

# CHALLENGING THE BUSINESS OF FEAR



**ENDING WORKPLACE RETALIATION,  
ENFORCING WORKERS' RIGHTS**

**RAISE THE FLOOR ALLIANCE  
and NATIONAL ECONOMIC  
& SOCIAL RIGHTS INITIATIVE**

**Published 2016**

**Principal writer: Brittany Scott, NESRI**

**Published by: Raise the Floor Alliance and  
National Economic & Social Rights Initiative (NESRI)**

# Contents

<b>Executive Summary</b> . . . . .	<b>2</b>
<b>About the Collaborators</b> . . . . .	<b>4</b>
<b>Methodology</b> . . . . .	<b>5</b>
<b>Introduction</b> . . . . .	<b>6</b>
<b>I. The Business of Fear in Illinois</b> . . . . .	<b>8</b>
A. Unchecked Abuse in the Workplace . . . . .	9
B. Retaliatory and Intimidating Treatment . . . . .	11
C. Workers Affected Across the Board . . . . .	15
D. Culture of Repression . . . . .	17
<b>II. Leaving Our Frontline Monitors at Risk.</b> . . . . .	<b>20</b>
A. Ragged Patchwork . . . . .	21
B. Unjust Burdens . . . . .	23
C. Delays and Obstacles to Justice . . . . .	24
<b>III. Systemic Failure to Prevent Retaliation</b> . . . . .	<b>27</b>
A. No Penalties for Employers . . . . .	28
B. Inadequate Monitoring and Investigation . . . . .	31
C. No Market Disruptions. . . . .	32
<b>IV. Protect Workers, Restore Rule of Law</b> . . . . .	<b>33</b>
A. Adequate and Fair Legal Coverage . . . . .	35
B. A Path to Justice that Meets Workers' Needs . . . . .	37
C. Making the System about Prevention . . . . .	43
<b>Conclusion and Recommendations</b> . . . . .	<b>45</b>
<b>Appendices</b> . . . . .	<b>48</b>
<b>Notes</b> . . . . .	<b>56</b>

# Executive Summary



**“Workers’ participation is essential to an employer compliance system. [And when workers make claims], [t]he issue is that people are not being protected.”**

**—Jennifer Gordon, Professor of Law at Fordham Law School  
and Founder of New York-based Workplace Project**

Illinois workplaces have become dangerous and abusive sweatshops through the growing use of fear as a way of doing business. Violations of workers’ rights are pervasive throughout numerous low-wage industries and sectors, and low-wage workers confront an almost entirely lawless environment. Retaliation is a constant threat deployed by employers in response to workers who courageously bring attention to abuses and try to improve work conditions for themselves and others. Together with employer policies and practices that deliver a consistent message of expendability to workers, retaliation is effectively forcing workers to silently accept these conditions.

Illinois’ system of enforcement depends on workers claiming their rights, which makes the state’s failures to protect against retaliation both incomprehensible and deeply troubling. A scattered patchwork of retaliation prohibitions under state and federal law provide uneven and unreliable protection, which fails some workers completely and, for others, is both confusing and too uncertain. Moreover, procedural legal hurdles, such as an unreasonable burden of proof placed on workers, make it very difficult for workers to secure justice in the face of retaliation, reducing these on-the-books protections to little more than rhetoric. When you add fragmented, complex and recklessly slow complaint resolution processes to this degraded enforcement landscape, you create a perfect storm of impunity for abuse against workers who are inevitably pushed into silence.

Consequently, even when penalties for retaliation are available under the law, they are rarely imposed. And when they are, they are ill designed to incentivize employers to correct and prevent abuse. Additionally, outside of responding to complaints, there is no sign that state agencies are even attempting to monitor employer compliance with basic workplace standards. Given that the vast majority of low-wage workers are in no position to walk away from even the most abusive job, consequences for abusive employers are few and far between. Thus, Illinois’ system of enforcement not only clearly fails to provide

adequate relief from retaliation, it also fails to deter and prevent these abuses.

There is a way to reverse this crisis and restore rule of law. A new approach to enforcement that empowers and protects workers on the frontlines of defending rights and freedom at work is possible. Given that workers are the only ones who are always present when abuse occurs, we need to look to worker-driven models for solutions.

Union contracts and legally binding supply chain agreements, designed by workers for workers, have proven that innovative and effective models are more than within our reach. The public policies required to replicate the essential elements of these worker-driven models have also been tested in other states, countries and municipalities, and, under some circumstances, even in Illinois. These should be adopted statewide to create an effective, holistic approach to worker-centered enforcement.

This report recommends incorporating at least three essential elements in Illinois’ enforcement system to move towards a worker-centered approach: (1) adequate and fair legal coverage, (2) accessible and timely complaint resolution and (3) built-in systems for the prevention and deterrence of retaliation. This requires shifts in public policy along with political will on the part of state—and ideally federal and local—enforcement agencies to implement change through effective collaboration with workers’ organizations. Specifically, we recommend the State of Illinois pass a comprehensive anti-retaliation bill that:

- Ensures all workers can access relief from retaliation on a consistent basis through broadening legal protections and creating fair assumptions and burdens of proof under the law;
- Ensures speedy and timely resolution for retaliation complaints in order to meet workers’ needs; and
- Imposes legal penalties that effectively deter employers from delaying and denying justice for workers.

## ABOUT THE COLLABORATORS

**R**aise the Floor Alliance was founded by Chicago area worker centers: ARISE Chicago, Centro de Trabajadores Unidos, Chicago Community and Workers' Rights, Chicago Workers' Collaborative, Latino Union, Restaurant Opportunities Center-Chicago, Warehouse Workers for Justice, and Worker Center for Racial Justice. Raise the Floor brings together low-wage workers across geography and industry to build collective power to win full-time, family-supporting work across Illinois. [raisetheflooralliance.org](http://raisetheflooralliance.org)

**National Economic and Social Rights Initiative (NESRI)** partners with communities to build a movement for economic and social rights, including health, housing, education and work with dignity. NESRI brings an inclusive human rights approach to supporting the on-the-ground work of its partners by putting people's experiences at the center of efforts to build power, shift narratives and change policies. [nesri.org](http://nesri.org)



## METHODOLOGY

The analysis in this report is based primarily on surveys and qualitative interviews with low-wage workers in the Chicago area that documented what happens when workers try to deal with abuses and other problems at work or improve their jobs. (See sample survey and interview guide at Appendices A and B).

The surveys and interviews included issues regarding wages, health and safety hazards, injuries, sexual harassment and discrimination, how workers feel they are treated and what barriers they face in addressing these issues. Though not generalizable, data of this kind gives a more in-depth account of workers' experiences in Illinois and can be used to identify patterns of shared experiences and trends that are relevant to the broader population.

Eight Chicago-area worker centers, all founders of the Raise the Floor Alliance, in collaboration with the National Economic and Social Rights Initiative, designed the survey and interview materials to collect workers' stories. After completing two pilot studies in English and Spanish in early 2015, surveys were conducted in both languages over a six-month period. Surveys were integrated into the worker centers' existing processes for making contact with their community members. They were conducted with new and existing members by both staff and other members through outreach and intake, regularly held meetings, community-based trainings and other planned gatherings. Regardless of the setting in

which the surveys were conducted, administrators of the survey observed strict confidentiality practices to further encourage workers' voluntary participation.

Our resulting sample population includes workers from a broad cross-section of low-wage industries and sectors in the Chicago metro area and is inclusive of the significant portion of the low-wage workforce missed by traditional research data collection practices. Their off-the-books work, immigration status and/or fear of retaliation by their employers keep them and the places in which they work relatively hidden. (See survey participant demographics and industries at Appendix C).

Through the survey, 275 workers shared their experiences. To be included in the study, participants' current or most recent work had to be in the State of Illinois. After screening, 29 surveys were excluded from the study because the worker was employed outside the State of Illinois or the location of employment could not be identified. Additionally, eight workers and six Illinois legal practitioners participated in interviews, which were on average an hour long. Attorneys had an average of over 12 years of experience practicing labor and employment law in Illinois. We also interviewed academic researchers and advocates who have studied enforcement issues for many years and used secondary data from past research studies along with analysis of law and data provided by government enforcement agencies to expand our findings.



# Introduction





**“You gotta realize you need a job to survive and you’re going to do anything and everything you can because you gotta eat and you gotta have a roof over your head. I want my daughter to have things I didn’t have—to not have to worry about this kind of stuff. It’s frustrating and depressing how they treat us like garbage, but you better say nothing if you want to keep your job.”**

**—Lauren\*, 47-year-old Black single mother experiencing unemployment after being fired because of a work injury**

**F**aced with skyrocketing inequality and economic insecurity in Illinois and across the country, low-wage workers are more vulnerable than ever to the abuse of their rights on the job. Companies driven by the quest to maximize profits are turning Illinois’ workplaces into dangerous and abusive sweatshops through the exploitation of low-wage workers’ fears and vulnerabilities. Everything from wage theft, to impeding access to workers’ compensation for injuries, to retaliatory firings for speaking up or organizing and more, has become the new normal for American workplaces.

Retaliation has been the primary tactic deployed by businesses to keep workers from exercising their rights in the precarious economy. Retaliation as a systemic business practice, when coupled with our inadequate social safety net for workers to fall back on, compels silent acceptance by hundreds of thousands, even millions, of workers as their wages are stolen and conditions degrade to levels incompatible with human dignity and rights.

Government actors generally stand by, even encouraging this upheaval in work in the name of economic development and job creation at all costs. As a result, violations of basic rights have become routine, if not compulsory, in low-wage industries, with no practical recourse for workers suffering these abuses. At a time when low-wage workers living paycheck to paycheck are least able to withstand job loss resulting from defending their own rights at work, our local, state and federal governments have abdicated even their most basic responsibility—ensuring the rule of law in the workplace.

The conditions of work documented in this report demonstrate that our frameworks for enforcing the fundamental rights of workers are irretrievably corrupted. This leaves workers constantly vulnerable to abuse. It also compromises advances in other arenas, such as the inspiring Fight for \$15, which depend on effective enforce-

ment of workplace standards. Too often the only vehicles for ensuring basic rights for low-wage workers are rare and hard-fought enforceable private agreements, such as union contracts with individual employers or legally binding supply chain agreements. This is an unacceptable state of affairs.

Today in Illinois, workers must endure a fragmented enforcement system with long, arduous and complex complaint processes that deliver, at best, modest and incomplete relief for major disruptions and losses in their lives. At the same time, even a successful challenge rarely costs guilty employers more than what they already owed workers, creating no deterrents for future abuses.

In this report, we lift up workers’ experiences to identify the roots of this unchecked abuse and outline an alternative worker-centered enforcement framework. A worker-centered framework enables workers to fill the role of frontline monitors of fundamental rights, and demands that the pervasive menace of retaliation be addressed by:

- Ensuring all workers can access relief from retaliation on a consistent basis through broadening legal protections and creating fair assumptions and burdens of proof under the law;
- Ensuring speedy and timely resolution for retaliation complaints in order to meet workers’ needs; and
- Imposing legal penalties that effectively deter employers from delaying and denying justice for workers.

Illinois has the opportunity to reverse deteriorating conditions of work by giving workers the support they need to monitor and defend their own rights. This is the bottom line for creating a fair business climate that respects workers’ rights in Illinois and beyond.

\*Names of quoted participants are fictitious to protect workers’ identities.

# I. The Business of Fear in Illinois



**“If our boss pressures us, she makes more money. So her way of accomplishing this was by making people fearful.”**

**—Monica, 39-year-old Latina mother fired from a retail job she held for ten years because of her effort to improve conditions**

## **A. UNCHECKED ABUSE IN THE WORKPLACE**

**“We felt it as a moral issue. We needed to be treated with dignity, but after we received training on our rights we realized the law was also being broken. There were problems with wage theft, with emergency exits being blocked. Many things were dangerous at work that didn’t need to be.”**

**—Monica**

**A**larming and abusive sweatshop-like conditions in Illinois have been exposed in recent years by a growing worker center movement. A 2005 study involving day laborers captured wage theft and workers’ widely shared concerns about physical safety in one of the state’s fastest growing sectors.<sup>1</sup> A large-scale survey project in 2008 confirmed that wage theft is widespread across multiple industries and sectors in Illinois, impacting hundreds of thousands of jobs in food service, retail, construction, childcare and manufacturing.<sup>2</sup> And since 2008, worker center studies have continued to document deteriorating conditions of work in more and more industries throughout Illinois, like warehousing<sup>3</sup> and car washes.<sup>4</sup> All together, these studies depict a significant and growing segment of the state’s economy defined by endemic wage theft, unsafe and unhealthy conditions, high injury rates and racial discrimination that affects scores of communities and families.

This is not a crisis driven by just a few “bad apples.” Rather, violations of even the most basic rights are systemic, creating conditions in which employers violate

workers’ rights in order to compete with low prices and avoid losses of business. The findings from the landmark *2008 Unregulated Work Survey Project* are staggering: for example, nearly half (47 percent) of participating workers in the Chicago area across several low-wage industries experienced a wage violation in the prior week, such as being paid less than minimum wage or being denied overtime pay.<sup>5</sup> Only three percent of participants received workers’ compensation for a severe on-the-job injury.<sup>6</sup>

In our *2015 Business of Fear Human Rights Documentation Project*, we found this trend was not limited to wage theft or any one specific type of violation. Most participants from diverse industries reported experiencing multiple and often simultaneous violations in their current or most recent jobs.<sup>7</sup> For instance, workers reported wage theft and safety issues, or discrimination and a workplace injury. Breaking the law has “become a standard business practice”<sup>8</sup> with workers facing an almost entirely lawless environment.<sup>9</sup> Indeed, many who participated in our documentation project reported bosses telling them that they have no rights.

# LAUREN

Like most moms, Lauren wants her five-year-old daughter to have opportunities she never did. She wants her to be able to focus on school and not have to worry about how they're keeping a roof over their heads and food on the table.

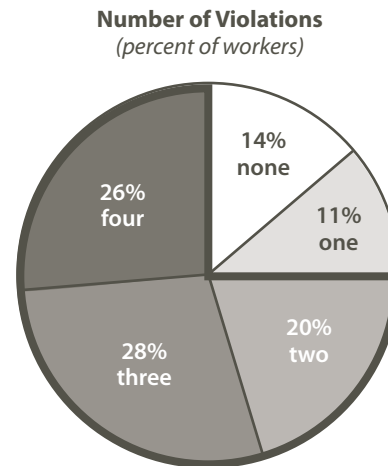
"Just because I have kidney failure, doesn't mean I can stop working. It's more bills. I need work more than ever," the 47-year-old single Black mother explains. Working long shifts on an assembly line at a Fannie May candy factory in Chicago for the last three years as a temp worker, Lauren has been barely making ends meet.

"I can't afford to be kicking up dust and complaining," she says. "You just know they'll fire you if you stir the pot." So, when the temp agency would sometimes short her two hours of pay for a 12-hour shift, she swallowed the bitter feelings and took the money. If she'd known she'd lose the job because of a swollen ankle hurting from long hours of standing on the line, she would never have told them about it. "I thought I'd just take a day off and let it heal. They told me to go home but they didn't tell me they weren't going to let me come back." The following day, she reported for work and was told she couldn't return to the factory. She was on the Do Not Return list: blacklisted.

The temp agency offered her work at another factory, but it was so far away that she couldn't get to it. She explained, "They know I didn't have a car. It was just another way of firing me." She said she felt thrown out like garbage. It's been a month and Lauren hasn't been able to find another job. She feels stuck without a good reference for her last three years of work. "It's in God's hands now."

## Violations Workers in Business of Fear Survey Experienced at Current or Most Recent Jobs

Types of Violations		
	number	percent of workers
<b>Wage theft</b>	<b>119</b>	<b>48%</b>
<b>Unsafe conditions</b>	<b>173</b>	<b>70%</b>
<b>Work injuries</b>	<b>126</b>	<b>51%</b>
<b>Discrimination</b>	<b>171</b>	<b>70%</b>
<b>Race or color</b>	<b>117</b>	<b>48%</b>
<b>Language</b>	<b>95</b>	<b>39%</b>
<b>Immigrant</b>	<b>85</b>	<b>35%</b>
<b>Gender</b>	<b>85</b>	<b>35%</b>
<b>Sexual harassment</b>	<b>72</b>	<b>29%</b>



## B. RETALIATORY AND INTIMIDATING TREATMENT

“Mostly, people don’t bother to fight. They see people speak up and suffer reprisals and think it’s not worth it. For me, when the pain in my hands from doing the same motions over and over got so bad that I complained, supervisors would show they were unhappy by telling me not to come to work or they’d call me in but make me do very difficult work. I was called ‘worthless’. I was given harder work. I was even put to work in a freezer, without warning to bring warm clothes. Eventually, they said they had no more work for me.”

—Victoria, 38-year-old Latina single mother of two experiencing unemployment due to the severe injuries suffered in a Chicago factory after working there nine years as a temp

**R**etaliation is a constant threat for far too many low-wage workers in Illinois. Roughly one in every three workers in the *Unregulated Work Survey* who complained to their employer about a violation of their rights or tried to unionize was fired or otherwise retaliated against by their employer.<sup>10</sup> More than one in five experienced retaliation for reporting an injury.<sup>11</sup> Among workers in the *Business of Fear Survey*, 83 percent shared an example of a time they had tried to fix a problem at work or improve their jobs, and half (48 percent of all survey participants) reported experiences involving retaliation. That is, 58 percent of workers who shared an experience had a story of retaliation to tell.

Workers identified a range of underlying issues in the 118 instances of retaliation. These included workers being injured on the job, bringing attention to particular legal rights violations (like wage theft, safety hazards or discrimination), and speaking up about other concerns of dignity and fairness, such as erratic scheduling or verbal abuse. In many stories, workers identified several concurrent issues. Overall, employers retaliated against workers for raising almost any concern that involved their rights at the workplace.<sup>12</sup>

Bosses also retaliated against workers whether they brought concerns to them directly, to their coworkers, to the government or to the public through protest. Indeed,

the majority of workers facing abuse found no path to justice free of retaliation. Workers who made abusive conditions and injuries public, whether by filing a claim with the government or through group action, experienced higher rates of retaliation than those who spoke only with a boss or coworkers. More than 80 percent of workers who went through public or government channels faced retaliation, despite the law clearly prohibiting retaliation in those contexts. Moreover, the slightly lower rate of retaliation for in-house reporting (61 percent to employers, 66 percent to coworkers) was largely offset by employers' non-responses to workers' concerns (20 percent, 23 percent). That is, when employers did not retaliate, they mostly ignored workers' concerns. There was not only no path to justice free of retaliation, there was often no path to justice at all.

Employers frequently customized retaliation to intimidate and coerce workers. The *Business of Fear Survey* recorded a wide range of retaliatory tactics used by employers in Illinois, including 89 unique combinations of tactics and a shocking amount of physical abuse (seven percent of retaliation stories).

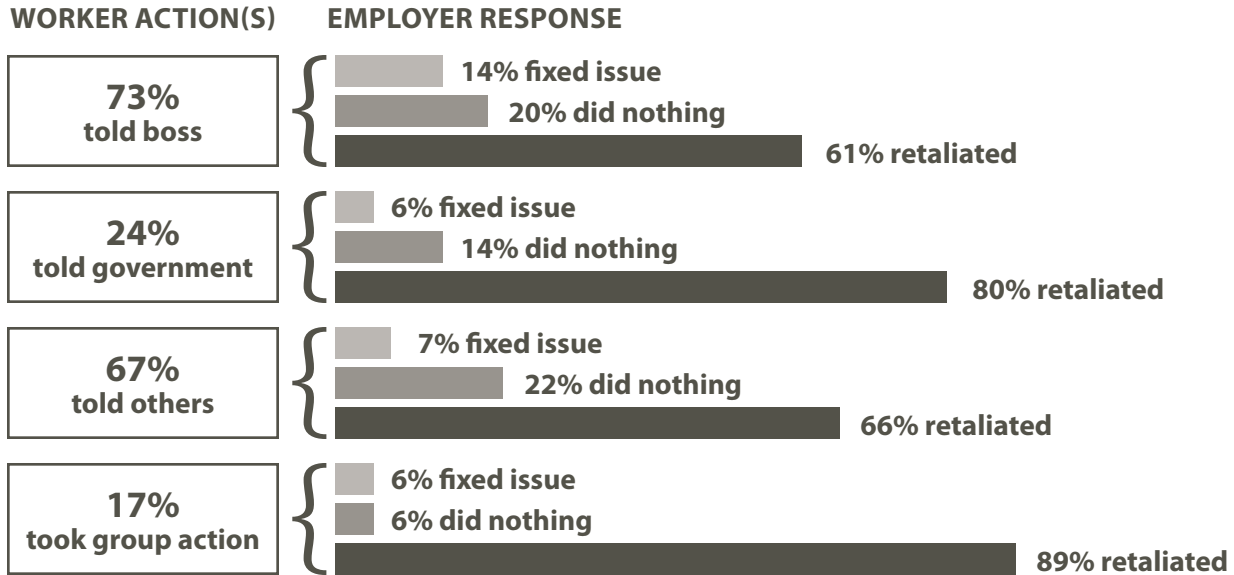
Instances of job loss, cut hours and pay, worse assignments, harassment—such as false accusations of breaking workplace rules—and immigration threats were common in both the *Unregulated Work Survey* and the *Business of Fear Documentation*.<sup>13</sup> Within the variation, however, taking away work remains the most prevalent way employers retaliate against workers.<sup>14</sup> Employers appear to be skilled at identifying the retaliatory tactics that work best.

“Retaliation can be anything. A ‘good’ manager knows how to handle an employee once they get to know them. Workers who want every hour they can get—they’ll start cutting their hours. I’d rather go home early every day, so they’ll start working me late.”

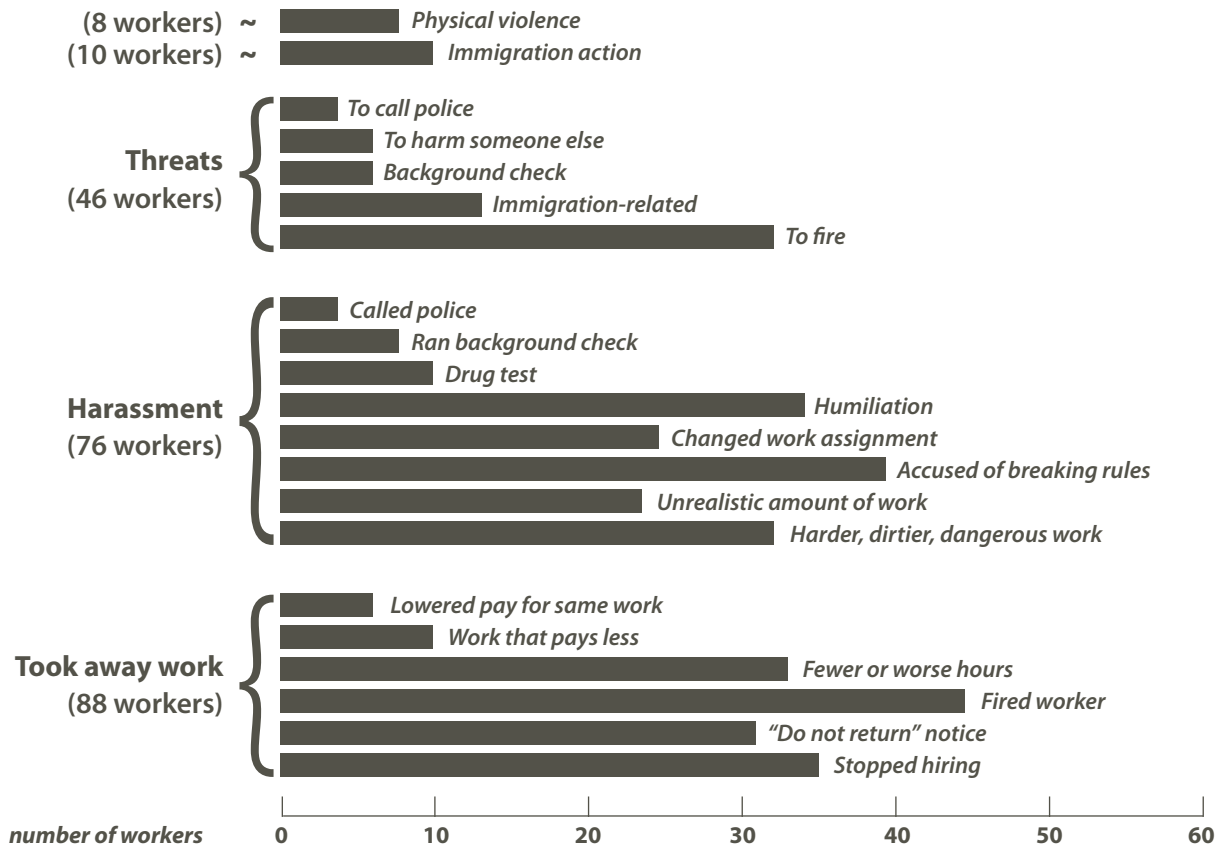
—Nick, 39-year-old White male warehouse worker of over a decade witnessing the declining conditions of work in Chicago’s suburbs



**Workers in the Business of Fear Survey Took Action in One or More Ways to Defend Their Rights and Improve Jobs, But Regardless of the Type of Action Taken, Retaliation Was the Norm**



**Retaliation Tactics Used by Illinois Employers in Business of Fear Survey**





# VICTORIA

Victoria was on-call seven days a week for nine years working at a frozen pizza factory in Romeoville, Illinois through a temp agency. “When I asked to take off a Sunday, I was laid off for two weeks,” she recalls. The agency required that she show up at 6 a.m., but often didn’t let her clock in until eight or nine. She notes, “Mostly, people don’t bother to fight these things. They see people speak up and suffer reprisals and think it’s not worth it.”

Relentless pain in her wrists led Victoria to say something. The work required her to do the same motions over and over, putting ingredients on pizzas, getting boxes ready and packing them. Lots of coworkers developed back and hand injuries. When the 38-year-old single Latina mother of three began experiencing pain in her wrists four years ago, it was so bad that she couldn’t pick up her youngest son, a baby at the time. He complained constantly and she still worries about how this has affected him.

“They would show they were unhappy with you if you complained about the pain by telling you not to come to work sometimes or they’d call you in but make you do very difficult work,” says Victoria, remembering how bosses treated her. She was called “worthless.” Her doctor’s restrictions were ignored; instead, she was given harder work. She was put to work in a freezer, without warning to bring warm clothes. Then she was fired. She recalls, “They eventually said they had no more work for me.”

For the past three years, Victoria has been fighting the agency to get each of seven surgeries on her hands covered by workers’ compensation. She’s still fighting the agency over replacement wages she needs for the time she hasn’t been able to work because of her injuries. “I’ve been out of work for a while.” She chokes up, “My oldest is 19 and works in the factory now. My middle son is nine years old and he says to me he wants to see if he can get work too so we can have enough money.”

## C. WORKERS AFFECTED ACROSS THE BOARD

As with wage theft, discrimination and other rights abuses,<sup>15</sup> workers reported high rates of retaliatory and intimidating treatment across a broad set of low-wage industries. Retaliation affected workers across race and citizenship status but with significantly higher rates of abuse and mistreatment reported by Black and Latino workers. Recent immigrants were also more frequently motivated by fear of retaliation to say nothing about abuses. Yet the *Unregulated Work Survey* found that job characteristics, like payment in cash, were the greatest predictors of abusive workplaces.<sup>16</sup> And no group of low-wage workers, irrespective of their demographic, is adequately protected.<sup>17</sup>

Finally, while mistreatment and retaliation define the conditions of low-wage work in Illinois, higher paid workers are also at risk when they try to improve conditions by organizing a union. A majority of workers

say they want a union to represent them in negotiating with their employer for better pay and conditions,<sup>18</sup> but only 15 percent have a union in Illinois, with less than nine percent of private sector workers unionized.<sup>19</sup> Well-founded fears of lost work and other retaliatory abuses impact workers' decisions to be involved in organizing efforts.<sup>20</sup> Despite formal legal protections, employers are increasingly using punitive anti-union tactics to dissuade workers from their efforts to organize.<sup>21</sup> The use of ten or more anti-union tactics has doubled in recent years, with a sharp increase in monitoring and punishing organizing activities.<sup>22</sup> The level of retaliation, threats, harassment and surveillance documented in workplaces in which workers have tried to win union representation is akin to the constant threat of the same in low-wage work—it is standard practice that has intensified in recent years.



# MONICA

For over a decade, Monica unloaded and sorted truckloads of donations for a thrift store in Chicago. It was physically demanding work, but the 39-year-old Latina mother took pride in sending regular sums of money to her children back in Mexico.

“There were issues with wage theft and safety,” Monica recalls, but it was the abusive way new store managers treated workers, always wielding insults and threats of firing them, which led her and her coworkers to campaign for union representation. The company responded with its own campaign, promising that they didn’t need a union to protect them. Too many people “believed the lies,” says Monica.

Days after the failed election, company representatives arrived at the store with the list of votes. One by one, in front of everyone, they demanded immigration papers from each worker who supported the union and nothing from workers who voted against it. Monica remembers women crying. “It was humiliating.” Monica was among those who lost their jobs.

Monica has not been able to find stable work since. “I don’t know if it was worth it. All I can find now is temp work in the factories. I’ve got nothing to send home to my kids. And it’s the same thing all over again, no matter where I go: they don’t respect you or your rights.”



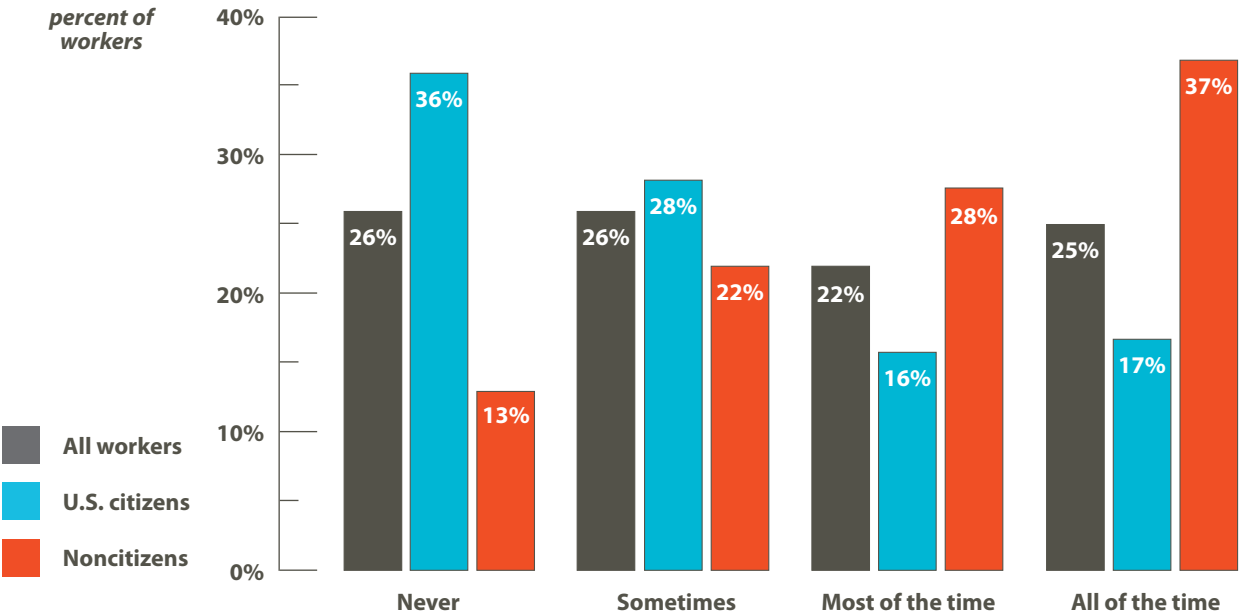
## D. CULTURE OF REPRESSION

**R**etaliation destroys workers' wills to defend their own rights by making those efforts mostly futile. It creates a culture of hopelessness and helplessness and its impact reaches beyond the workers who lose their jobs or are otherwise punished. Fifteen percent of workers in the *Unregulated Work Survey* remained silent about a serious legal rights violation they had experienced in the prior year, a majority out of fear of losing work.<sup>23</sup> Nearly three

quarters of the workers in the *Business of Fear Survey* (73 percent) also reported keeping quiet at least sometimes about problems at work out of fear. Half (47 percent of survey participants) were compelled by fear to keep silent all or most of the time. Fear is therefore a major factor for workers deciding whether or not to defend their own rights at work.

Employers create fear by sending a constant message

**Workers in the Business of Fear Survey Fear Bringing Attention to Problems at Work**





of expendability to low-wage workers. “You can just feel it in the air,” remarked Charles, a 44-year-old Black male warehouse worker. This message is delivered in multiple forms. Without doubt, each instance of retaliation by firing or other means—often public—demonstrates to workers what their employer will do if they speak up. The message is also delivered to workers when employers discourage them from speaking up about problems, when they are verbally abusive or threatening, when they

fire workers who become injured or practice discrimination in hiring that favors workers perceived to be more fearful, such as recent immigrants. This was the kind of workplace most frequently described by workers in the *Business of Fear Documentation*.<sup>24</sup> Reminded consistently that the risk of retaliation is high, many workers are effectively prevented from getting the treatment they need when injured, blowing the whistle on other abuses and organizing for better conditions.

Hiring practices that favor Latino workers perceived to be less likely to speak up about abusive conditions are the same practices that deny employment to Black workers. “Being an African American, as soon as [employers] see me, they just do not want to hire me,” Michael, a 22-year-old male, reflected on his unsuccessful applications and interviews for countless restaurant and service jobs around Chicago. Needing to provide for two young daughters, Michael has turned to temp agencies for work, but keeps being told that there is no work. He notes, “[Employers] tell [Black workers] one thing and [other workers] something else.” Always being on the job hunt has been a defeating experience for Michael. He explains, “I put one foot in and I get knocked back.” No group of workers benefits from these divisive tactics.



# ALBERTO

Alberto has worked for several companies around the Chicago area, including jobs in a grocery store, factory, warehouse and in construction. “There’s no job security and companies know it. They take advantage, overwork us, abuse us verbally and discriminate against us.”

Even though the 42-year-old Latino male has experienced violations of several of his legal rights on the job, including stolen wages, he never complains. “I am afraid,” he admits. “I’ve seen what happens to others when they complain. Retaliation comes swiftly.” He recalls many instances of coworkers who complained about illegal working conditions being fired, struggling with more difficult or impossible work assignments, enduring verbal abuse and harassment, and effectively forced into quitting. He even once witnessed a supervisor threaten to physically assault one of his coworkers. “This is what I always see.” He adds, “Fear allows [supervisors] complete control.”

Alberto says he feels the pressure wearing on him mentally and physically: “The stress is intolerable.”

# CHARLES

“You can feel it in the air,” Charles remarks on how he knows he’d be fired if he complained about the wage theft and dangerous conditions he has experienced as a temp for the past six years in the factories and warehouses outside Chicago.

The 44-year-old Black male is also aware that he’s being mistreated because of his injury. The day after his hand was cut to the bone by a piece of steel while working on the assembly line packing macaroni and cheese boxes, he was told he was on the Do Not Return list. He couldn’t afford the two thousand dollar medical bill he received to treat his hand, so he filed for workers’ compensation.

Charles has gotten new jobs through the temp agency, but he says, “They’re treating me worse. I never get a full week’s work anymore. My checks have been short. And bosses will stand there pushing me and pushing me to do work that’s usually done by three people. It’s not safe!” While he waits for workers’ comp, he worries about the impact of unpaid bills on his credit, and he worries about his health and his family. He flexes his hand to show it’s still stiff. “Sometimes it goes numb,” he explains. “I’ve thought about going to a doctor again, but I can’t afford to miss work.”

## II. Leaving Our Frontline Monitors at Risk





**“I can say it’s illegal, but that doesn’t stop them from firing us or retaliating in some other way.”**

**—Nick, a 39-year-old White male warehouse worker of over a decade**

**L**ike most states, enforcement in Illinois primarily depends on workers detecting abuses they suffer in the workplace. That means wage theft, safety hazards and other abuses that do not get reported do not get fixed. Additionally, when workers cannot report on-the-job injuries, they do not get workers’ compensation and must bear the tremendous costs of unsafe working conditions. Even when public agencies are tasked with enforcing workplace laws, such as the minimum wage or health and safety standards, agencies discover only a fraction of

violations without workers first reporting them. Public agencies are not resourced or positioned to effectively oversee all workplaces. To make matters worse, a growing number of workplaces are off their radar, paying workers in cash and using other methods to evade regulatory oversight. This means workers are now, more than ever, the frontline monitors of rights at work. Yet, as noted above, retaliation is rampant, leaving our frontline monitors constantly at risk.

## A. RAGGED PATCHWORK

**M**uch, but not all, of the retaliation suffered by workers is blatantly illegal. Legal protection from retaliation arises from a scattering of independent state and federal laws.<sup>25</sup> The patchwork nature of this protection results in uneven gaps and grey areas in Illinois. The uneven nature of the law, which lets employers engage in practices that violate the spirit of the law, are one slice of a broader problem.

To begin with, retaliation prohibitions only kick in when a worker engages in a defined set of protected activities, which varies across the different laws. For instance, workers are generally protected when they file complaints with the government, but when workers complain to a coworker, whether or not they are legally protected from retaliation depends on the content of their complaint. They may not be protected if their complaint concerned subminimum wages,<sup>26</sup> but they would be if their complaint concerned discrimination or unsafe conditions.<sup>27</sup>

Moreover, a single worker who, lacking knowledge of the law, complains about abusive treatment in general terms without referencing a particular legal right may not be protected, whereas if that worker acted with at least one other coworker to address the same concerns as a group, such as through a petition, they would be covered.<sup>28</sup>

Similarly, the actions employers are prohibited from taking in retaliation also vary. In the case of wage, non-discrimination and health and safety laws, employers are prohibited from changing work conditions in ways that most workers would find harmful, such as cuts to pay and hours.<sup>29</sup> Yet injured workers are only protected from being fired, although it is well known that employers deploy a wide variety of retaliatory tactics.<sup>30</sup> Workers are also not afforded any certainty as to whether they are protected from threats and harassment.<sup>31</sup> And undocumented immigrants cannot be sure the law protects them

from immigration action should they bring attention to abuse at work.<sup>32</sup> There are only a few reported legal decisions concerning employers' use of workers' immigration status to retaliate and, while these courts held that in these cases unfair immigration action was a form of illegal retaliation,<sup>33</sup> they offer cold comfort to undocumented workers given the lack of a clear prohibition against this form of retaliation in all cases. Workers facing deportation after exercising their rights at work, at best, can hope for prosecutorial discretion.<sup>34</sup> At the same time, the National Labor Relations Act prohibits employers from interfering in general with the activities of any two workers to improve their jobs.<sup>35</sup> For temp workers and other subcontracted workers, the very nature of their work arrangements create loopholes in protection that can be exploited by companies that simply choose to no longer contract with the intermediary.<sup>36</sup>

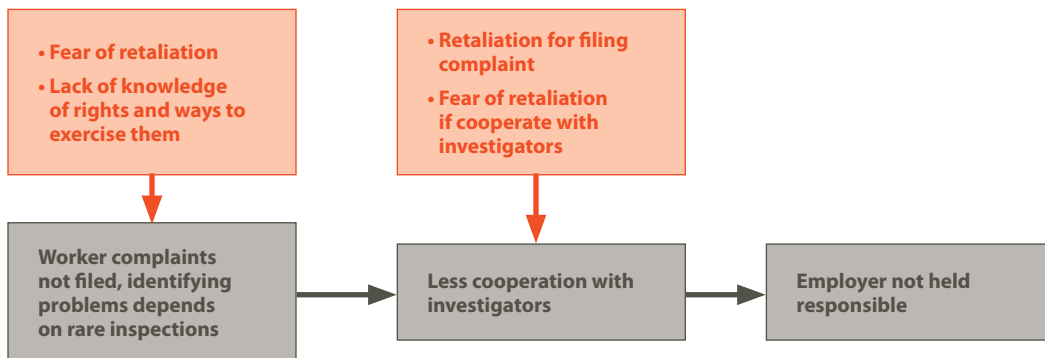
To say this is confusing to a low-wage worker, who may not even be familiar with the specifics of any of these laws, is an enormous understatement. Watching injured workers suffer harassment for seeking compensation to which they are legally entitled, with no way of legally protecting themselves, certainly provides no reassurance to the worker suffering wage theft who may not know broader and more explicit protections are in place for wage theft. There is no rationale that would adequately explain these discrepancies to any reasonable worker. Exploiting the unclear and uneven nature of the laws is one reason that employers can convincingly tell workers that they have no rights they can defend with confidence. Together with workers witnessing and hearing about retaliation, this confusing, oppressive environment has a broad chilling effect on all workers standing up for any of their rights on the job.

### Effect of Retaliation on Workplace Enforcement

**Workplace enforcement process . . . in theory:**



**Breakdown in enforcement process:**





## B. UNJUST BURDENS

While confusing and patchwork anti-retaliation laws are deeply problematic, the less visible issue of “burden of proof” is an even more significant barrier to justice. Under current law, it is not enough that employer actions clearly have a retaliatory impact. Although it is very rare for employers to state directly that they are intending to retaliate against workers,<sup>37</sup> workers have the burden of proving an employer’s underlying motive.

Employers are allowed to fire workers or change the terms of employment for any or no reason at all as a general matter,<sup>38</sup> with narrow legal exceptions for retaliation and discrimination. Consequently, employers can and do claim a range of justifications for their retaliatory tactics, such as poor performance, downsizing, speaking too loudly or not getting along with coworkers.<sup>39</sup> This then

places the legal burden on workers to prove motive and show these justifications are false,<sup>40</sup> a burden that is seemingly impossible to meet.<sup>41</sup>

Specifically, workers must have evidence that retaliation was, despite their employer’s claims, at least one of the reasons for the employer’s actions or, in some cases, such as cases concerning non-discrimination and workers’ compensation rights, they must show that their employer would not have taken the negative employment action but for the workers exercising their rights, which is even more difficult.<sup>42</sup>

As an Illinois attorney with 30 years of experience representing both workers and employers noted, employers—instead of workers—are routinely given “the benefit of the doubt.”

As a result, legitimate claims are routinely denied and

“I had one case—a temp worker was cooperating with a DOL investigation. The investigator asked her to help find witnesses, so she posted on Facebook. The temp agency she worked for sued her for defamation, because she posted about them not paying people right. We took the straightforward retaliation case to the DOL. All they did was call her employer and ask, ‘Was it because of the investigation?’ When her employer said, ‘no,’ they dropped the case.”

—Illinois attorney with 11 years experience representing workers

retaliation protections are, in many cases, diminished to little more than rhetoric.

The challenge of proving retaliation is particularly complicated for temp workers. Temp workers do not always know who their employer is and who is responsible for the retaliation—the staffing agency or the agency’s client for whom they labor.

Workers cannot prove their employers’ motives if they cannot even identify their employers. This is increasingly challenging in today’s changing economy,<sup>43</sup> with temps and other subcontracted workers carrying the added burden of proving the employment relationship, another time-consuming, complex legal process.<sup>44</sup>

“So who is it? You try to talk to this person at the job site who seems to be supervising you and he says he’s not your boss. Then you try speaking with the temp agency and they’re not your boss either.”

—Lauren, 47-year-old Black single mother who worked as a temp for three years in a Chicago factory until she was fired because of her injury

### Most Retaliation Claims Do Not Survive the Investigation

Underlying issue*	Oversight body	Withdrawn or dismissed
Unsafe conditions	OSHA <sup>45</sup>	76%
Discrimination & sexual harassment	Ill. Dept. of Human Rights <sup>46</sup>	88%
	EEOC <sup>47</sup>	83%
Organizing for improved jobs	NLRB <sup>48</sup>	57%

\*No data was readily available for wage theft and workers’ compensation based retaliation claims

## C. DELAYS AND OBSTACLES TO JUSTICE

“Sometimes you just need money and have no time to fight. It’s really a job in itself. You get that mail, you send in your response, you have to meet with your attorney. You have to make sure you get this phone call with this person. If I was working like I normally was, it would be nearly impossible to keep this going.”

—Tiana, 31-year-old Black single mother of two on her experience navigating the administrative process of a state agency

Even if the law clearly protected a worker against a retaliatory action (and that worker knew it and could meet the unreasonably high burden of proof required), Illinois’ processes for seeking relief remain more of an obstacle course than a path to justice. Complaint resolution processes are confusing, demanding, fragmented and plagued by serious delays that deny just outcomes in retaliation cases.

Workers in the *Business of Fear Survey* widely agreed that their retaliation claims were not resolved in a timely fashion, regardless of whether they brought them to the government, to their employer or to both. Public data confirms that reaching resolution through a government complaint takes many months, often years. As an example, the investigation process alone at the Illinois Department of Human Rights takes an average of 290 days to resolve

employment discrimination related claims of retaliation.<sup>49</sup> The federal equivalent, the Equal Employment Opportunity Commission, takes ten months on average to investigate a charge and three months to resolve a charge through mediation.<sup>50</sup> Hearings can take years.<sup>51</sup>

As a formal audit of the Occupational Safety and Health Administration captured in 1997, with delays, quality of evidence erodes and witnesses become unavailable.<sup>52</sup> In retaliation cases, lost witnesses means lost cases. At the same time, workers who are living paycheck to paycheck are expected to bear added costs of going to court, such as taking time off work from a new job, after suffering lost wages due to illegal firings, wage theft or an injury.<sup>53</sup> Many workers cannot make it through this obstacle course, and justice delayed becomes justice denied. “It’s not ‘you lose.’ It’s you’re processed out the door. It’s about it taking a long, long time,” explained the Illinois attorney with 30 years of experience.

The web of multiple, disconnected processes, through which workers can make complaints, also discourages workers from holding employers accountable and securing complete relief. Over half a dozen public agencies and courts in Illinois promise to provide retaliation protection with each implementing a distinct piece of workplace regulation. Nearly every workplace standard—minimum wage, non-discrimination, and so on—has spawned its own isolated process with unique points of access, forms, staff, rules, investigations, settlements and hearings.<sup>54</sup>

As our documentation reflects, this is completely out of sync with how workers experience abuse and retaliation. For workers, the range of violations (which they often suffer simultaneously) is one set of interrelated experiences. Yet securing justice could require a worker to file multiple complaints, using different rules in multiple venues. This is an unnecessary maze to solve that is time and resource intensive.

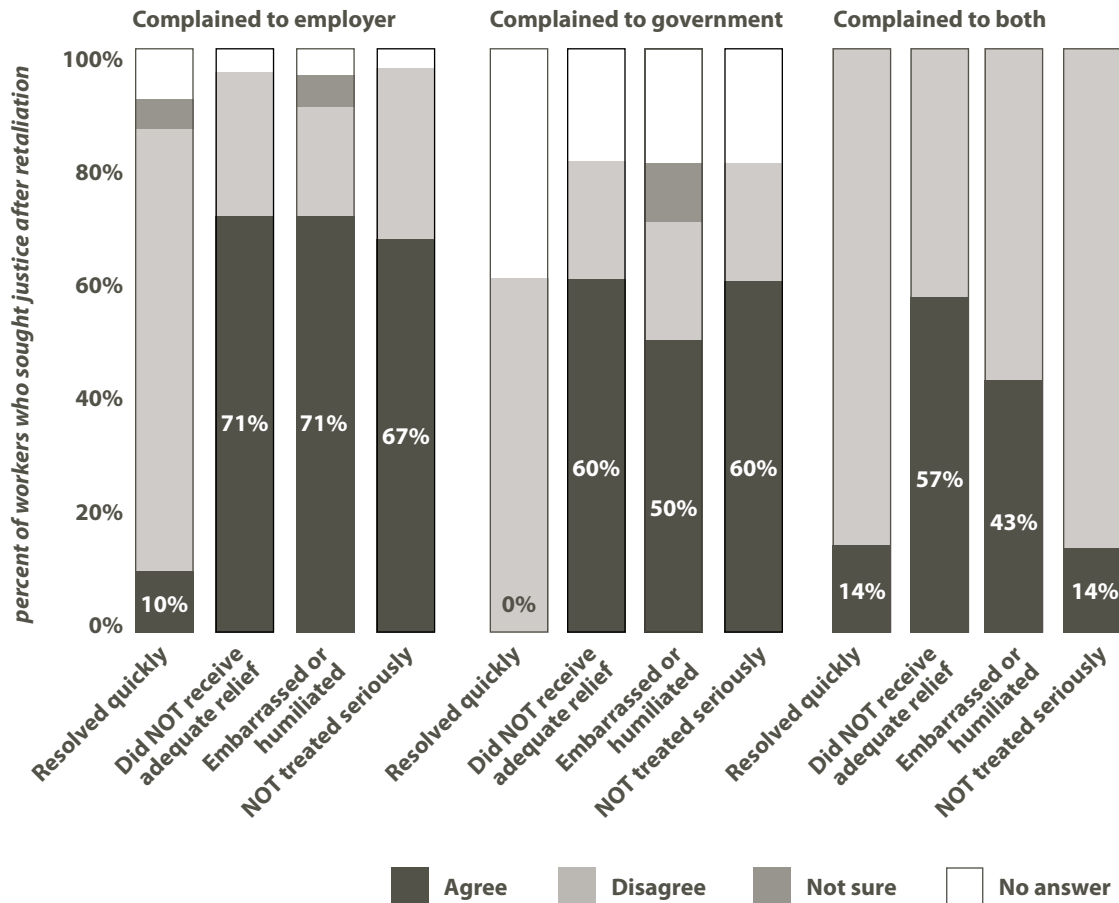
Given these realities, it is not surprising that a majority of workers in our *Business of Fear Survey* who had made a workplace complaint to the government shared the view that the complaint process was confusing. Only a quarter of all survey participants even knew where to go to make a complaint. Among the workers who had made a complaint to the government, many also felt the process was scary or threatening (26 percent), required an attorney (26 percent) and was a waste of time (15 percent). Moreover, of the 118 who shared a retaliation story, only one-third sought justice for it (less than half turning to the government), while two-thirds had not. Yet only seven percent said the retaliation they experienced was not actually worth complaining about. As one experienced attorney’s understated comments reflected, “Generally, the legal process is not responsive to workers’ needs.”

These procedural challenges are compounded by the lack of legal representation for many workers. Without legal assistance, the possibility of a worker securing jus-





## Workers' Experiences Searching for Justice After Retaliation in Business of Fear Survey



tice after retaliation is particularly low.<sup>55</sup> The potential procedural complexity of any case combined with the need to surface evidence of an employer's motives, which often requires technical understanding and the ability to undertake discovery (formal requests for admissions of facts, requests for depositions, documents and more), is daunting. Yet help is not widely available and even training for workers on how to make complaints themselves is highly circumscribed.<sup>56</sup>

Low-wage workers may sometimes get representation if an attorney can anticipate getting the costs of their service covered through provisions in the law for attorneys' fees. Where fees are available, an attorney can take cases with the expectation that, if they win, they can charge a guilty employer for their costs. These are only available under minimum wage and non-discrimination laws;<sup>57</sup> they are not available for retaliation claims related to

health and safety,<sup>58</sup> workers' compensation<sup>59</sup> or organizing.<sup>60</sup> Moreover, if a worker only has a retaliation case, and, for instance, no linked case of wage theft, "they won't find an attorney, because judges are unlikely to award high fees to the attorney if the monetary damages for the worker are negligible," explained an attorney who solely represents low-wage workers. "Workers are also less likely to get legal help if their case falls into a grey area, because attorneys lack adequate assurance they can win the case and get paid for taking on the work," explained another Illinois attorney with ten years representing both workers and employers. Workers' organizations have tried to step into the void but lack the resources to fill it, so workers remain chronically under- or unrepresented. Combined with all the other barriers discussed above, the system is currently designed to fail to protect workers seeking to defend basic rights on the job.

### III. Systemic Failure to Prevent Retaliation





**“Everywhere you look, it’s the same. They don’t respect you or your rights.”**

**—Monica, the 39-year-old Latina woman reflecting on her experience in the job market since being fired from her long-time retail job**

## A. NO PENALTIES FOR EMPLOYERS

The enforcement frameworks and system in Illinois fail to deter and prevent retaliation in any significant way. Even when worker complaints are successful, they yield too little too late for workers and demand negligible compensation from guilty employers. With penalties rarely imposed and, when they are, at minimal cost to business, employers have almost no incentive to refrain from delaying and denying basic justice to workers.

Workers who prove their employers acted unlawfully will typically receive modest relief from losing their jobs, either getting their jobs back or money to cover wages they

lost as a result. It is extremely rare for employers to pay a penalty.<sup>61</sup> Fines and criminal sanctions are only available in the cases where retaliation stems from a wage theft dispute, and even then the fines are modest and criminal sanctions rarely imposed.<sup>62</sup> Under other circumstances, punitive damages, essentially a fine paid to a worker, are only available for “willful” or “reckless” violations, relieving employers of responsibility if they can manage to claim ignorance of the workplace practices taking place under their watch.<sup>63</sup> However, when employers retaliate against workers for organizing, not even punitive damages are available.<sup>64</sup>

Of equal importance, even under the most egregious circumstances, no penalty is automatic. Because nearly all retaliation cases that are not dismissed or withdrawn are settled out of court, in reality, penalties, where they exist, are frequently negotiated away in exchange for back wages owed to the worker.<sup>65</sup> And even when penalties are imposed, they are unrelated to whether or not an employer took corrective action, providing no incentive to correct a situation sooner to



# NICK & SHANTEL

Nick has worked in warehouses in Joliet, Illinois, for over ten years and has seen the conditions deteriorate. “The problem is that most of the jobs now are permanently temporary,” the 39-year-old White male explains, which means no more benefits and lower pay. “It’s so easy to get rid of you that bosses cut all kinds of corners, stealing your wages and pushing productivity over your safety.”

When Nick’s coworkers were fired for presenting management of the Walmart distributor with concerns about wage theft and safety issues, Nick and three dozen other coworkers went on strike in solidarity. They kept the strike going publicly for 21 days, capturing the attention of the public, and on the 22nd day they returned to work alongside their reinstated coworkers. Two weeks later, Nick was among nine workers who were again fired—this time for good.

The case they brought to the National Labor Relations Board was a slam dunk. All nine workers had written proof that they were fired for taking action protected under the law; their discharge papers read “fired for petition.” Nevertheless, the case dragged on for over a year. Some of Nick’s coworkers were hurting, unable to find another job. Nick says they were lucky though, “Without the worker center’s knowledge of the process, helping with prep work and even driving [those of] us without cars to the NLRB office, the case would have fallen through the cracks.” In the settlement, the Walmart contractor paid the workers back pay for lost work and promised to not retaliate again, namely, by blacklisting temps on Do Not Return lists.

Three years after Nick went on strike, Shantel was struggling to unload heavy boxes from a trailer at the same warehouse when she heard a loud crash. She and other workers found one of their coworkers crushed by boxes in a nearby trailer. The boxes were pinning him down and they struggled to free the injured man.

The 36-year-old Black female, who had been working at the warehouse as a temp worker for three years, mentioned the incident to a supervisor and the man’s frightening neck injury. Soon after, she received a call from the temp agency. “The company didn’t want me back,” Shantel recalled. Eventually, Shantel secured some work at the same warehouse through a different agency. Again she was told she could not return to the warehouse. For reporting the injury, she was on the company’s Do Not Return list—the blacklist Walmart’s distributor had promised to stop keeping.



mitigate the negative impact and change practices to prevent future abuse. Moreover, penalties can be a relatively insignificant cost compared to the employers' profits from abusive pay and conditions. This means employers rarely have more to risk than what they already owed their workers. They have nothing to lose from continuing abusive practices.

There is also rarely any cost at all imposed on employers found guilty of retaliating against undocumented workers. A 2002 U.S. Supreme Court decision, *Hoffman Plastics Compound, Inc. v. NLRB*, effectively eliminated undocumented workers' access to existing remedies for retaliation.<sup>66</sup> "If they're fired, undocumented workers can't get their jobs back or wages lost for the time they would have worked if they hadn't been fired," explained the Illinois attorney who solely represents low-wage workers in wage theft and discrimination cases. With penalties also primarily off the table and rarely imposed, this means there is little to no legal consequence for employers using retaliation to intimidate undocumented workers in Illi-

nois. Rather, employers have everything to gain from their abuse.

More and more businesses in Illinois are also escaping liability for deteriorating working conditions through outsourcing the labor-intensive parts of their operations.<sup>67</sup> There are a number of outsourcing practices on the rise, such as multi-layered contracting, use of temporary staffing agencies, franchising, and misclassifying employees as independent contractors.<sup>68</sup> Fortunately, courts and public enforcement agencies are increasingly finding joint responsibility for workers' rights among companies within these extended supply chains.<sup>69</sup> Illinois law has even clearly stated that the client companies of temp agencies share responsibility for minimum wage and wage payment.<sup>70</sup> Yet more needs to be done to consistently hold companies at the top accountable. Through low-bid competition among labor intermediaries, the lead businesses in these arrangements can still profit from the lower labor costs produced by noncompliance with workplace standards, often at little risk to themselves.<sup>71</sup>

After securing a legal victory, workers face yet another challenge: actually collecting monetary relief from their employer.<sup>72</sup> Current legal tools for collections have proven inadequate.<sup>73</sup> Too often, employers transfer or sell their assets, or file for bankruptcy, while defending against workers' claims of their illegal employment practices. In fact, a recent review of wage claims in

California found that 83 percent of workers who won their cases were unable to recover any money at all.<sup>74</sup> While similar research appears to be lacking regarding other types of claims, there is no apparent reason that collecting on judgments is not also a barrier to the enforcement of claims more broadly, including retaliation.

## B. INADEQUATE MONITORING AND INVESTIGATION

The only other formal avenue to address the crisis of retaliation, outside of workers bringing complaints, is proactive agency monitoring and investigation strategies. But there is no comprehensive workplace governance system in place in Illinois capable of meeting this goal. Just as in the case of complaints, state law disperses enforcement authority across multiple public agencies and courts, and there is no evidence that these agencies take adequate independent or coordinated action.

Indeed, there are no obvious indications that state agencies engage in compliance monitoring or agency-initiated investigations *at all*, which means that state-based enforcement is likely limited to processing workers' complaints on a first-come, first-served basis.<sup>75</sup> In recent years, the Obama administration has shifted a greater share of the U.S. Department of Labor and the Equal Employment Opportunity Commission resources into agency-initiated investigations of industries with a high risk of noncompliance,<sup>76</sup> but these resources pale in comparison to the wave of violations.<sup>77</sup>

All enforcement agencies, whether local, state or fed-

eral, suffer serious resource constraints in the face of growing outsourcing and endemic violations. No agency alone has more than one staff person for every 40,000 workers, which, according to the International Labour Organization (ILO), an agency of the United Nations, is well below what is needed to implement effective workplace enforcement. The ILO suggests that agencies need one labor inspector for every 10,000 workers.<sup>78</sup> Moreover, some agencies enforce multiple mandates that extend beyond workers' rights, to which a portion of staff is dedicated. For instance, the Illinois Department of Human Rights is responsible for not only employment discrimination but also non-discrimination laws concerning public places and housing.<sup>79</sup> The Illinois Department of Labor has 92 employees, but fewer than ten are dedicated compliance officers in its Fair Labor Standards Division.<sup>80</sup> Moreover, a lack of coordination between enforcement agencies and between agencies and frontline workers in Illinois leaves existing efforts at workplace oversight marked by severe limitations. Limited resources and lack of coordination work together to leave the culture of fear unchecked in Illinois workplaces.

### Web of Enforcement

Underlying issues	Oversight bodies	Compliance mechanisms	Agency full-time employees : workers in jurisdictions <sup>81</sup>
Wage theft	U.S. Dep't of Labor, Wage and Hour Division	56% complaint resolution, 44% agency directed <sup>82</sup>	1 : 79,100 <sup>83</sup>
	Ill. Dep't of Labor	Complaint resolution	1 : 62,600 <sup>84</sup>
	Court	Complaint resolution	No data
Unsafe conditions, work-related injuries	OSHA	30% complaint resolution, 70% agency directed <sup>85</sup>	1 : 63,100 <sup>86</sup>
	Court (only workers' compensation claim)	Complaint resolution	No data
Discrimination, sexual harassment	EEOC (only investigations, mediation)	78% complaint resolution, 22% agency directed <sup>87</sup>	1 : 65,100 <sup>88</sup>
	Ill. Dep't of Human Rights (only investigations, mediation)	Complaint resolution	1 : 40,290 <sup>89</sup>
	Court (only after EEOC or IDHR investigation)	Complaint resolution	No data
Organizing to improve job	NLRB	Complaint resolution	1 : 84,800 <sup>90</sup>

## C. NO MARKET DISRUPTIONS

**“For employers, it’s just a body count issue. They just call up the temp agency and get someone else to come do the job.”**

**—Jeff, 50-year-old Black male working as a temp in a Chicago factory**

**E**mployers rarely face market consequences for workplace abuses. No amount of retaliation or abuse disrupts business as usual. Workers have little job security and cannot afford to walk away from abusive work. Walking away can spell tremendous hardships for them and their families. They have little savings, see no safety net that will help them and, everywhere they look, they see comparable poor working conditions available to them.

Extreme wealth inequality and a destroyed social safety net have concentrated power with employers in the workplace. The third of Illinois workers paid less than the cost of living are accumulating debt rather than savings that workers can rely on in case of unemployment.<sup>91</sup> Many low-wage workers are also excluded from public assistance programs, restricted sharply in the 1990s due to powerful racialized myths about “individual responsibility” that helped shift public support from a social safety net to disastrous criminal justice responses to poverty.<sup>92</sup> Under these conditions, workers compete for subsistence jobs and employers endure no losses in replacing them.<sup>93</sup>

Within this context, abusive employers are gaining market advantages and reshaping the nature of work. Employers’ growing use of “temporary help” as a permanent part of their business models is further destabilizing workers.<sup>94</sup> Temp jobs make no promise of work from day to day, pay lower wages than direct employment and generally offer no benefits.<sup>95</sup> Temp workers are also experiencing higher rates of rights violations on the job.<sup>96</sup> Since the 1960s, these jobs have increased more than twentyfold and continue to be one of the fastest growing segments of Illinois’ economy.<sup>97</sup> In these industries, employers are enjoying an even greater degree of control over the terms and conditions of employment, driving down their costs at the expense of workers’ needs and rights.<sup>98</sup>

Illinois has not responded by regulating the market in a way that disrupts this kind of abuse. No matter how egregious the conduct, employers are allowed to continue to buy and sell unabated and hire more “bodies” to continue making profit. All together this adds up to a context in which retaliation is systemic and pervasive, while the response falls far short.



# IV. Protect Workers, Restore Rule of Law



**“We need a realistic way to enforce the law that’s in place—to enforce it more regularly.”**

**—Nick, a 39-year-old White warehouse worker on the job for more than a decade**

**T**he workers most affected by Illinois’ failed workplace enforcement are also the very people who can—if empowered and protected—fuel the solution. Workers are in a unique position to monitor violations of their own rights at work and be the frontline in improving conditions.

Indeed, current frameworks of enforcement recognize this reality. To date, Illinois has almost exclusively relied on workers to trigger workplace accountability. Yet, by failing to protect workers against retaliation, Illinois is dramatically undermining the very model around which state policy is organized. To ensure an effective worker-centered approach to enforcement, at minimum, workers must be rigorously protected from any and all forms of retaliation when they take action to ensure rights in the workplace.

Every person has a human right to be treated with dignity at work and no one should be compelled to accept sweatshop conditions, particularly when these conditions are blatantly illegal. By making protection against retaliation dependable and user-friendly, as well as better designed towards prevention of abuse in the future, the state could provide courageous workers with the support they need to hold their employers accountable and improve working conditions for all Illinois workers.

Reimagining our enforcement system has become a moral and practical necessity. Towards this end, and drawing on innovations that have evolved across the country and the experience of workers themselves, we have identified at least three essential elements for an effective worker-centered system of enforcement:

- **Adequate and fair legal coverage:** The law needs

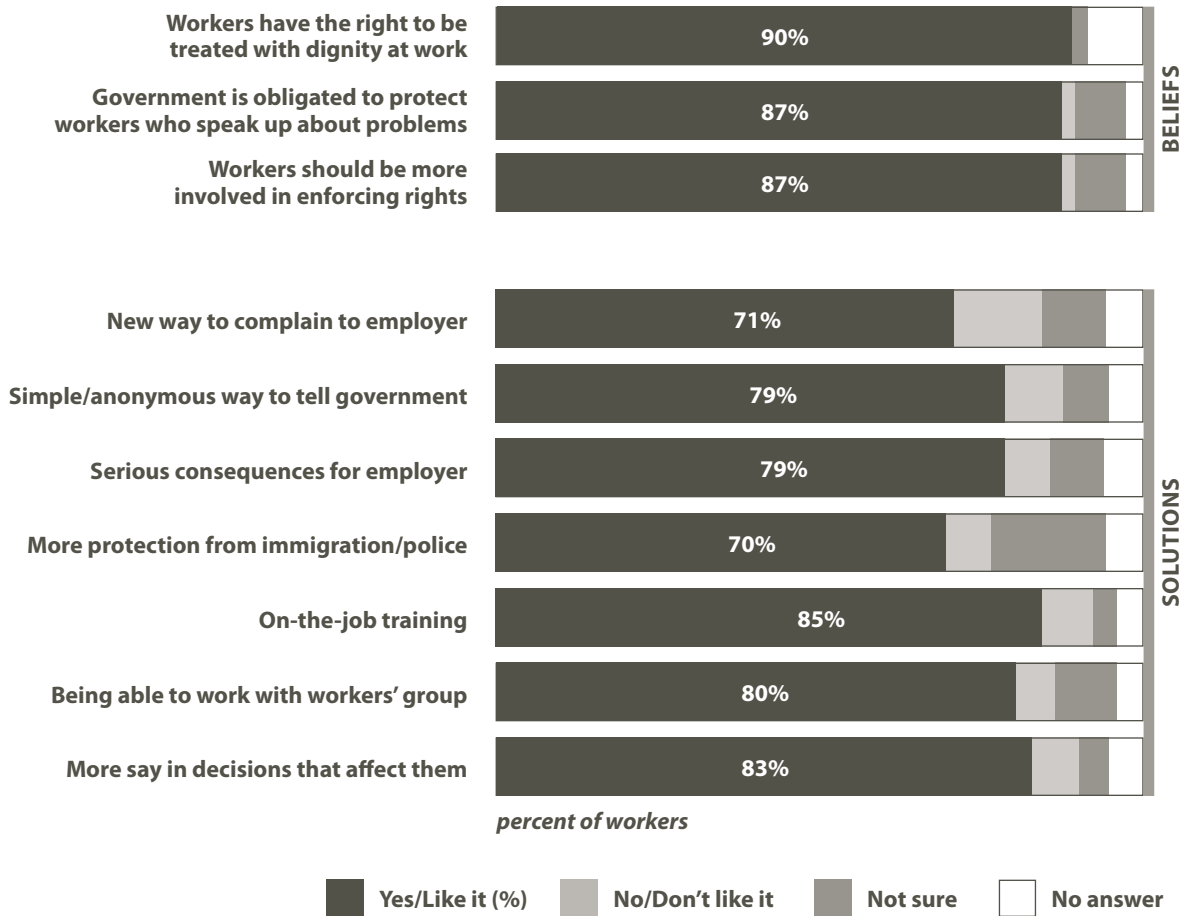
to provide broad protection for retaliation that is inclusive of all workers, as well as all employer tactics. In order to ensure adequate coverage, the law must also assume that adverse actions impacting workers experiencing an injury, a violation of their rights or organizing for better conditions are retaliatory unless the employer proves otherwise.

- **Accessible and timely complaint resolution:** The complaint resolution process should be streamlined, ideally through a unified system. It should provide relief to all workers who are harmed in a timely, transparent, and efficient manner so as to minimize the harm and discouragement of delayed relief. It should also be supported by community partnerships to assist workers in monitoring and defending their rights.
- **Built in systems for prevention and deterrence:** The primary goal of any enforcement system should be to prevent violations and, only when prevention fails, to punish and compensate for abuse. Penalties must be designed to effectively deter employers from retaliating against workers, and to encourage corrective action and monitoring to prevent future abuse. The cost of failing to take corrective action must outweigh the cost of mere compliance.

The time is now to move to a new vision of workplace accountability. The nature of work is changing rapidly, and the existing system of enforcement is clearly out of sync and failing. The solution is a holistic rethinking of the way rights are protected and laws are enforced in the workplace, not endless small tweaks to the current failing approach.



## Workers' Vision for Change in the Business of Fear Survey



## A. ADEQUATE AND FAIR LEGAL COVERAGE

“Workers would stand up for themselves if there was job security. Employers know we are scared, that they can exploit us, and that they don’t have to do anything no matter how many times we complain.”

—35-year-old Latina hospital worker

Illinois needs to address gaps and grey areas in anti-retaliation laws to effectively include all marginalized and excluded workers, irrespective of their circumstances. In particular, as California recognized in its whistleblower laws in 2013,<sup>99</sup> state policy must create a firewall between labor disputes and immigration enforcement activities. Temp workers also require special attention because of their vulnerability as outsourced labor. If temp

workers do not have the same protections as direct hires, market incentives will continue to normalize this model as a strategy to evade accountability to standards that would otherwise apply. Temp agencies, like other employers, should have to prove their reasons for *not* hiring, *ceasing* to hire or changing work assignments are lawful.<sup>100</sup> An expanded recognition of retaliation tactics should also include tactics known to be used by client companies to

dismiss temp workers who exercise their rights, such as ending contracts with labor intermediaries for retaliation purposes and blacklisting temps on Do Not Return lists.<sup>101</sup>

Indeed, anti-retaliation laws should cover all employer tactics. Workers cannot be expected to stand up for themselves and their coworkers when they have to guess whether a particular employer tactic falls within or outside of the boundaries of the law. For instance, state law must extend protection to injured workers suffering the wide range of tactics deployed by employers short of firing a worker.<sup>102</sup> It must also broadly recognize verbal abuse and threats as retaliation that anticipates workers exercising rights, such as right after an injury.<sup>103</sup> Job protections should also attach to workers from the moment they speak to anyone about their rights (currently a practice in nine California cities' through their minimum wage laws)<sup>104</sup> or are injured or experience a violation of their rights.<sup>105</sup>

However, filling gaps in the law regarding *who* and *what* is protected is not enough to afford workers real security. *How* the law determines whether retaliation has occurred must also change. Currently, workers must prove, depending on the specific law at issue, that the adverse action taken against them was because of the employer's desire to retaliate, or even that the adverse action would not have occurred but for the employer's desire to retaliate (meaning that if the employer can argue retaliation was just one of multiple motives, it becomes lawful). Divining and establishing an employer's motive, in essence proving what was going on in a supervisor's mind, is a virtually impossible burden of proof. It is employers that must be held responsible for proving that justifications and motives for firing and disciplining workers are lawful.

A particularly effective solution to address both uneven legal protections and unrealistic burdens of proving employers' motives is the just cause standard. The just



cause standard creates a broad assumption of protection against being fired arbitrarily.<sup>106</sup> Found in union contracts and public policy around the world, this standard requires that employers have a valid reason for firing (or disciplining) workers.<sup>107</sup> It does not prevent employers from firing workers, but rather requires a lawful reason and often also progressive discipline, whereby supervisors give workers the chance to correct behavior or improve performance before they are fired.<sup>108</sup>

A presumption of retaliation is a more recent legal innovation that assumes that any adverse action taken against a worker for a period of time after a worker exercises a right is retaliatory. In Oakland, for a six-month period after a worker has exercised a right, employers have to have clear and convincing evidence that a negative employment action is not retaliation.<sup>109</sup> Other California cities have a three-month period.<sup>110</sup> For whatever the period, the burden is on the employer to prove the motives and justifications for the adverse action were lawful. The current state of affairs in which legal protection against adverse actions is the exception to the rule creates a profound chilling effect on the exercise of rights in the workplace. Whether through just cause standards, presumptions of retaliation or other legal innovations, Illinois law should create an assumption of protection for the workers who are the frontline monitors of basic rights in industries across the state.

## B. A PATH TO JUSTICE THAT MEETS WORKERS' NEEDS

*"You're supposed to be protected from reprisals, but the law has to be stronger to pressure employers. It should be stricter. Too much time is allowed to go by now."*

—Monica, a 39-year-old Latina mother fired for organizing for better conditions at her long-time retail job

The system of enforcement cannot begin to function effectively, and will continue to represent a failed legal framework, until the State of Illinois redesigns the complaints process to ensure it addresses the needs of workers. Workers need a simpler, timely and cohesive process to secure justice in all cases of retaliation.

### **Rapid Relief**

In the precarious economy where low-wage workers cannot afford to lose even one week of pay, justice delayed is most certainly justice denied. In this context, it is critical to afford vulnerable workers rapid relief from retaliation and abuse.

The first way to ensure rapid relief for workers is to build temporary relief fully into the process of resolving retaliation complaints. The Mine Safety and Health Act, for example, requires an immediate order of temporary relief if an agency investigator determines a worker's retaliation claim is not "frivolous."<sup>111</sup> In fact, temporary relief, such as reinstating a fired worker while their claim is being resolved, is already theoretically available under various laws. In general, however, procedural challenges create insurmountable barriers and this kind of immediate relief is rarely granted.<sup>112</sup> Moreover, given the backlog in many agencies and the need for far more resources to resolve those backlogs, it would be more effective if temporary relief orders became automatic when a worker files a retaliation claim, requiring the employer to prove the claim is frivolous.<sup>113</sup>

A second way to speed up justice is through tailored punitive measures designed

to incentivize employers to monitor their workplaces and respond quickly to abuse. The law could require employers to remediate instances of retaliation or prove the claim is frivolous within a specified period of time.<sup>114</sup> Failure to comply would trigger automatic penalties. Employers that have non-retaliatory reasons for taking adverse action would have the opportunity to provide proof in a timely



manner, while guilty employers would be met with reasons to not delay justice.

Under the Fair Food Program, which regulates 90 percent of Florida’s tomato fields through a private Code of Conduct system consisting of legally binding contracts, employers have seven days to present a plan for correcting violations of the Code or face losses of business. Coupled with the threat of lost business for non-compliant employers, almost half of the complaints are resolved in two weeks and the overwhelming majority within the month. The key is attaching strict penalties for noncompliant employers to time limits that match workers’ need for speed.

Certainly, in the case of retaliation, each day a guilty employer fails to take remediating action after an incident should be considered an additional violation of the law and result in another penalty. Several California cities impose a daily penalty for minimum wage violations, including retaliation, that accumulate with “each day the violation exists.”<sup>115</sup> The premise of applying this to all retaliation cases in Illinois is to have employers absorb some of the costs of delay. This could not only serve to alleviate the burden of delay experienced by workers, if directed to workers as punitive damages, it could also incentivize quicker corrective action from employers by increasing the risks associated with delay.

Legal creativity is absolutely required to address the

current crisis. For example, the law could impose different penalty levels that escalate from noncompliance to willful delay of the resolution process. An initial daily penalty level, at least equivalent to the average wage of a worker in the relevant industry (to ensure the cost of noncompliance is greater than compliance), could take effect after a short grace period, such as seven days after an incident. This would hold employers accountable for monitoring their workplaces and incentivize internal grievance procedures. The daily penalty level could then double seven days after the employer receives notice that the worker has filed a legal claim if the employer continues to willfully delay settlement of the claim.<sup>116</sup> The law should prohibit settlements unless they include mandated penalties, so that settlements can stop the clock but not dilute the consequences of delaying justice.

In some cases, getting a worker rehired or back pay is not legally possible.<sup>117</sup> To ensure all workers can secure justice in case of retaliation, there is a need for an alternative form of relief that is universally available, providing a minimum amount of relief in all cases. So-called liquidated damages provide monetary relief for suffering that is difficult to quantify and can offer such a universal form of relief.<sup>118</sup> Liquidated damages are already a widely available form of relief, including under New York law as relief to workers who experience retaliation for exercising rights in the workplace.<sup>119</sup>

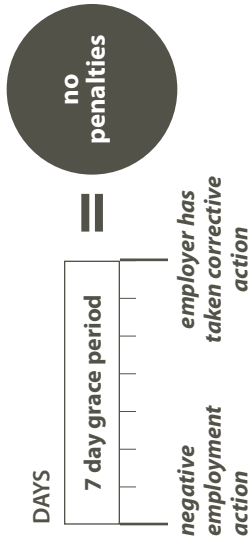
For ensuring low-wage workers can recover lost wages and damages, pre-judgment wage liens have proven to be a demonstrably effective and simple tool in wage theft cases.<sup>120</sup> The lien places a temporary claim on an employer’s property until the employer pays the relief owed to the worker. This has no impact on the employer’s ability to use the property, unless the employer tries to transfer it or enters bankruptcy, in which case the lien protects the worker’s interest. Wage lien laws already exist in several states, including Alaska, Idaho, Maryland, New Hampshire, Texas, Washington and Wisconsin.<sup>121</sup> Wisconsin’s law allows workers to secure a lien at the beginning of a case, rather than wait for a final judgment—that is, it is a “pre-judgment” wage lien—which

markedly increases a worker’s chances of recovering relief from a guilty employer.<sup>122</sup>

To ensure relief is collectable for all kinds of workplace violations, including retaliation, the concept of a pre-judgment lien should be duly expanded. The amount recorded in the lien should be sufficient to ensure payment of wages for lost work and penalties due once the claims are resolved. One way this might be handled, given the added uncertainties of non-wage claims, is to use a formula that enables a worker to secure a floor amount of relief, such as one month’s pay at the average wage of a worker in the relevant industry. By making relief more certain, a pre-judgment lien would also have the potential to speed up justice and curb retaliation.

## Possible Penalty Structure to Encourage Rapid Relief in Retaliation Cases

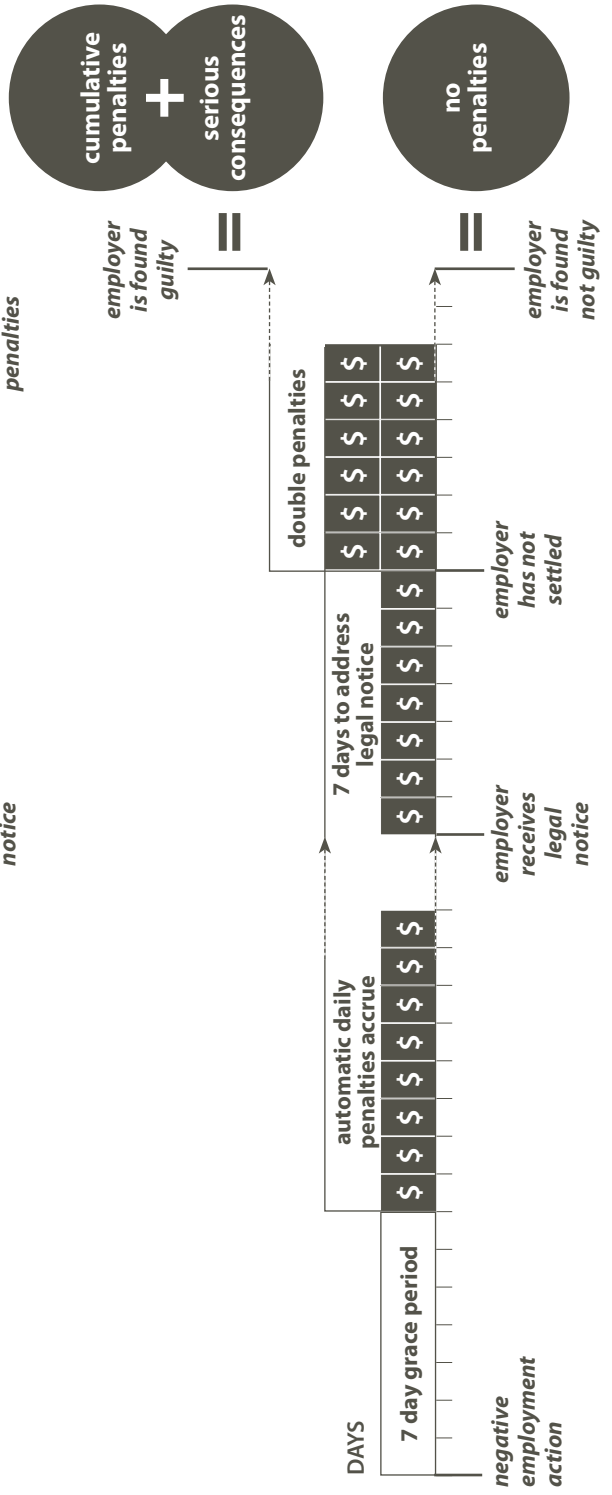
**SCENARIO 1**  
Employer takes prompt action



**SCENARIO 2**  
Employer delays action



**SCENARIO 3**  
Employer takes no action





### **Unified Process**

Retaliation is by nature connected to other abuses in the workplace, and in many cases workers experience multiple violations simultaneously. Workers should be able to resolve the range of workplace issues they are experiencing through one coherent and unified process. Currently, workers face unreasonable burdens imposed by a fractured system that demands they navigate multiple complaints in multiple venues for one interrelated set of abuses. Streamlining this process and replacing the messy patchwork system with a “one stop shop” can also simplify complying with the law for employers.

Last year, Ireland created a new enforcement agency that merged the roles and functions of five different agencies and courts.<sup>123</sup> This kind of cohesive complaint resolution process is central to the French and Spanish systems of labor enforcement.<sup>124</sup> Private contracts in the United States, such as union contracts, also have directed all kinds of complaints through a common arbitration process. New labor enforcement agencies at the city level, in San Francisco and Seattle, likewise field complaints concerning a range of rights and offer a streamlined complaint process.<sup>125</sup>

Another way to unify the process for workers is through inter-agency coordination. For instance, agencies can share a common complaint form, offer a shared point

of access for workers to make complaints, use a team of investigators and a bench of judges to resolve the range of issues to which workers bring light and avoid discouraging workers from pursuing them all. In California, workers can report all kinds of possible workplace violations through a common whistleblower hotline.<sup>126</sup> California’s Labor Enforcement Task Force even coordinates some investigations and enforcement efforts in industries that are at high risk of multiple violations.<sup>127</sup>

### **Training and Assistance with the Legal Process**

Just as with any other abuse, in order to stand up to retaliation for claiming rights in the workplace, workers need adequate training, transparency around what happens with complaints in their workplaces and assistance navigating the process. On-the-job training for workers responds to the needs of the most vulnerable workers who are least likely to have the resources or time to receive training off the clock.

“[On the job training] would make a huge difference,” Victoria, a factory worker, explained, because “so many don’t know their rights and don’t know their options.”





The Fair Food Program in Florida provides an impressive example of comprehensive training at the job site, on the clock (paid) and at the point of hire.<sup>128</sup> The educational information is also reaffirmed through postings and notices. Importantly, these should be where workers will see them and in all the languages needed, whether printed on paystubs, posters on break room walls or outside the workplace.<sup>129</sup> For workers with limited literacy, there should also be images and video options to reinforce the training.<sup>130</sup> Creating policy frameworks that support hiring halls run by workers' organizations provides another possible venue to ensure workers get know-your-rights training.<sup>131</sup>

Workers should also be able to witness the resolution of complaints—both theirs and others. For example, reinstatement of a worker fired due to retaliation should be a public act. This is a strategy employed by the Fair Food Program to instill confidence in workers that the process works and to publicly reinforce workplace norms.<sup>132</sup> The remedy for an instance of retaliation must “match the theater of retaliation,” given that many, if not most, retaliatory acts are public in order to contribute to the culture of fear.<sup>133</sup> In the Fair Food Program, employers have to make an announcement to all workers that what happened was wrong and the supervisor will be disciplined, and also reaffirm the rights that were violated.<sup>134</sup> This sends a mes-

sage that workers will be protected, which is counter to the current predominate message of employer impunity and worker expendability.

“We need more communication between workers and the government,” said a 37-year-old Latina factory worker.

There should also be transparency around what complaints have been made, the progress of investigations and the steps taken to fix violations, which would reinforce training for both workers and supervisors. The federal Occupational Safety and Health Act, crafted with this in mind, makes it a right for workers to access information about an employer's legal filings, to receive notices of complaints and to have workers' organizations on site during inspections.<sup>135</sup> This should be extended to other basic workplace issues, including retaliation.

Finally, workers should not only be trained on, but receive assistance with monitoring and defending their rights. Multiple workers in the *Business of Fear Documentation* remarked on the importance of having sup-



port from people with knowledge and experience in navigating the complaint process.<sup>136</sup> For many workers, worker centers and labor unions are their source of training and assistance with making complaints.<sup>137</sup> Workers' organizations, however, lack the resources to provide this assistance to all the workers who need it.

Recognizing that these workers' groups are contributing to basic workplace enforcement and have developed the trust among vulnerable workers' communities that government agencies lack, more and more cities are forming and funding formal partnerships between agencies and workers' organizations to train and assist workers to be their own rights monitors and gather evidence for investigators.<sup>138</sup>

These models encourage workers to make complaints through worker centers, so that workers can benefit from the advocacy support and potential anonymity that a stronger collaborative working relationship between agency investigators and community partners provides.<sup>139</sup> Partnerships with worker centers also help investigators stay in contact with the workers whose testi-



monies are critical to the integrity of these cases.

Requiring employers to pay for attorneys' fees for all kinds of retaliation cases, not just wage and discrimination claims, is an additional way to ensure that workers have access to the help they need to defend their rights.<sup>140</sup>

### Government Community Enforcement Partnerships at a Glance<sup>141</sup>

<b>Location of formal partnerships</b>	<b>San Francisco, Los Angeles, Seattle and St. Petersburg, Fl. Other cities like Minneapolis, San Diego and Oakland may be next to adopt this model.</b>
<b>Level of funding for community partners</b>	<b>\$500,000-\$1,000,000</b>
<b>Collaborative roles</b>	<b>Training; gathering evidence of violations and filing complaints (in some cases, agencies have deputized partners to visit and inspect worksites, increasing capacity for audits); and designing proactive, industry-specific strategies of enforcement</b>
<b>Challenges</b>	<b>Need to create culture shift to encourage transparency and coordination between agencies and community organizations</b>

## C. MAKING THE SYSTEM ABOUT PREVENTION

A system intended to protect basic rights can only be successful if it prevents violations far more often than it has to intervene to remedy them.<sup>142</sup> Thus, employer consequences need to be tailored to lead to compliance with the law. To begin with, significant penalties should not be imposed on an employer that provides harmed workers with rapid relief from retaliation, such as reinstatement, disciplining supervisors and retraining and monitoring labor intermediaries. Employers must be strictly penalized though if they delay or deny justice (*see* section B). And if employers are found guilty and have not corrected retaliatory injustices, the consequences must be certain and appropriately disruptive to business as usual, such as loss of sales, loss of a license to do business, truly significant monetary sanctions and/or jail time.<sup>143</sup> The magnitude of the penalty must induce other similarly situated employers to comply with the law, and parallel efforts should be undertaken to support employers in implementing best practices for prevention.<sup>144</sup>

Proactive agency enforcement strategies could also help reduce the utility of retaliation as a tactic for evading legal regulation.<sup>145</sup> Ideally, proactive audits would be regular and comprehensive, especially in high-risk industries. At a minimum, agencies should have the capacity to do follow-up investigations to ensure noncompliant employers come into compliance. However, proactive, targeted agency inspections should only supplement, not supplant, an effective complaint resolution process, as the most egregious abusers will often find ways to evade detection.<sup>146</sup>

A serious commitment to prevention demands resources. Agencies need adequate budgets to staff complaint resolution processes and proactive audits, as well as improved legal tools for conducting investigations, training and information tracking, particularly around compliance and how industries are structured and companies are linked. At a minimum, agencies should develop formal, funded partnerships

with workers' organizations to not only support workers through complaints, but also expand agencies' capacity on the ground to monitor abuses and develop preventative strategies.<sup>147</sup> Agencies can also prioritize and handle complaints that arise from workers in high-risk industries in a way that gathers information about compliance and industry structures to shape more effective prevention strategies (while still rapidly responding to the threat of retaliation).<sup>148</sup>

Workers should also be able to file a lawsuit in court for all varieties of retaliation, rather than the current limited instances.<sup>149</sup> An important precedent is California's Private Attorney General Act of 2004, which allows private citizens to pursue penalties for workplace violations as if deputized by the Attorney General.<sup>150</sup> This ensures there is still a legal means to enforce the law even if agency enforcement processes are undermined by the whims of politics and budget cycles.<sup>151</sup> Allowing workers to seek justice for retaliation more broadly through the courts also will create a deterrent effect on employers, especially for the more egregious cases associated with larger judgments.

Finally, to deter retaliation, it is critical that companies that outsource the labor-intensive parts of their businesses are held legally responsible.<sup>152</sup> If the consequences for illegal workplace practices do not reach those at the top of supply chains, these companies will continue to



encourage, intentionally or not, low-bid contracting at the expense of workers' rights.<sup>153</sup> Extending accountability to the top of supply chains also encourages these companies to ensure oversight of their labor intermediaries, as they do for product quality, including demanding that workers' groups are able to get onsite to investigate and monitor conditions. In a growing number of cases, this requires re-establishing the legal responsibility of key industry decision makers.

Joint accountability is a legal concept increasingly used by courts and legislatures to recognize the employment responsibilities that employers must retain when they subcontract work.<sup>154</sup> A number of states, including Illinois, have recently passed laws holding temp agencies' client companies jointly accountable for certain

workplace violations, such as wage theft.<sup>155</sup> Other states, such as California, have created assumptions of employment in high-risk industries in which employers have used misclassified independent contractors to avoid liability.<sup>156</sup> More is needed, however, to ensure those at the top are held responsible, particularly given the presence of multi-layered contracting.<sup>157</sup> Prohibiting outsourcing may be called for when it is essential to creating accountability. In parts of Europe, Asia, Africa and Latin America, temp work is limited to meet extraordinary business needs, prohibited for hazardous work or work central to a business' operations, and limited to short time frames.<sup>158</sup> This constrains businesses from using these arrangements to distance themselves from legal liability in the first place.

### Performance Indicators for Effective Worker-centered Enforcement

#### RELIABLE RETALIATION PROTECTION

- All workers are confident that they are protected from retaliation if they speak up at work
- Relief is available to all workers, including undocumented workers
- Temp workers have protection equal to direct hires
- Workers are empowered to monitor compliance
- The burden is on employers to prove their actions are lawful

#### WORKER-FRIENDLY COMPLAINT PROCESS

- Complaints are resolved within a time frame that meets workers' needs
- Workers' experience of the complaint process is cohesive and streamlined
- Workers know their rights and how to enforce them
- Workers know how complaints in their workplaces are resolved
- Workers can get help they trust with making complaints
- Penalties and corrective action plans are meaningful, including rehiring of workers in a clear and public manner

#### DETERRENTS TO RETALIATION

- Employers are incentivized to, and not penalized when, they provide rapid relief from retaliation
- Employers are swiftly and reliably penalized when they delay and deny justice
- Corrective action becomes a central part of the complaints system with adequate monitoring that is driven by workers
- Workers have a way to enforce their rights even without the cooperation of public agencies
- Businesses that outsource the labor-intensive parts of their operations are liable for retaliation and abuse

# Conclusions and Recommendations





**“[Our] mission . . . is to ensure that low-wage workers have access to quality jobs and are empowered to uphold and improve workplace standards.”**

**—Raise the Floor Alliance mission statement**

**W**ith at least a third of Illinois workers living paycheck to paycheck and no reliable safety net to enable most to walk away from even an abusive job, an effective workplace enforcement system is more important than ever. Despite the state’s reliance on workers to trigger enforcement, Illinois has failed to respond to the range of retaliation and intimidation tactics used to evade accountability to basic workplace standards. Through exploitation of workers’ fears and vulnerabilities, the result has been the unconscionable growth and

normalizing of workers’ rights violations across multiple industries.

We need an economic development approach that includes policies ensuring a fair business climate compatible with the rights and dignity of Illinois workers. We must radically re-envision enforcement to achieve this goal, and we share the following recommendations toward that end. Together, these recommendations will expedite the resolution of workplace conflicts for all involved, making Illinois a better place to both work and do business.



***The State of Illinois should pass a comprehensive anti-retaliation bill that is designed for effective worker-centered enforcement by making the following changes:***

- 1** Replace inconsistent, narrowly defined retaliation protections with one broad standard of protection that applies to all workers' rights, all categories of workers and all types of retaliatory tactics, including tactics specifically used to stop workers from speaking up in the first place, such as threats.
- 2** Create a legal assumption that eliminates barriers to justice for workers, requiring employers prove their employment actions are just and not retaliatory, especially following a workplace violation or injury.
- 3** Ensure relief from retaliation is delivered quickly to workers, for instance, by redistributing the burden of a delayed resolution through legal tools like temporary relief for workers or punitive measures that accumulate for guilty employers that delay justice.
- 4** Provide for minimum relief that is universally available even when reinstatement is not possible.
- 5** Give workers (and employers) a unified way to secure a resolution in the face of retaliatory abuses, through reorganization of existing agencies into a one-stop shop or coordination between agencies to provide a singular process.
- 6** Enable workers to bring a lawsuit to enforce their full range of rights in the workplace through establishing a private right of action with legal support, providing for attorneys' fees.
- 7** Empower workers to serve as frontline defenders of their rights through on-the-job training and consistent reinforcement through greater transparency of the entire complaint resolution process.
- 8** Fund formal agency partnerships with workers' groups around training, monitoring, and enforcement planning and implementation.
- 9** Use joint liability and/or supply chain liability to hold employers accountable for legal compliance in work done through outsourcing and recognize retaliatory tactics used by client companies to interfere with workers' exercise of their rights. When necessary, prevent outsourcing altogether to protect workers' basic rights in high-risk industries.
- 10** Ensure significant, disruptive deterrents for guilty employers that refuse to correct retaliatory injustices.

***Illinois enforcement agencies should take the following steps to increase the effectiveness of their approaches to worker-centered enforcement:***

- 1** Train and provide oversight for agency investigators that recognizes the central role of workers in enforcement.
- 2** Increase transparency with workers around complaint resolution.
- 3** Develop partnerships with workers' groups to support workers in monitoring and defending their rights, including using existing legal authority to investigate anonymous complaints made through the groups.
- 4** Assess available penalties against employers that choose to delay relief to encourage employers to respond quickly to retaliation complaints.
- 5** Use legal powers to deliver timely relief to workers, such as existing authority to offer temporary relief, and advocate for universal forms of relief and strengthened legal authority to provide rapid relief and deter retaliation in the first place.
- 6** Work with other agencies to give workers (and employers) a unified way to secure a resolution in the face of retaliation, including through interagency agreements.
- 7** Provide clear guidance on gaps and grey areas in the law, including employment relationships in outsourced work and protections for temp and immigrant workers, and advocate for a broad, consistent standard of protection from retaliation for all workers in all circumstances and a more just burden of proof.



# Appendices

- Sample Survey,  
Business of Fear Documentation . . . . . 49**
  
- Sample Interview Guide,  
Business of Fear Documentation . . . . . 53**
  
- Demographics and Industries of Survey Participants,  
Business of Fear Documentation . . . . . 54**
  
- Number of Rights Violations by Industry,  
Business of Fear Documentation . . . . . 54**
  
- Story Outcomes Based on Underlying Issue,  
Business of Fear Documentation . . . . . 55**
  
- Story Outcomes Based on Demographics,  
Business of Fear Documentation . . . . . 55**

**Data box for office use only – to be filled out by your organization:**

Survey #: \_\_\_\_\_ Date: \_\_\_\_\_  
 Location where survey was done (city, state): \_\_\_\_\_  
 Survey Giver: \_\_\_\_\_  
 Organization: \_\_\_\_\_  
 Follow up

**Worker Survey**

Dear Worker,

We are doing a survey to find out what happens when workers try to deal with unfair treatment or problems at work, whether it's not getting paid, being unsafe, trying to get workers' comp for getting hurt, or anything else. We are publishing a report in about a year to share the stories of workers in Illinois and to push for protection for workers when they speak up or try to resolve problems.

We will not share your name or use any information that would let someone figure out who you are. This survey is not connected to any government, and we have not received government money. We will possibly use the stories about what you and others are dealing with at work in the report. This survey is completely voluntary. If you change your mind at any point, you can stop taking it or skip questions you would rather not answer.

Thank you!

Survey #: \_\_\_\_\_

**Section 1 Treatment at Work**

1) Do you believe all workers have a human right to be treated with dignity at work?  
 Yes  No  Not sure

Please answer the following questions about your current work. If you are not working, tell us about your most recent work.

2) How often are you treated in the following ways by your bosses?

	All of the time	Most of the time	Some-times	Never
My bosses treat me with respect.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My bosses encourage me to speak up about problems.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My bosses say or do things that humiliate or insult me.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My bosses make me feel threatened or intimidated.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
When my bosses accuse me of breaking workplace rules, I feel I'm punished too harshly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I fear losing my job or other punishment for bringing workplace problems to my bosses' attention.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I avoid bringing workplace problems to my bosses' attention, because I fear losing my job or other punishment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Sample Survey, Business of Fear Documentation, continued

Survey #: \_\_\_\_\_

3) Have you ever experienced any of the following in your current jobs? If you are not working, please answer this question about your most recent work.

	Yes	No	Not sure/ not applicable
Health and Safety			
I felt my work was dangerous.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I needed more training to do my job safely.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I felt more safety equipment could make my job healthier or safer.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I became injured or ill because of work.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I needed medical treatment for a work injury or illness.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I missed work because of a work injury or illness.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I felt uncomfortable at work because of...			
...Sexual remarks, jokes, or questions.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Unwanted touching, looks, or gestures.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Wages			
My boss didn't pay me all or some money I was owed for hours I worked.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My boss took money out of my pay.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tips			
My boss took a portion of my tips.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I disagreed with how my boss made me share tips.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Different Treatment			
My boss treated some workers differently because of their...			
...Race or color.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Gender.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Age.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Language.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Being an undocumented immigrant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Being an immigrant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Disability.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Religion.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Political beliefs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Criminal background.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bosses hired or didn't hire people based on their...			
...Race or color.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Criminal background.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Being an undocumented immigrant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
...Other: _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Working Together			
I wanted to work with my co-workers to improve my job.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I wanted a labor union in my workplace.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

4) Think of ONE concrete example of a time when you tried to fix a problem at work or improve your job. What was the issue?

[ ] One of the experiences listed above (in Question #3). Circle the experience above.  
 [ ] Something else: \_\_\_\_\_

Continue to think ONLY about this ONE particular time as you answer the following questions.

Survey #: \_\_\_\_\_

5) In that case (the example you chose in Question #4), how did you try to fix the problem or improve your job? Check all that apply.

<input type="checkbox"/> Nothing	Optional notes describing your experience and the action you took.
<input type="checkbox"/> Told my boss	
<input type="checkbox"/> Filed a complaint with a government agency	
<input type="checkbox"/> Participated in a government investigation	
<input type="checkbox"/> Told the police	
<input type="checkbox"/> Posted on social media	
<input type="checkbox"/> Spoke with the press	
<input type="checkbox"/> Spoke with a co-worker	
<input type="checkbox"/> Suggested group action or protest to a co-worker	
<input type="checkbox"/> Participated in group action or protest with co-workers	
<input type="checkbox"/> Presented a group complaint or request to my boss	
<input type="checkbox"/> Told a co-worker her rights or helped her exercise rights	
<input type="checkbox"/> Asked a labor union for help	
<input type="checkbox"/> Asked a worker center or community group for help	
<input type="checkbox"/> Told my boss I planned to file a workers' compensation claim	
<input type="checkbox"/> Filed a workers' compensation claim	
<input type="checkbox"/> Did something else: _____	

6) How did your boss react? Check all that apply.

<input type="checkbox"/> My boss responded with respect and fairness	Optional notes describing your boss' reaction to your action.
<input type="checkbox"/> Fixed the issue	
<input type="checkbox"/> Wasn't aware	
<input type="checkbox"/> Did nothing	
<input type="checkbox"/> Stopped hiring me	
<input type="checkbox"/> Gave me a Do Not Return notice or told me to not return	
<input type="checkbox"/> Fired me	
<input type="checkbox"/> Accused me of breaking workplace rules	
<input type="checkbox"/> Gave me fewer or worse hours	
<input type="checkbox"/> Gave me work that pays less	
<input type="checkbox"/> Gave me harder, dirtier, or more dangerous work	
<input type="checkbox"/> Gave me an unrealistic amount of work	
<input type="checkbox"/> Changed my work assignment	
<input type="checkbox"/> Lowered my pay for the same work	
<input type="checkbox"/> Tried to humiliate me	
<input type="checkbox"/> Tried to physically harm me	
<input type="checkbox"/> Asked me to take a drug test	
<input type="checkbox"/> Ran a criminal background check on me	
<input type="checkbox"/> Called the police	
<input type="checkbox"/> Called immigration authorities	
<input type="checkbox"/> Verified if I was authorized to work in the United States	
<input type="checkbox"/> Threatened to fire me	
<input type="checkbox"/> Threatened to run a criminal background check on me	
<input type="checkbox"/> Threatened to call the police	
<input type="checkbox"/> Threatened to call immigration authorities	
<input type="checkbox"/> Threatened to verify if I was authorized to work in the U.S.	
<input type="checkbox"/> Threatened to harm someone else	
<input type="checkbox"/> Did something else: _____	

**7) In that case, did you complain about how your boss reacted? Check all that apply.**

- I did not feel it was a big issue. Skip to #8
- It was an issue, but I did not complain. Skip to #8
- Contacted my employer's human resources (HR) department
- Contacted a government agency (such as the Department of Labor)
- Contacted an attorney
- Contacted the police
- Contacted a labor union
- Contacted a worker center or community group
- Other: \_\_\_\_\_

**7a) If you did complain, how were your concerns addressed?**

	Agree	Disagree	Not sure/ not applicable
My concerns were not treated seriously.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
My concerns were resolved quickly.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I was embarrassed or humiliated by how I was treated.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
I did not receive adequate relief for the harm I suffered because of my boss' treatment.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**8) Do you know that you can complain to the government?**

- Yes
- No. Skip to #9
- Not sure. Skip to #9

If so,

**8a) Do you know where to go?**

- Yes
- No
- Not sure

**8b) Have you tried to do it?**

- Yes
- No
- Not sure

**8c) What do you think of the process? Check all that apply.**

- It's confusing
- It's easy
- It's scary or threatening
- Need an attorney
- It's fast
- It's a waste of time

**Section 2 Your Work**

**9) In which of the following areas do you currently work? If you are not working, in which did you most recently work? Check all that apply.**

- Restaurants and hotels
- Construction
- Warehousing
- Manufacturing
- Retail
- Car wash
- Moving service
- Home health care
- Day care
- Private households
- Cleaning service
- Other, please describe: \_\_\_\_\_

If you have worked in multiple areas:

**9b) In which area of work did the experience that you just described (in #5-7) happen? Circle one response above.**

**10) Was your employer in that particular case...? Check all that apply.**

- A company
- An individual person
- A temp agency
- Other, please describe: \_\_\_\_\_

**11) Which best describes your work status with that employer?**

- Full time (35 hours or more per week)
- Part time (less than 35 hours per week)
- Sometimes full time and sometimes part time
- On call (only whenever the employer calls you)

**12) How long do/did you expect your job to last with that employer?**

- Indefinitely / permanent (year-round)
- Seasonal
- Temporary

**13) Did your work for that employer take place inside or outside the State of Illinois?**

- Inside Illinois
- In another state: \_\_\_\_\_
- Both
- Not sure

**Section 3 Solutions**

For the following questions, we will move from problems at work to possible solutions.

**14) Would any of the following make it easier for you to speak up about problems at your workplace?**

	Yes	No	Not sure/ not applicable
A new way for workers to complain directly to employers about workplace problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
A simple and anonymous way to tell government agencies about workplace problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More serious consequences for employers who punish workers for speaking up about workplace problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More protection from immigration authorities and law enforcement for speaking up about workplace problems	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
On-the-job training for workers about workplace rights	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Getting a labor union in your workplace	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Being able to work with a worker center or community group to address problems at your workplace	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
More say in decisions at work that affect you	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

**15) Do you believe government has an obligation to protect workers who speak up about workplace problems?**

- Yes
- No
- Not sure

**16) What do you think of the idea of workers and worker organizations being more involved in enforcing workplace rights?**

- Like it
- Don't like it
- Not sure



Raise the Floor Alliance – Human Rights Documentation of Retaliation  
**Worker Interview Guide**

INTRODUCTION

Sample: "Thanks so much for coming here today to speak with me about your experiences working in Illinois. My name is \_\_\_\_\_ and I work with \_\_\_\_\_. *[describe your organization and the work you do]* \_\_\_\_\_. I'm here today because we are working with the Raise the Floor Alliance."

INFORMED CONSENT

Please read through the Consent Form with the worker. This Form goes over the purpose of Raise the Floor's research project, steps we will be taking to protect the worker's confidentiality, and what the worker can expect in the interview. Please answer any questions the worker may have as best you can. If the worker is comfortable with moving forward, please ask the worker to complete the "Before interview" section of the Consent Form.

AUDIO RECORDING

Before you begin, please make sure your recording equipment is working, has plenty of storage, and, with the permission of the worker, turned on and recording.

INTERVIEW QUESTIONS

Please follow these questions as closely as you can, while responding to the worker's personal story and needs during the interview. Each lead question (in **bold**) is followed by an estimated amount of time to be spent on that set of questions (the lead question and follow up) and a short description of the purpose of each set of questions.

- 1. We'll start by talking about the jobs you've had in Illinois. Can you give me a couple examples of the kinds of jobs you've had in Illinois?** *[5 minutes to put the worker at ease and get a sense of what jobs and industries will be covered in the interview]*
- 2. Now let's talk about what happens when there are problems at work. At the places you've worked in Illinois, what are some problems you've experienced on the job?** *[10 minutes to identify problems, such as wage theft, unsafe working conditions, work injuries, discrimination, and to get the worker's viewpoint on how workers, government and bosses respond]*

Follow up:

- Have you experienced serious problems at work but didn't say or do anything about it? Do you think other workers experience that? Why? Does this happen a lot?
- Have you ever complained about workplace problems to your bosses? Or to the government? Or do you know of others who have made a complaint?
- Have you experienced threats or been discouraged from raising problems at work? Have you witnessed other workers be threatened or discouraged? By whom and how?
- Do you remember ever having a government agency, like the Department of Labor, catch a problem at work without you or other workers reaching out to them? Does this happen a lot?

- 3. How do your bosses treat you or any other workers when you complain about problems at work or try to improve your jobs?** *[1.5 minutes to get a sense from the worker about how they see their bosses responding to workplace complaints and whether they fear retaliation]*

Follow up:

- Have any of your bosses ever mistreated workers who complained about problems? Is this rare or common? What do you consider to be mistreatment?
- Do you ever worry about your boss mistreating you if you speak up about problems on the job? If you do, are you less likely to speak up at work about these problems?
- Why do you think bosses behave in this way?
- Do you remember ever having a boss that encouraged workers to raise problems at work? Is this rare or common?

- 4. Have you ever lost work or been harmed or threatened because you complained about problems at work? If so, by whom and how?** *[1.5 minutes to get a personal story of retaliation and any experience with making a complaint about it with a boss or government agency]*

Follow up:

- How did this impact you? Did it impact your health? Did it impact your ability to get another job? Did it impact your family or community?
- Have you ever seen any other worker be harmed or threatened for complaining about work problems? If so, by whom and how?
- Did you complain to anyone about how you or other workers were treated? If so, to whom and what happened? If not, why not?
- Have you ever chosen not to complain about how you were treated for speaking up at work? If so, why? Do you think it's common for workers to not complain about how they're treated? Why or why not?

- 5. Are there some workers who are treated differently from others? Why do you think they're treated differently?** *[5 minutes to get any stories about discriminatory hiring and treatment on the job based on the race, sex, or immigration status of workers. If prejudice is voiced, address]*

- 6. To wrap up our discussion, I'd like to ask you what rights do you think should be protected at work?** *[5 minutes to get the worker's sense of rights and workplace violations, and find out if information about rights is available at work]*

Follow up:

- Where did you learn about what rights you have as a worker in Illinois? Have you ever learned about rights and how to exercise them on the job? Does this happen a lot?
- In your experience, are your rights at work being protected, or are they being violated? What are some examples?
- What would make it easier for you to speak up at work when you think your rights are being violated?

**AFTER THE INTERVIEW:** Please ask the worker to complete the "After interview" section of the Consent Form, and save the audio recording in a way that it can be shared with or picked up by Raise the Floor or NESRI.



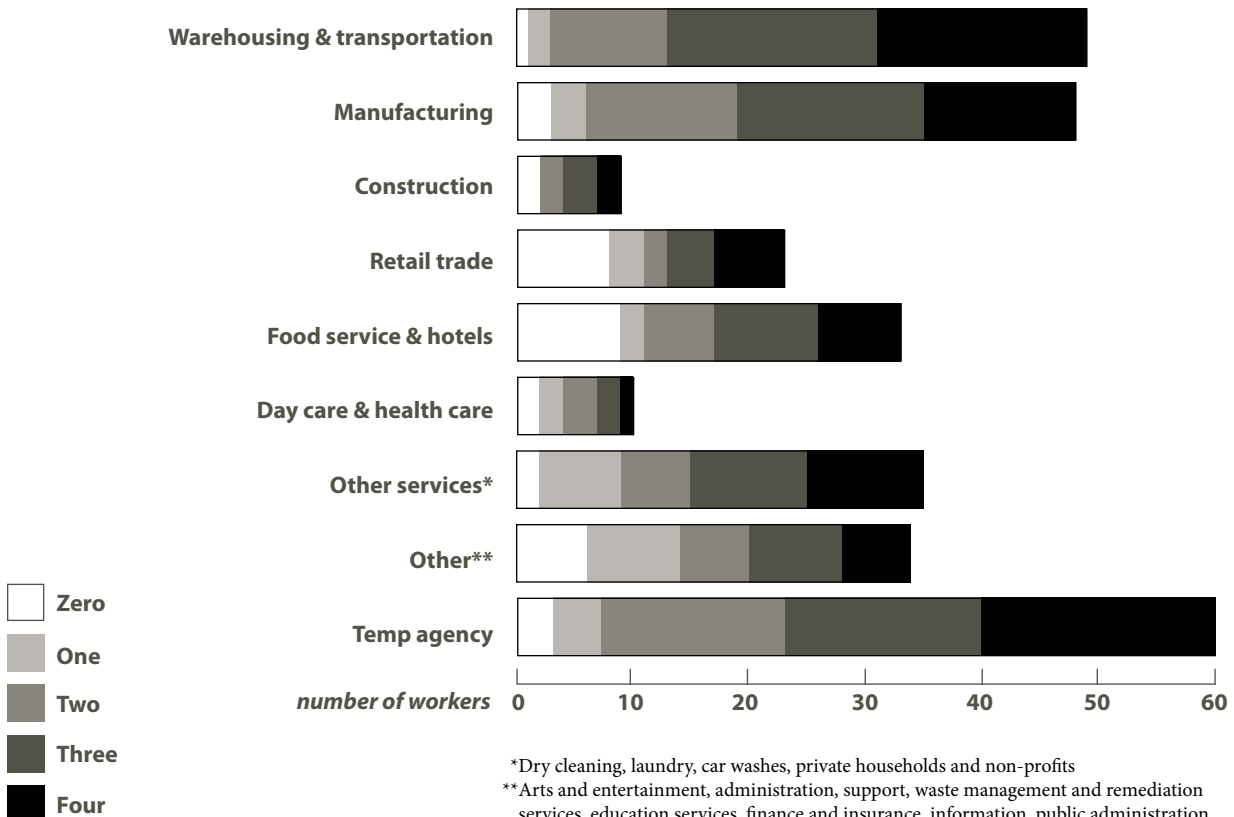
## Demographics and Industries of Survey Participants, Business of Fear Documentation

<b>AGE</b>	<b>20%</b> Under 25	<b>26%</b> 26-35	<b>25%</b> 36-45	<b>15%</b> 46-55	<b>7%</b> 56-65
<b>GENDER</b>	<b>49%</b> Female	<b>48%</b> Male	<b>&lt;1%</b> Other		
<b>RACE &amp; ETHNICITY</b>	<b>36%</b> Black	<b>54%</b> Latino	<b>6%</b> White	<b>1%</b> Mixed	
<b>IMMIGRATION STATUS</b>	<b>53%</b> U.S. Citizen	<b>37%</b> Noncitizen	{ 10% Documented { 27% Undocumented		

<b>INDUSTRIES &amp; SECTORS</b>	<b>23%</b> Manufacturing	<b>21%</b> Warehousing & transportation
	<b>12%</b> Food service & hotels	<b>7%</b> Retail
	<b>14%</b> Other services*	<b>4%</b> Construction
	<b>4%</b> Day care & health care	<b>14%</b> Other**
	<b>29%</b> Temp agency	{ 12% Manufacturing { 11% Warehousing { 6% Other

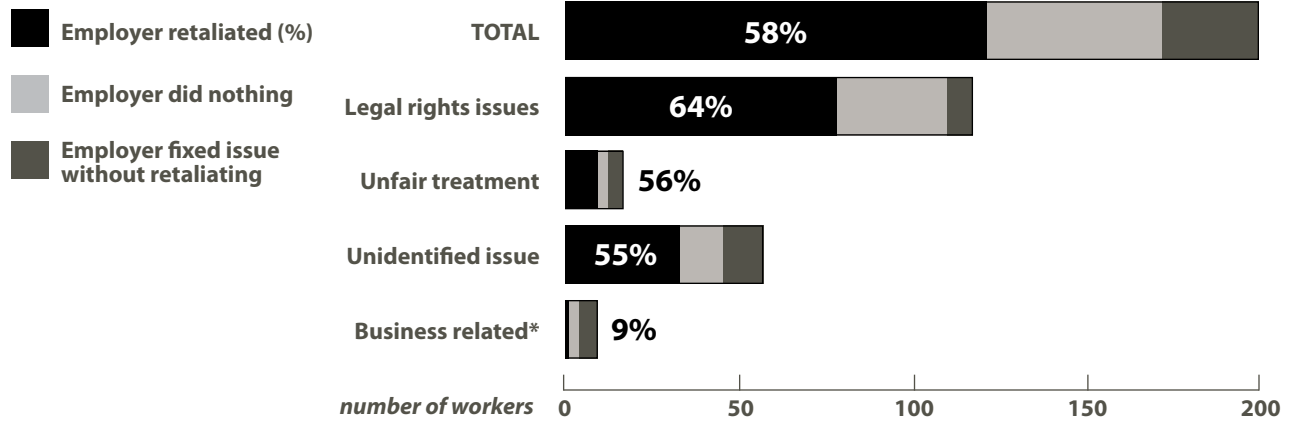
\*Dry cleaning, laundry, car washes, private households and non-profits  
 \*\*Miscellaneous and unidentified

## Number of Rights Violations by Industry, Business of Fear Documentation



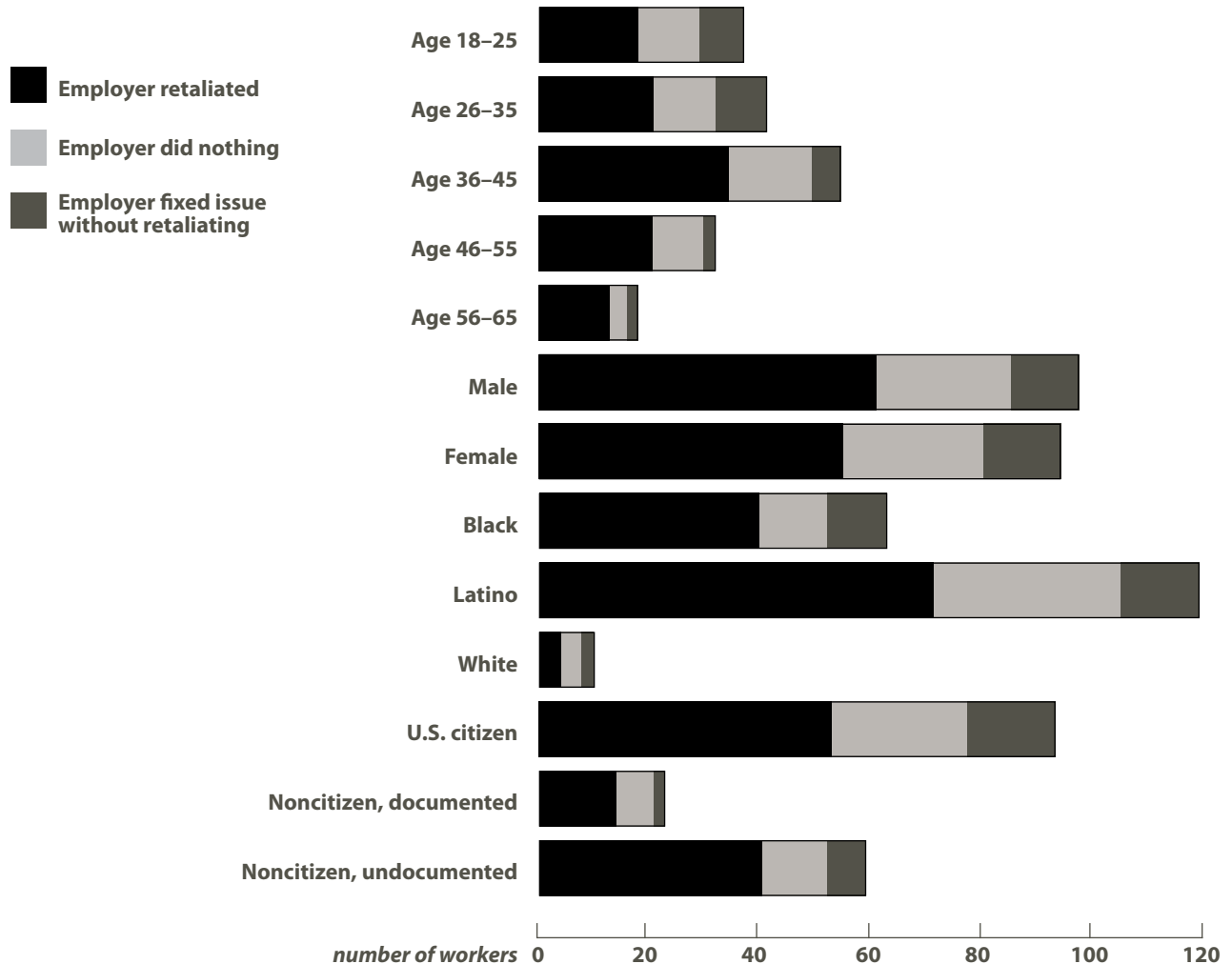
\*Dry cleaning, laundry, car washes, private households and non-profits  
 \*\*Arts and entertainment, administration, support, waste management and remediation services, education services, finance and insurance, information, public administration, wholesale trade and unidentified

## Story Outcomes Based on Underlying Issue, Business of Fear Documentation



\*Includes actions taken by workers to improve or participate in a business, such as improving an inventory system, discussing workplace systems and tasks at meetings, bringing defective machinery to a boss' attention and helping a coworker improve productivity.

## Story Outcomes Based on Demographics, Business of Fear Documentation



## NOTES

1. Day Laborer Collaboration, Survey of Latino Day Labor Workers: A Project of the Day Laborer Collaboration, Chicago, Ill. (2005).
2. Nik Theodore, et al., Unregulated Work in Chicago: The Breakdown of Workplace Protections in the Low-Wage Labor Market (2010) [hereinafter Unregulated Work].
3. Warehouse Workers for Justice, Bad Jobs in Goods Movement: Warehouse Work in Will County, Ill. (2011).
4. Robert Bruno, et al., Clean Cars, Dirty Work: Worker Rights Violations in Chicago Car Washes (2012).
5. Unregulated Work, *supra* note 2, at 19.
6. *Id.* at 18.
7. In the *Business of Fear Survey*, rights-based issues perceived by workers are not necessarily legal violations. However, workers' perceptions are the basis of workers' claims and, thus, the basis of worker-centered enforcement. What is important is that workers have a full range of concerns pertaining to their rights, but, confronted with the threat and fear of retaliation, they do not try to address them.
8. Unregulated Work, *supra* note 2, at 31.
9. See Appendix D for the number of rights violations workers perceived by industry.
10. Unregulated Work, *supra* note 2, at 16.
11. *Id.* at 18.
12. See Appendix E for story outcomes based on underlying issue.
13. See Unregulated Work, *supra* note 2, at 17.
14. In the *Business of Fear Documentation*, 75% of workers' retaliation stories involved lost work and pay.
15. See, e.g., Unregulated Work, *supra* note 2, at 22–29 (reporting consistently high violation rates across many industries, despite finding variation).
16. *Id.* at 30.
17. See Appendix F for story outcomes based on demographics.
18. Kate Bronfenbrenner, No Holds Barred: The Intensification of Employer Opposition to Organizing 4 (Economic Policy Institute Briefing Paper #235, 2009).
19. Frank Manzo IV, Illinois Economic Policy Institute, et al., The State of the Unions 2015: A Profile of Unionization in Chicago, in Illinois, and in America ii (2015).
20. See, e.g., Chirag Mehta & Nik Theodore, Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns 8 (2005) (finding a correlation in failed union campaigns and the number of employers' anti-union tactics based on analysis of NLRB cases in Chicago).
21. See Bronfenbrenner, *supra* note 18, at 9–15 (capturing the tactics and rising frequency and intensity of employers' anti-union campaigns).
22. *Id.* at 10–11.
23. Unregulated Work, *supra* note 2, at 16.
24. For too many workers, their bosses humiliated and insulted them (21%) and made them feel threatened and intimidated (22%) all or most of the time.
25. This report focused on the following eight laws: Fair Labor Standards Act, 29 U.S.C.A. § 215(a)(3); Title VII of the Civil Rights Act, 42 U.S.C.A. § 2000e-3; National Labor Relations Act, 29 U.S.C.A. § 158(a); Occupational Safety and Health Act, 29 U.S.C.A. § 660(c); Illinois Minimum Wage Law, 820 Ill. Comp. Stat. Ann. 105/11(c); Illinois Wage Payment and Collections Act, 820 Ill. Comp. Stat. Ann. 115/14; Illinois Human Rights Act, 775 Ill. Comp. Stat. Ann. 5/6-101; Illinois Workers' Compensation Act, 820 Ill. Comp. Stat. Ann. 305/4(h).
26. The Fair Labor Standards Act prohibits retaliation against workers who have filed a complaint or testified. 29 U.S.C.A. § 215(a)(3). While the U.S. Supreme Court in 2011 decided this covers oral complaints as well as written complaints and lawsuits, the Act does not apply to complaints to others. *Kasten v. Saint-Gobain Performance Plastics Corp.*, 131 S. Ct. 1325, 1335 (2011). Illinois' Wage Payment and Collection Act applies to workers who complain in a public hearing or to a community organization, but again is silent about speaking to coworkers. 820 Ill. Comp. Stat. Ann. 115/14.
27. Workers are protected for merely "opposing" unlawful discrimination or sexual harassment. 42 U.S.C.A. § 2000e-3.
28. Workers who "engage in . . . concerted activities for the purpose of collective bargaining or other mutual aid or protection" are protected under the National Labor Relations Act. 29 U.S.C.A. § 158(a).
29. For instance, the Fair Labor Standards Act states that for an employer to "discharge or in any other manner discriminate against" a worker who exercises rights under the Act is a violation of the Act. 29 U.S.C.A. § 215(a)(3).
30. The Illinois Workers' Compensation Act lists a range of prohibited employer actions, including discrimination, threats to fire and refusing to rehire, but does not specify a path to justice. The Illinois Supreme Court has interpreted this narrowly, allowing injured workers to bring lawsuits only under the common law tort of retaliatory discharge, severely limiting the scope of protection. See *Bajalo v. Nw. Univ.*, 369 Ill. App. 3d 576, 582 (2006) (listing cases).
31. See Charlotte Alexander, *Anticipatory Retaliation, Threats and Silencing of the Brown Collar Workforce*, 50 Am. Bus. L.J. 779, 800 (citing a Title VII case decided by the U.S. Supreme Court, *Burlington N. & Santa Fe Ry. Co. v. White*, 548 U.S. 53 (2006), which set the standard for what constitutes an adverse employment action under anti-retaliation laws as "not . . . all retaliation, but . . . retaliation that produces an injury or harm," and noting the volume of lower courts that have interpreted this narrowly to exclude unfulfilled threats and harassment).
32. See Eunice Hyunhye Cho & Rebecca Smith, Nat'l Emp't Law Project, *Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights* (2013) (noting efforts made by the Obama administration to encourage prosecutorial discretion by ICE in labor disputes and use of temporary visas for victims of crime in the workplace are not enough).
33. See *EEOC v. City of Joliet*, 239 F.R.D. 490 (N.D. Ill. 2006) (issuing a protective order restraining employer from checking documents in a Title VII case); *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, 103 F. Supp. 2d 1180 (N.D. Cal. 2000) (holding that calls to immigration authorities constitute retaliation in a wage dispute); *AM Prop. Holding Corp., Maiden 80/90 NY LLC and Media Tech.*, 350 NLRB No. 80, 86 (2007) (finding an investigation into a worker's immigration status for giving testimony to the NLRB was retaliation).
34. ICE, Special Agent Field Manual 33.14(h) (saying that when the agency receives information concerning the employment of undocumented workers, officials must "consider" whether the information is being provided in retaliation); Memorandum from John Morton, Director, ICE, "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities

- of the Agency for the Apprehension, Detention, and Removal of Aliens” (Jun. 17, 2011).
35. The Act includes language that requires employers not to “interfere with, restrain, or coerce employees in the exercise of their rights guaranteed [in the statute]”. 29 U.S.C.A. § 158(a).
  36. See Rebecca Smith, Nat’l Emp’t Law Project, et al., *Temped Out: How the Domestic Outsourcing of Blue-Collar Jobs Harms America’s Workers* 9 (2014) (noting warehouses in Illinois typically retain a rotating group of two to eight temp agencies at a time on yearly contracts).
  37. This was stated strongly by all of the attorneys interviewed for the *Business of Fear Documentation*, saying, for instance, “If it’s not in writing, you’re up s\*\*\* creek.” And, “Never in my life have I seen an employer say, ‘You filed a workers’ comp case against me, you’re fired.’” And, “Rarely do you get a smoking gun.”
  38. Under U.S. law, without a contract or law stating the contrary, employment is “at will,” which means either employer or worker can end the relationship for any or no reason at all.
  39. *McDonnell Douglass Corp. v. Green*, 411 U.S. 792, 801 (1973) (describing the employer’s burden as “to articulate some legitimate, nondiscriminatory reason” for their adverse employment decision).
  40. Courts use the approach established under Title VII in *McDonnell Douglass. Id.* After a worker makes an initial case of retaliation, the employer has an opportunity to claim a non-retaliatory motive for their action, shifting the ultimate burden of proof back on the worker. *Id.*
  41. See *Texas Dep’t of Cmty. Affairs v. Burdine*, 450 U.S. 248 (1981) (limiting employers’ duty to provide a justification and ensuring the worker’s burden almost always includes proving the employer’s rationale is pretext).
  42. *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. \_\_\_, 133 S. Ct. 2517 (2013) (requiring that workers in Title VII retaliation cases prove that their employer’s adverse employment action would not have happened “but for” a retaliatory motive); *Mercil v. Fed. Express*, 644 F. Supp. 315, 317 (N.D. Ill. 1987) (holding that, if the employer has a valid basis which is not a pretext for discharging an injured worker than the retaliation claim fails); see also *Larsen v. Club Corp. of America, Inc.*, 855 F. Supp. 247 (N.D. Ill. 1994) (describing the burden in a retaliation claim under the Fair Labor Standards Act as shifting from a worker creating reasonable inferences to an employer proving that they would have taken the action regardless of the fact that the worker exercised their rights).
  43. See, e.g., Catherine Ruckelshaus, Nat’l Emp’t Law Project, et al., *Who’s the Boss: Restoring Accountability for Labor Standards in Outsourced Work* (2014) (profiling outsourcing trends in a number of industries); Smith, *supra* note 36 (documenting the growth of temp labor as a permanent feature of some supply chains).
  44. Catherine Ruckelshaus & Bruce Goldstein, Nat’l Emp’t Law Project, *The Legal Landscape for Contingent Workers in the United States* (2003).
  45. FY 2014 investigation data for whistleblower cases received by OSHA in the State of Illinois (obtained under the Freedom of Information Act from Region 5 of OSHA, requested Feb. 2015, received Aug. 2015) [hereinafter OSHA FOIA].
  46. FY 2013 data for retaliation-based employment discrimination charges received by Ill. Dep’t of Human Rights (obtained under the Freedom of Information Act from Ill. Dep’t of Human Rights, requested Feb. 2015, received Feb. 2015) [hereinafter IDHR FOIA].
  47. Retaliation-Based Charges FY 1997 - FY 2015, Enforcement & Litigation Statistics, EEOC, [www.eeoc.gov/eeoc/statistics/enforcement/retaliation.cfm](http://www.eeoc.gov/eeoc/statistics/enforcement/retaliation.cfm) (last visited Aug. 8, 2016) (for statistics on FY 2014).
  48. FY 2014 data for unfair labor complaints received by the NLRB in the State of Illinois (obtained under the Freedom of Information Act from Region 13 of the NLRB, requested Feb. 2015, received Apr. 2015).
  49. IDHR FOIA, *supra* note 46.
  50. *What You Can Expect After You File a Charge*, EEOC, [www.eeoc.gov/employees/process.cfm](http://www.eeoc.gov/employees/process.cfm) (last visited Aug. 8, 2016) (reporting averages for 2015); see also OSHA FOIA, *supra* note 45 (reporting the average number of days to complete an OSHA whistleblower investigation is 157 days).
  51. An attorney with 30 years experience gave as an example a case he brought on behalf of a worker in 2009, which was awaiting summary judgment (an initial decision from the judge on letting the case proceed or not) when the authors interviewed him in 2015.
  52. Office of Inspector Gen., U.S. Dep’t of Labor, *Nationwide Audit of OSHA’s Section 11(c) Discrimination Investigations*, Final Report No. 05-97-107-10-105 14 (1997).
  53. Nick, a 39-year-old White warehouse worker of over a decade conveyed a sentiment shared by many of the workers who had stories of navigating a retaliation complaint when he said, “Without [the worker center], we would not have gotten our jobs back. [They] did a lot for us. For instance, a lot of workers don’t have drivers’ licenses—they’d drive us into the [agency’s] office to give affidavits.”
  54. For wage-based retaliation claims, workers choose between several venues: the courts, or the Illinois or U.S. Departments of Labor. For discrimination-based retaliation claims, workers must go first to the EEOC or the Illinois Department of Human Rights, through which an investigation is completed prior to pursuing justice in court or through the Illinois Human Rights Commission. For health and safety related retaliation or organizing-based retaliation, workers have only one venue option, a public agency: OSHA and the NLRB. And, for workers’ compensation-based retaliation, a worker must go to court to secure justice.
  55. One attorney with ten years experience representing workers and employers explained that workers who do not have lawyers can work with an agency, an available route in all cases except workers’ comp related retaliation, but the “streamlined, bare bones” intake process is “not ideal.” The “limited time spent” with the worker “risks missing something” needed to be successful. Workers who represent themselves in court face significant challenges to success as well. See Minna J. Kotkin, *Outing Outcomes: An Empirical Study of Confidential Employment Discrimination Settlements*, 64 Wash. & Lee L. Rev. 111, 138 n.126 (2007) (reviewing settlement statistics from the Northern District of Illinois and finding just 2.8% of employment discrimination settlements involving pro se litigants, which is significantly lower than the 18% of pro se filings reported by the Southern District of New York, and concluding pro se cases are most likely being dismissed and not reaching the settlement stage). Also, pro se litigants who succeeded in obtaining a settlement received significantly lower judgments. *Id.* at 146.
  56. Among the various enforcement agencies, OSHA provides the most robust training programs targeting workers, which includes how to file a complaint. The agency also provides grants to non-profits to help reach high-risk workers. Through this program, since 1978, OSHA has trained a modest 2.1 million workers. See *Susan Harwood Training Grant Program*, U.S. Dep’t of Labor, OSHA, <https://www.osha.gov/dte/sharwood/index.html> (last visited Aug. 8, 2016). In the last decade, the Wage & Hour Division of the U.S. Department of Labor has piloted

- and expanded a similar partnership-based program intended to reach vulnerable workers. See David Weil, *Partnering to Give Workers a Voice*, U.S. DOL Blog (June 18, 2014), <http://blog.dol.gov/2014/06/18/partnering-to-give-workers-a-voice/> (last visited Aug. 8, 2016). The EEOC and Illinois Department of Human Rights both offer training programs, but little suggests these reach or even target vulnerable workers. And there is no evidence that the Illinois Department of Labor offers any training programs.
57. 42 U.S.C.A. § 2000e-5(k) (making attorneys' fees available in the discretion of the court for all Title VII cases); 29 U.S.C.A. § 216(b) (creating reasonable attorney fees for wage-related claims).
  58. See, e.g., U.S. Dep't of Labor, OSHA Whistleblower Protection Advisory Committee, Minutes of Tuesday, Jan. 29, 2013, Meeting (2013) available at [www.whistleblowers.gov/wpac/WPAC\\_minutes\\_01292013.html](http://www.whistleblowers.gov/wpac/WPAC_minutes_01292013.html) (discussing the construction of the statute and the absence of attorney fees).
  59. Callahan v. Edgewater Care & Rehab. Ctr., 374 Ill. App. 3d 630 (2007) (noting the lack of attorneys' fees in workers' compensation-based retaliation cases under the retaliatory discharge tort).
  60. NLRB v. Cable Car Advertisers, Inc., 319 F. Supp. 2d 991 (N.D. Cal. 2004) (holding that the National Labor Relations Act did not provide for attorneys' fees; but see Int'l Union of Elec., Radio & Mach. Workers, AFL-CIO v. NLRB, 502 F.2d 349 (D.C. Cir. 1974) (holding that, in cases in which employers raise frivolous defenses, the NLRB may award attorneys' fees); HTH Corp., 361 NLRB No. 65 (Oct. 24, 2014) (imposing litigation costs on employers exhibiting bad faith).
  61. On this point, all the employment law practitioners interviewed for the *Business of Fear Documentation* agreed. In fact, the attorney with 11 years experience said he had "never seen a penalty imposed."
  62. The Fair Labor Standards Act authorizes the U.S. Department of Labor to assess a maximum penalty of \$10,000 for a willful violation or, for a repeat offender, six months in jail. 29 U.S.C.A. § 216. The Illinois Wage Payment and Collection Act, 820 Ill. Comp. Stat. Ann. 115/14, imposes an administrative fee between \$250 and \$1,000 on employers who are ordered by the Illinois Department of Labor or a court to pay wages to an employee. If the employer also fails to comply with the order in a timely manner, they owe the Illinois Department of Labor a penalty equal to 20% of the underpayment and the worker 1% per day of the underpayment. The Illinois Minimum Wage Act, 820 Ill. Comp. Stat. Ann. 105/12, also imposes penalties equal to 20% of their underpayment, directed to the Illinois Department of Labor, for willful, repeat or reckless violations and 2% of the underpayment per month unpaid to the worker.
  63. In discrimination and workers' comp based retaliation cases, damages are available for intentional, malicious or reckless violations only. See Kolstad v. Am. Dental Ass'n, 527 U.S. 526 (1999) (concerning Title VII cases); Kelsay v. Motorola, Inc., 384 N.E.2d 353 (1978) (concerning workers' compensation based cases). In health and safety related retaliation cases, punitive damages are for "egregious misconduct" or when employers were "aware" of their violations. U.S. Dep't of Labor, OSHA, Whistleblower Investigations Manual, Directive No. CPL 02-03-005 (2015). However, the Illinois Wage Payment and Collection Act, 820 Ill. Comp. Stat. Ann. 115/14, makes generally available damages equal to 2% of stolen wages, while the Fair Labor Standards Act, 29 U.S.C.A. § 216(b), provides for liquidated damages equal to lost wages.
  64. Lummus Co. v. NLRB, 339 F.2d 728 (D.C. Cir. 1964).
  65. Again, the attorneys we interviewed agreed, pointing out that 90–99% of cases settle. One attorney could not think of a single case that went to hearing, saying, "We always settle."
  66. 535 U.S. 137 (2002).
  67. See, e.g., Nik Theodore & Jamie Peck, *The Temporary Staffing Industry: Growth Imperatives and Limits to Contingency*, 78 Econ. Geography 463, 467 (2002) (calling the "regulatory advantage" "crucial" to the growth of temp work in the United States).
  68. Ruckelshaus et al., *supra* note 43.
  69. See, e.g., McDonald's USA, LLC, a joint employer, et al., 363 NLRB No. 144 (2016); see also Ruckelshaus, *supra* note 44 (reviewing the evolving legal terrain in 2000).
  70. Day and Temp Services Act, 820 Ill. Comp. Stat. Ann. 175/85(b).
  71. See Hyeyoung Yoon & Tseyeye Gebreselassie, Nat'l Emp't Law Project, Building Robust Labor Standards Enforcement Regimes in Our Cities and Counties 4 (2015) (explaining how, despite broad language in many statutes, that should extend liability up and across supply chains, many jurisdictions have relied on narrow court and agency interpretations).
  72. See, e.g., Ellyn Fortino, *Chicago Car Wash Workers Dealt Major Blow in Wage Theft Case*, Progress Illinois (May 19, 2016), <http://progressillinois.com/quick-hits/content/2016/05/19/chicago-carwash-workers-dealt-setback-wage-theft-case-video>.
  73. See Eunice Hyunhye Cho et al., Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers 8–10 (2013) (analyzing pros and cons of existing tools).
  74. *Id.* at 13.
  75. For a short period under the Quinn administration, the agency used its auditing power to investigate possible violations of the minimum wage law when temp agency employers were flagged for possible licensing violations. However, this auditing authority had never been used before and has not been used again under the current administration.
  76. See Web of Enforcement on page 31.
  77. See, e.g., Pauline T. Kim, *Addressing Systemic Discrimination, Public Enforcement and the Role of the EEOC*, 95 B.U. L. Rev. 1133, 1135 (2015) (noting that the EEOC's "systemic enforcement efforts are hampered by significant resource constraints, especially given a shrinking budget and the agency's heavy workload processing individual charges of discrimination").
  78. Int'l Labor Org., Int'l Labor Office, Comm. on Emp't & Soc. Policy, *Strategies and practice for labour inspection*, Doc. GB.297/ESP/3, Governing Body, 297th Sess. (Nov. 2006).
  79. Office of Mgmt. & Budget, Office of the Governor, Illinois State Budget Fiscal Year 2016, 114 (2015) (reporting employment-related enforcement data within a broader "non-housing" category).
  80. *Id.* at 131 (reporting six staff members dedicated to the Fair Labor Standards Division); Illinois Dep't of Labor, Labor Advisory Meeting, Meeting Minutes, Dec. 9, 2013 (noting that, since the Department started in 1973, the number of compliance officers had dropped from 42 to 9).
  81. The authors used Bureau of Labor Statistics 2014 annual employment averages (136,613,609 for the nation and 5,762,156 for Illinois).
  82. U.S. Dep't of Labor, FY 2014 Annual Performance Report 64 (2015).
  83. U.S. Dep't of Labor, FY 2016 Department of Labor Budget in Brief 41 (2016) [hereinafter DOL Budget in Brief] (1,727 actual full-time employees in Wage and Hour Division for 2014).
  84. State of Illinois, Illinois State Budget Fiscal Year 2016 (2015) [hereinafter Illinois Budget Book] (headcount for the Illinois Department of Labor was 92 for 2014).
  85. OSHA FOIA, *supra* note 45 (reporting 2,898 inspections with 872 triggered by a complaint).



86. DOL Budget in Brief, *supra* note 83 at 54 (2,166 full-time employees at OSHA for 2014).
87. EEOC, Fiscal Year 2015 Performance and Accountability Report 22 (2015) (referring to systemic discrimination cases).
88. EEOC, EEOC Budget and Staffing History 1980 to Present, <https://www.eeoc.gov/eeoc/plan/budgetandstaffing.cfm> (last visited Aug. 9, 2016) (2,098 full-time employees for 2014).
89. Illinois Budget Book, *supra* note 84, at 115 (for the whole of the Illinois Department of Human Rights, a headcount in 2014 was 143).
90. NLRB, Justification of Performance Budget for Committee on Appropriations: FY 2016 6 (2016) (1,610 full-time employees in 2014).
91. *See, e.g.*, Social Impact Research Center, Heartland Alliance, Illinois's 33%: Report on Illinois Poverty (2013).
92. Key federal legislation included the Personal Responsibility and Work Opportunity Act of 1996, Pub. L. No. 104-193, 110 Stat. 2105, and the Quality Housing and Work Responsibility Act of 1998, Pub. L. No. 105-276, 112 Stat. 2518. *See also* Barbara Ehrenreich, *How We Cured 'The Culture of Poverty', Not Poverty Itself*, Mother Jones (Mar. 15, 2012), <http://www.motherjones.com/politics/2012/03/barbara-ehrenreich-what-causes-poverty> (explaining the influential "culture of poverty" theory attributing poverty to behaviors and culture of people experiencing it); Jamie Peck & Nik Theodore, *Carceral Chicago: Making the Ex-offender Employability Crisis*, 32 Int'l J. Urb. & Regional Res. 251, 258 (2008) (noting that, today, for every one dollar spent in Illinois on social welfare programs, nine dollars go to state prisons, while, in the mid-1980s, welfare spending exceeded prison spending by a ratio of more than three to one).
93. *See* Annette Bernhardt et al., *Confronting the Gloves-Off Economy: America's Broken Labor Standards and How to Fix Them* 20 (2008) (explaining how families pushed out of public assistance ended up in low-wage or unstable employment); Peck & Theodore, *supra* note 92, at 266 (noting homogenous stigmatization of formerly incarcerated Black men limits employment opportunities).
94. *See* Bernhardt et al., *supra* note 93, at 11 (explaining how shifting power dynamics and use of non-unionized subcontracted workers has driven the restructuring of the economy, not, for instance, an influx of foreign-born workers).
95. Smith, *supra* note 36, at 11.
96. *See, e.g., id.* (noting, not only do temps in the United States have worse health and safety outcomes than other workers, but research shows this is consistent with temp work globally).
97. Bruce Kennedy, *Temp Jobs are a Growth Industry*, CBS News (Mar. 5, 2015), <http://www.cbsnews.com/news/temporary-jobs-are-a-growth-industry/>; Bernhardt et al., *supra* note 93, at 3 (noting historical growth).
98. *See* Theodore & Peck, *supra* note 67.
99. A.B. 263, 2012-2013 Leg. Session (Ca. 2013), A.B. 524, 2012-2013 Leg. Session (Ca. 2013), and S.B. 666, 2012-2013 Leg. Session (Ca. 2013); *see* Nat'l Emp't Law Project, *California's New Worker Protections Against Retaliation*, Fact Sheet (2013), *available at* <http://www.nelp.org/content/uploads/2015/03/ca-immigration-retaliationv3.pdf>.
100. *See, e.g.*, OSHA, *Whistleblower Protection Rights: Protection from Retaliation for Using Rights under the OSH Act*, Temporary Worker Initiative, TWI Bulletin No. 3 (2015) (recognizing "failing to hire or rehire" as retaliation).
101. *See, e.g.*, EEOC, EEOC Notice Number 915.002, Dec. 3, 1997 (recognizing client company's request to temp agency to replace a worker reporting client's discrimination as retaliation).
102. Under other laws, prohibition of a range of adverse actions is common. *See, e.g.*, Burlington N. & Santa Fe Ry. Co. v. White, 548 U.S. 53 (2006) (explaining the breadth of adverse actions considered under Title VII).
103. *See* N.Y. Wage Theft Prevention Act, McKinney's Labor Law § 215(1)(a) (prohibiting threats under anti-retaliation provision); Alexander, *supra* note 31, at 33 (discussing caselaw that has recognized unfulfilled threats as prohibited under anti-retaliation laws because of their likely chilling effect on workers' rights).
104. Tia Koonse et al., UCLA Center for Labor Research and Education, UC Berkley Center for Labor Research and Education, *Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships* 5 (2015).
105. *See, e.g.*, *Cnty. of Santa Barbara v. Workers' Comp. Appeals Bd.*, 167 Cal. Rptr. 65 (Cal. Ct. App. 2d 1996) (reciting caselaw that interprets Cal. Lab. Code § 132a broadly to prohibit retaliation against injured workers generally).
106. Roger I. Abrams & Denis R. Nolan, *Toward a Theory of "Just Cause" in Employee Discrimination Cases*, 1985 Duke L.J. 594 (1985).
107. *See id.*; Clyde W. Summers, *Employment at Will in the United States: The Divine Right of Employers*, 3 U. Pa. J. Lab. & Emp. L. 65, 65 (2000) (noting the United States is alone among industrialized countries in using the at-will employment standard instead of the just cause standard).
108. In 1966, labor arbitrator Carroll Daugherty established the seven tests for "just cause," which includes forewarning, reasonableness of the underlying rule, an investigation by the employer into whether the rule was violated by the worker, the fairness of the investigation, substantial evidence obtained through the investigation, nondiscrimination in application of the rule, and the reasonableness of the discipline. *In re Enterprise Wire Co. & Enterprise Indep. Union*, 46 LA 359 (1966) (Daugherty, Arb.).
109. *See* Koonse et al., *supra* note 104, at 5.
110. *Id.*
111. 30 U.S.C.A. § 815(c)(2).
112. *See* *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 19 (2008) (explaining that, under common law, the standard that must be met to secure preliminary injunction requires proof that the complainant is "likely to succeed on the merits," "likely to suffer irreparable harm," "the balance of equities tips in his favor" and "an injunction is in the public interest").
113. This follows logic similar to the creation of a legal assumption of retaliation. *See* note 109.
114. It is common for enforcement of the law, such as with health and building codes, to require corrective action within a short, specific period of time, such as seven days. *See infra* note 116.
115. *See, e.g.*, L.A. Municipal Code §188.08(B) (establishing the daily administrative fine for retaliation at \$1,000 with a maximum cumulative fine of \$10,000, or 10 days). Eight of California's 12 local minimum wage laws include penalties payable to the worker per violation per day. Koonse, *supra* note 104, at 4.
116. It is also a common enforcement practice to require different levels of fines based on the seriousness of the violation and impose daily fines for refusals to comply. *See, e.g.* *Private Sewage Disposal Code*, 77 Ill. Adm. Code § 905.205 (establishing different levels of penalties that accumulate with each day the violation continues and a seven day time period for correcting serious violations).
117. *See, e.g.*, note 66.
118. *Renteria, et al. v. Italia Foods, Inc.*, 2003 WL 21995190 (N.D. Ill. Aug. 21, 2003) (ruling punitive and compensatory damages under the Fair Labor Standards Act's anti-retaliation provisions are available to undocumented workers); *Vallejo v. Azteca Electrical Construction Inc.*, 2015 WL 419634 (D. Ariz. Feb. 2, 2015)

- (discussing the caselaw that clarifies *Hoffman Plastics*' opposition to compensating undocumented immigrant workers for work not performed has not precluded these workers from recovering liquidated damages under the Act).
119. See McKinney's Labor Law § 215(2)(a) (making available liquidated damages for workers retaliated against for exercising rights under N.Y. labor laws).
  120. Cho, *supra* note 73.
  121. *Id.*
  122. *Id.* at 16 ("In cases determined to be the most likely to default, the state of Wisconsin successfully recovered some payment in 80 percent of cases that it has completed to date.")
  123. Gordon Smith, *Workplace Relations Commission: How New System Works*, Irish Times (Nov. 27, 2015).
  124. Michael J. Piore, *Flexible Bureaucracies in Labor Market Regulation*, prepared for 'The Idea of Labor Law' International Workshop, Cambridge, UK (2010).
  125. Office of Labor Standards, [seattle.gov/laborstandards](http://seattle.gov/laborstandards) (last visited Aug. 10, 2016) (enforcing laws ensuring paid sick time, minimum wage and fair hiring for workers with arrest records); Office of Labor Standards Enforcement, [sfgov.org/olse](http://sfgov.org/olse) (last visited Aug. 10, 2016) (enforcing a number of local labor laws).
  126. Cal. Lab. Code § 1102.7.
  127. LETF 2015 Report to the California Legislature, Department of Industrial Relations Labor Enforcement Task Force (2015).
  128. Fair Food Program 2015 Annual Report, Fair Food Standards Council 8 (2015).
  129. See *id.* at 28 (noting all participating growers in the Fair Food Program are provided with the Fair Food Standards Council complaint line numbers on their check stubs, in know-your-rights booklets and on wallet-size cards distributed during Fair Food Standards Council audits).
  130. See *id.* at 8.
  131. See, e.g., the hiring hall run by day laborers at the Albany Park Workers Center in Chicago, Latino Union of Chicago, <http://www.latinounion.org/#!day-labor-program/i9m1q> (last visited Aug. 10, 2016).
  132. Telephone interview with Sean Seller, investigator, Fair Food Standards Council (Mar. 16, 2016) [hereinafter FFSC investigator interview]; see Fair Food Program 2015 Annual Report, *supra* note 128, at 28 (reporting workers at over 35% of companies feel comfortable with using participating grower's internal complaint mechanisms, up from 10% the previous season).
  133. FFSC Investigator interview, *supra* note 132.
  134. *Id.*
  135. Telephone interview with Janice Fine, Associate Professor, Rutgers University (Feb. 9, 2015); see OSHA, Workers' Rights, OSHA 3021-09R-2014, Pamphlet, available at <https://www.osha.gov/Publications/osha3021.pdf>.
  136. Victoria said she "wouldn't have won much" without help from the worker center, which "helped with filing cases," and provided an "orientation on how to fight back." See Nick's similar remarks at note 53.
  137. *Id.* Additionally, when asked during interviews how they learned about their rights as workers, most people indicated that they learned them from a worker center.
  138. Yoon, *supra* note 71; see also Janice Fine & Jennifer Gordon, *Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations*, 38 Pol. & Soc'y 552 (2010) (discussing the need for agencies to partner with workers' organizations, alongside early case studies); Janice Fine, Co-Production: Bringing Together the Unique Capabilities of Government and Society for Stronger Labor Standards Enforcement, Labor Innovations for the 21st Century Fund (2015) [hereinafter Co-Production] (providing recent case studies and updated analysis of what makes these government and community-based partnerships work).
  139. Co-Production, *supra* note 138, at 14.
  140. Yoon, *supra* note 71, at 7.
  141. See note 138.
  142. See David Weil, *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division 11* (2010) ("Effective enforcement policies must change employer behavior. . .").
  143. See Yoon, *supra* note 71, at 4-6.
  144. See Weil, *supra* note 142, at 14 (explaining that personal relief for workers, such as reinstatement or back wages, is critical, but changing incentives of employers is also required).
  145. See *id.* at 2 (noting the traditional conception of enforcement has treated agency-directed and complaint-based investigations as "separate and distinct").
  146. See, e.g., Fresh Allegations of "Human Slavery" Emerge from the Tomato Fields of Immokalee, Coalition of Immokalee Workers blog (Dec. 10, 2007) (noting failure of Burger King's private supply chain monitoring group to detect inhumane conditions); Steven Greenhouse & Jim Yardley, *As Walmart Makes Safety Vows, It's Seen as Obstacle to Change*, N.Y. Times (Dec. 28, 2012).
  147. Through their members and leaders, workers' organizations retain deep knowledge of industries, how they are structured and what interventions will work and which will not.
  148. See Weil, *supra* note 142, at 3.
  149. See Yoon, *supra* note 71, at 7 (noting that a private right of action is important given limited public resources available for agency enforcement).
  150. Section 2698, et seq.
  151. Civil penalties secured by workers on behalf of the state are split between the agency, which receives 75%, and the worker, who receives 25% of the penalty. Cal. Lab. Code § 2699(i).
  152. See Weil, *supra* note 142, at 25 (discussing the enforcement problems in subcontracted work).
  153. *Id.* at 28.
  154. Ruckelshaus, *supra* note 44.
  155. See note 70.
  156. See Ruckelshaus, *supra* note 43, at 35.
  157. *Id.*
  158. See Mariya Aleksynska & Angelika Muller, *Nothing More Permanent Than Temporary? Understanding Fixed-Term Contracts* (International Labour Office, INWORK and GOVERNANCE Policy Brief No. 6 2015).

## ACKNOWLEDGMENTS

Most of all, we thank the workers who courageously shared their stories with us through surveys and interviews. We are also indebted to the community leaders and staff of the worker centers who collected these stories and shared their own. In addition, we are grateful to the legal practitioners who contributed their many years of experience, including Yolanda Carrillo, Jose Rivero and Chris Williams. Thanks too to Jose L. Casco-Guerra, Ranojoy Guha, the National Center for Law and Economic Justice, Audrey Son and Rachel Spector for their research assistance, and Eunice Cho, Janice Fine, Jennifer Gordon, Jacob Lesniewski, César Rosado, Sean Seller of the Fair Food Standards Council and Rebecca Smith of the National Employment Law Project for their generous contributions of their expertise. Finally, thanks to Drew Stevens ([studiodrew.nyc](http://studiodrew.nyc)) for his assistance in the design and production of this report.



# NESRI

NATIONAL ECONOMIC &  
SOCIAL RIGHTS INITIATIVE

