

DENIED DIGNITY AT WORK IN ILLINOIS: an initial report of findings

“They were so blatant with retaliation. They have no accountability. It was clear that they do that all the time and get away with it.”

—Tiana*, restaurant worker

BACKGROUND

Workers must be able to defend their rights to ensure basic standards are enforced in the workplace. Some legal rights, such as workers’ compensation, always require workers to make claims. But even when public agencies are tasked with enforcing workplace laws, such as minimum wage or health and safety standards, they discover only a fraction of violations on their own initiative without workers’ complaints.¹ Not only are public agencies not resourced to effectively oversee all workplaces,² a growing number of workplaces are off their radar, paying workers in cash and using other methods to evade regulatory oversight.³ With this being the new normal, workers are, more than ever, the frontline in monitoring rights on the job.

Thus, a precondition for making standards codified in the law a reality at work is workers feeling sufficiently safe to claim their rights and bring attention to potential problems. If employers are able to wield the threat of physical, economic and social harm in response to workers’ claims, workers may face no choice but to accept abusive pay and conditions. Broadly defined, this is retaliation.

Given that workers have to be able to claim rights in the context of increasing inequality, protecting workers from retaliation is more essential than ever to upholding rule of law in the workplace (see Figure 1). More jobs offer pay that leaves workers living paycheck to paycheck and make no promises of employment the next day.⁴ At the same time, an already tattered social safety net has been largely replaced with systems of criminalization and exclusion.⁵ For many workers who need to keep a roof over their heads and food on the table, the threat of lost work, even at substandard pay and conditions, can be too big of a risk.

Over the last decade, Chicago area worker centers have exposed what workers already know: employers are systemically denying workers’ basic freedoms across low-wage industries, disproportionately impacting Black and Latino communities.⁶ At least a dozen on-the-ground studies provide glimpses into the deteriorating conditions



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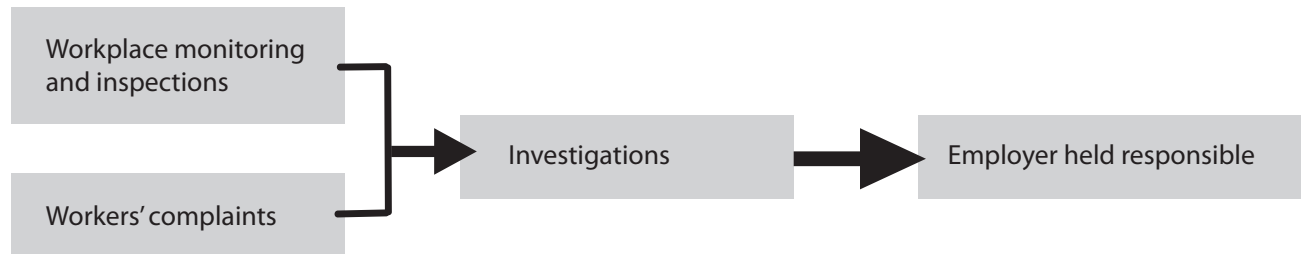
of low-wage work, finding systemic wage theft, racial discrimination, unnecessarily dangerous conditions and lack of access to workers' compensation for workers made injured or ill on the job. Many have also documented the widespread incidence of retaliation as both a perceived threat among workers who are experiencing these conditions and as a prevalent reaction of employers to workers' defense of rights.⁷

Our research builds on this work by focusing on how existing anti-retaliation measures empower or fail to empower workers to challenge possible violations. Our approach moves from asking if retaliation is happening to capturing a more detailed picture of how it is happening and identifying what the barriers are to workers gaining the protection of the law, which, at least on paper, prohibits employers from causing them harm. We focused on five basic workplace rights concerning:

- Health and safety,
- Work-related injuries and illnesses,
- Wage theft,
- Discrimination and sexual harassment, and
- Worker organizing.⁸

Figure 1. Effect of retaliation on workplace enforcement

Workplace enforcement process... in theory:



Breakdown in enforcement process:



We recognize that workers who are experiencing violations of their rights are experts in these problems. This research leverages their collective knowledge as a first step toward improving how workers are protected when they courageously participate in the preservation of fundamental freedoms on the job.

METHODS

In late 2014, we began an effort to capture what happens when workers try to deal with mistreatment in low-wage workplaces around the Chicago area.

We designed a survey to collect information about workers' experiences, including treatment and problems on the job, what happened when they have tried to fix problems or improve their jobs and their vision of what will make it easier to speak up about abuses at work. After completing two pilot studies in English and Spanish in early 2015, beginning in April, staff and members of all eight area worker centers conducted surveys in both languages over a six-month period.

Surveys were integrated into the worker centers' existing processes for making contact with their community members. Surveys 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 (for example, on a bus ride to the state capital). 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 population of the low-wage workforce missed by traditional research data collection practices because their off-the-books work, immigration status and/or fear of retaliation by their employers keeps them and the places in which they work relatively hidden.

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.

The following findings and implications are derived from these surveys. Where relevant, findings have been supplemented by the significant complementary research completed as part of this study. This additional research includes legal analysis of several labor and employment statutes, collection of public data, an extensive literature review and interviews with six attorneys who currently practice labor and employment law in the State of Illinois.

INITIAL FINDINGS

#1 Workers often encounter more than one type of rights violation in low-wage jobs

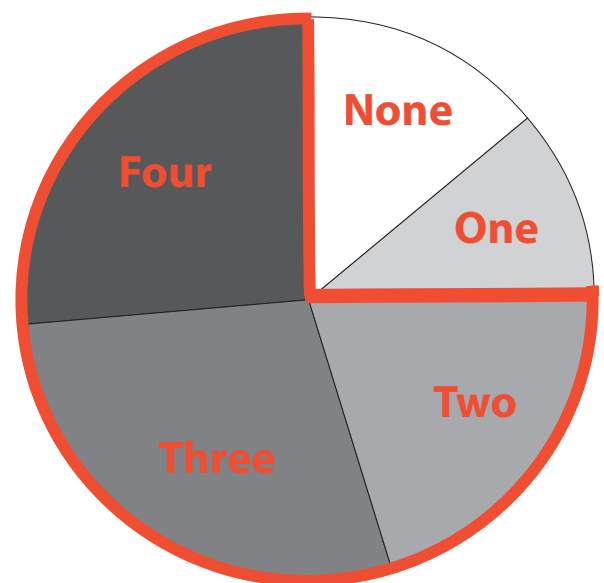
They treat us like animals, and we get used to it.

- Carla*, factory worker

As expected, most workers in the study sample identified at least one violation of their rights in their current or most recent jobs (85%). Problems with every right covered by this study were reported. Concerns about dangerous conditions and discrimination or sexual harassment were widely shared, each reported by 70% of participants. The most frequently reported type of discrimination was unequal treatment based on race or color (48%), though discrimination based on language (39%), being an immigrant (35%), gender (35%) and other protected classes were also common. Half of participants reported work-related injuries and illnesses (51%) and wage theft (48%).

As these numbers suggest, most participants experienced violations of multiple rights (74%) (see Figure 2). In fact, more than half (54%) reported abuses involving three or more rights and over a quarter (26%) reported violations of all four rights covered by the study. As in past research, which found certain industries and occupations rife with multiple legal rights violations,⁹ this trend extends to all of the low-wage industries and sectors in this study.

Figure 2. Number of rights violations workers experienced in their current or most recent jobs



#2 Out of fear of retaliation, most workers avoid bringing attention to abuse

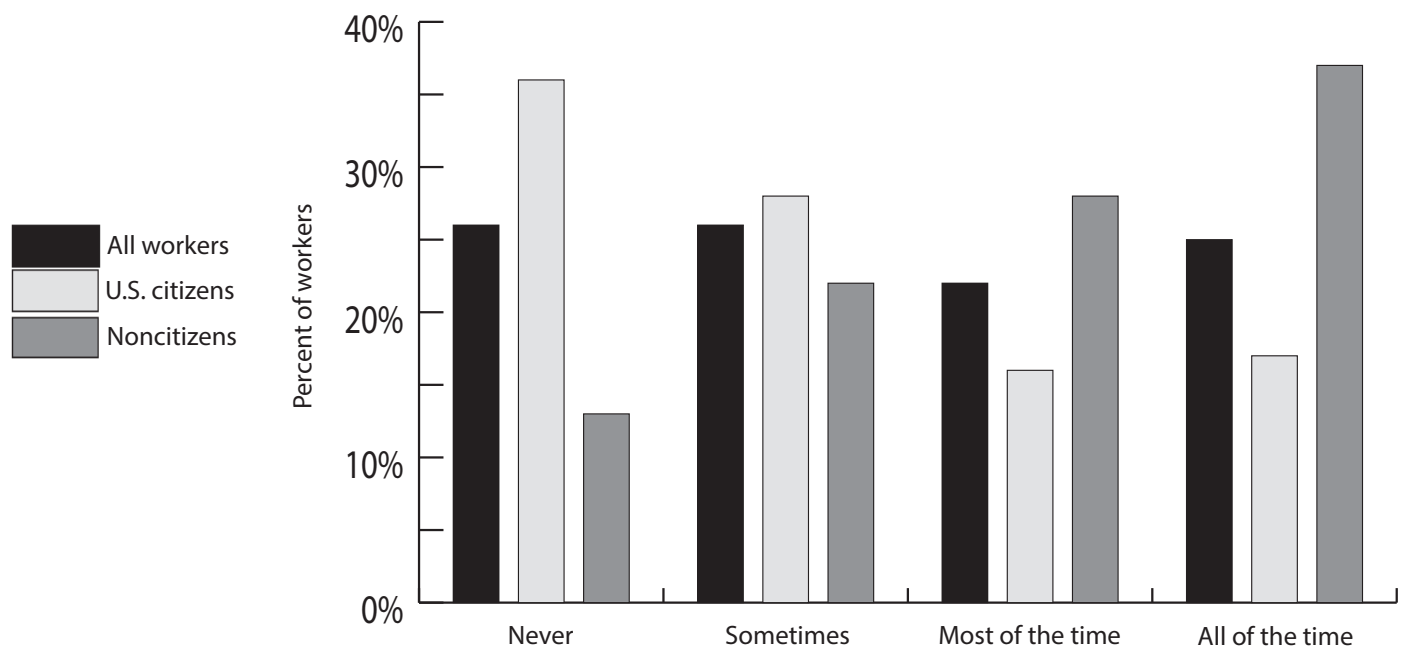
Workers see people like me speak up and they see that we suffer a lot of reprisals. Those workers think, 'It's not worth saying anything because I'm probably not going to get my issues resolved and I'm going to suffer a negative response from the boss.'

- Victoria*, factory worker

This study reinforces the reality that far too many workers are making decisions to not bring attention to rights abuses out of fear that their employers will fire or punish them. In fact, fear of retaliation drove most workers in this study to not act on their concerns about workplace problems at least sometimes (73%). For nearly half of participants (47%), fear compelled their silence about problems all or most of the time.

Fear affected participants across race and citizenship status, however Latino and noncitizen workers, both documented and undocumented, were more often induced

Figure 3. How often workers avoid bringing attention to problems at work out of fear of losing their job or other punishment



to silently accept problems than Black and White workers and workers with U.S. citizenship (p -values < 0.001 , based on an independent-samples t -test) (see Figure 3). Fear also had a greater affect on workers in manufacturing compared to other industries and sectors in this study (p -value < 0.001).

Unsurprisingly, workers described discouraging work environments. In the workplace most frequently described by participants, bosses never encouraged workers to speak up about problems and only sometimes treated workers with respect, while too often humiliating and insulting them and making them feel threatened and intimidated. For too many workers, their bosses never showed them respect (11%) and humiliated and insulted them (21%) and made them feel threatened or intimidated (22%) all or most of the time. Hiring discrimination, reported by 39% of workers, may also contribute to a discouraging environment. Workers who reported hiring discrimination were significantly more likely to avoid bringing attention to abuses than workers who did not report this kind of discrimination (p -value < 0.005).

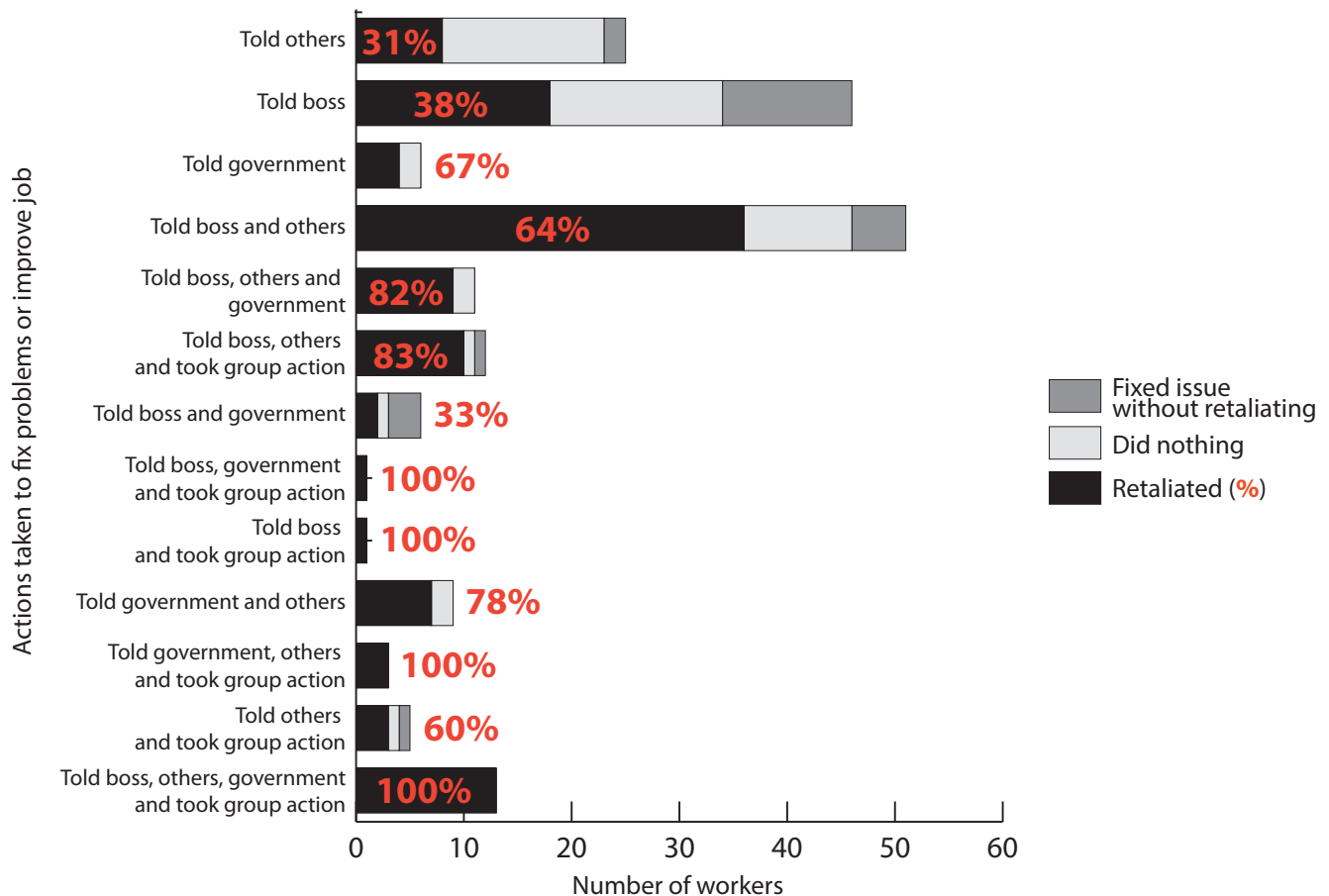
#3 No paths to justice free from retaliation for workers confronting abuse and trying to improve jobs

Retaliation dominated participants' stories when asked to share an example of a time they had tried to fix a problem at work or improve their job. Most workers in this study's sample had a story to share (83%), and most of those stories involved retaliation (58% of stories). Additionally, in 24% of stories in this study, bosses responded to workers'

concerns by doing nothing. In just 13%, bosses fixed the issue without retaliating. All industries and sectors except day care and health care work showed similar rates of retaliation. Retaliation also affects workers regardless of gender, race or citizenship, however this study found a significantly higher rate of retaliation against noncitizens (p -value < 0.005).

Most workers' stories involved workers clearly claiming their rights (58% of stories) and, despite the obvious application of legal protections, retaliation was more prevalent in these stories (64%). In these stories, workers reported acting on a single right violation (46% of stories), responding to multiple rights violations (3%) or organizing to improve their jobs (8%). Other workers described their problems in terms of unfair treatment (8%), including instances of physical and verbal abuse, overwork and unwarranted discipline, or didn't clearly mark a particular problem (29%). Some of the surveys in which a specific problem was not marked indicated, nevertheless, that their experience concerned a violation of their rights (6%), while the majority indicated multiple rights violations (16%), without specifying one particular underlying issue in their story. Nonetheless, statistically similar rates of retaliation were found in these stories (56%

Figure 4. Employers' reactions to workers' efforts to fix workplace problems or improve their jobs

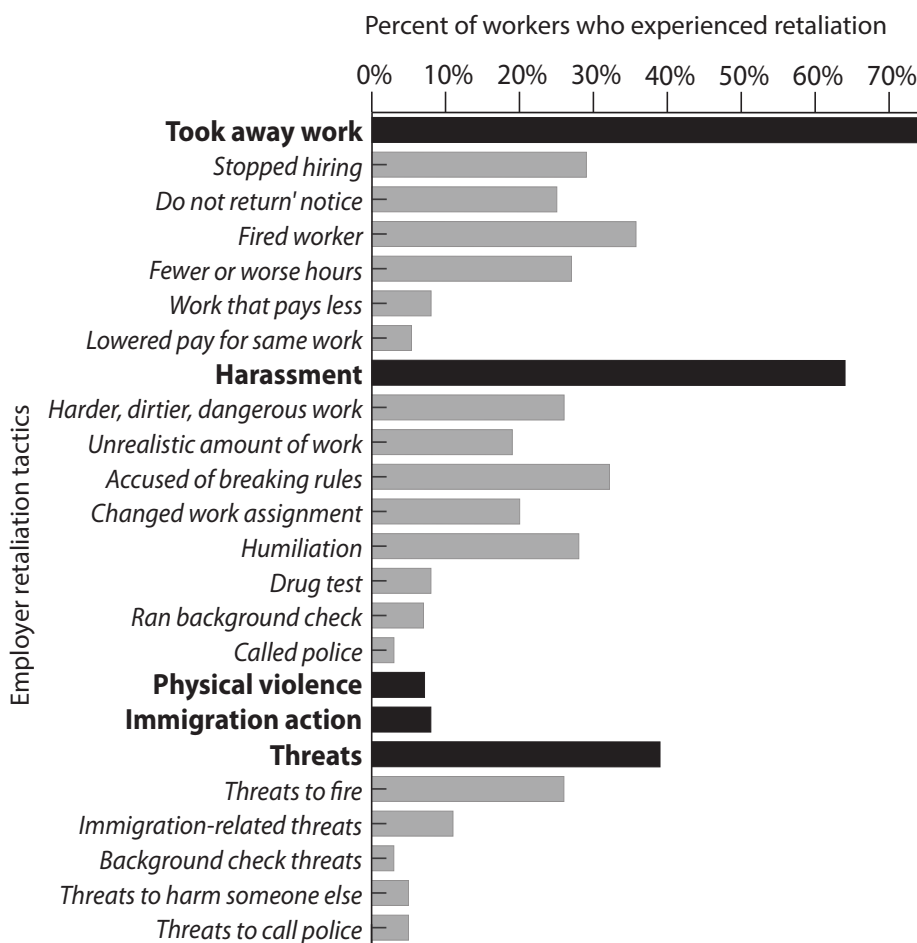


for unfair treatment and 55% for unidentified-problem stories) compared to stories that fit most obviously within a legal framework.

Workers reported taking many different routes to try to address abuse and improve their jobs, but, in this study, *none* proved free from retaliation (see Figure 4). Most workers sought justice by speaking with their boss and/or with others, accounting for 64% of stories, while less than one quarter of stories involved making a complaint to the government (24%) or taking group action (17%). Despite being the routes most clearly protected from retaliation under the law, workers who complained to the government or took group action were more often met with retaliation (80%, 89%). Workers who addressed concerns to their bosses or to others were also mostly confronted with retaliation (61%, 66%), albeit at a slightly lower rate. However, these workers reported more non-responses from their employers (20%, 22%).

#4 Employers use a variety of tactics to retaliate against workers, though firing workers is most common

Figure 5. Occurrence of retaliatory tactics used by employers against workers



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*, warehouse worker

Employers used a remarkable variety of combined tactics to retaliate against workers, suggesting tailored retaliation. Among the retaliation stories in this study, workers reported 89 unique tactical combinations. Across the variation, employers most often retaliated by taking away work (occurring in 75% of retaliation stories) (see Figure 5). This included workers being fired, no longer hired, assigned fewer or worse hours and, for temp workers, being put on a host company's "do not return" list. Harassment was the second most common type of retaliation across the variation (64% of on stories), followed by threats (39%), unfair

immigration action (8%) and a shocking amount of physical violence (7%).

These findings strongly suggest that employers' retaliation tactics are not only employed when there are gaps or ambiguities in the law failing to protect against certain abuses, such as with some forms of harassment. Rather, retaliation is extremely common even when the law clearly prohibits it. Certainly, firing workers for claiming their rights, or for being injured, is prohibited under all of the labor and employment laws covered in this study. Additionally, wage payment, non-discrimination and health and safety laws all generally prohibit employers from taking employment actions that most workers would find harmful, such as threats and cuts to pay and hours. The National Labor Relations Act goes even further, prohibiting employers from interfering with the activities of any two workers to improve their jobs.

#5 Too little too late for workers on a discouraging path to justice after retaliation

It becomes a job in itself. It would be nearly impossible for me to even have a job while fighting at the same time.

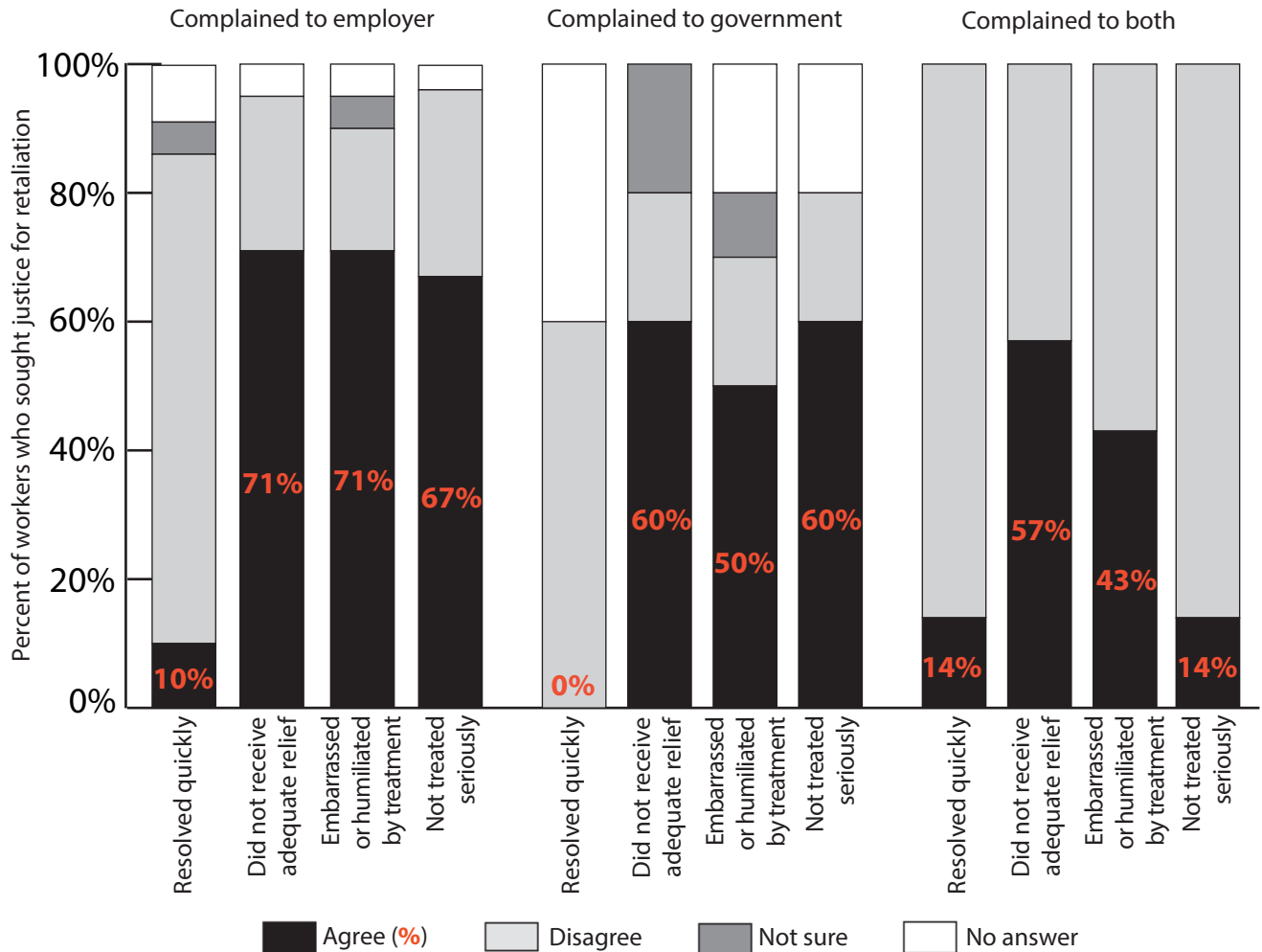
- Tiana

Few workers experienced retaliation and felt that it was not worth complaining (7% of retaliation stories). Yet, only a third addressed it with their employer or with the government (32%). Among workers who took further action, most approached only their employer (55% of retaliation complaints), rather than the government (26%) or both (18%), and most worked with a worker center, union and/or an attorney (63%). Another third have sought help from workers' organizations and attorneys, but have not (yet) tried to seek justice for the retaliation they experienced from their employer directly or through the government (30% of retaliation stories).

Regardless of whether workers went to the government, to their employers or to both with retaliation complaints, most felt that their concerns were not resolved quickly (74%) and that they did not receive adequate relief for the harm they suffered because of their boss' treatment (66%) (see Figure 6). Most also felt embarrassed or humiliated by how they were treated (61%) and that their concerns were not treated seriously (55%).

Generally, workers in this study shared the view that making complaints to the government is a confusing process (54% of respondents). Many lack information about how to complain to the government about work abuses. Roughly half know that they can complain (52%), but only a little more than a third know where to go (39%). Even fewer have tried it (24%). This trend appeared consistent regardless of the types of stories workers shared, and the race and citizenship status of the participants. Many workers also feel that complaining to the government is scary or threatening (31%), that it requires an attorney (25%) and that it is a waste of time (24%), while "it's easy" and "it's fast" were options largely rejected by workers (reported by 11% and 5% of respondents). These trends were by-and-large the same among the subset of workers who reported that they had tried the process.

Figure 6. Workers' experiences searching for justice after retaliation



#6 Effectively no penalties for employers who retaliate

Illinois legal practitioners interviewed for this study expanded on the challenges of successfully making workers' cases. From their perspective, retaliation claims are hard to win. These claims can help with getting bigger settlements for workers – at least, if they are related to wage or discrimination claims¹⁰ – but generally these claims run into the hurdle of proving employers' motives are retaliatory. Proving this point and getting a resolution take a very long time – from months to years. If a worker makes it this far, according to the attorneys, the outcome 90-99% of the time is a settlement that compensates individual workers for wages lost, but does not necessarily discourage employers from retaliating. However, if the worker is an undocumented immigrant, this remedy can be limited.¹¹ With so many cases *not* brought, *not* making it past difficult evidentiary barriers and getting settled, even when penalties for guilty employers are available under the law,¹² it is virtually unheard of for employers to suffer consequences for retaliation.

IMPLICATIONS

Out-of-control retaliation has led to a breakdown in rule of law at work

Anti-retaliation measures are not stopping employers from retaliating against workers who claim their rights. Knowing the risk of retaliation is high and there is no quick relief when it happens, workers are often prevented from asserting their rights to avoid the risk of job loss and other punishment that comes with speaking up. As a result, employers know all too well that the risk of getting caught for cutting business costs at the expense of workers' wages, health and safety and dignity are low. Building on past research, this study provides more evidence that the power and whim of employers governs the workplace, rather than the law. Abusive measures by employers to enforce substandard pay and conditions and achieve a "competitive advantage" is increasingly the new normal.

Filling gaps is necessary, but improving conditions for workers will require a reliable way to get rapid relief

I can say it's illegal, but that doesn't stop them from firing us or retaliating in some other way. We need a realistic way to enforce the law that's in place – to enforce it more regularly.

– Nick

Most of the retaliation workers suffer is blatantly illegal. An effective enforcement strategy that provides rapid relief from this abuse, rather than changing legal standards that are increasingly irrelevant to workers' lives, has become a human rights imperative. Nonetheless, background research for this study found gaps and a lot of grey area under the law. For instance, injured and ill workers are only protected from being fired, protection from harassment – such as changes in work assignments – is unclear, undocumented immigrants cannot be sure they will be protected from unfair immigration-related action and companies that use contractors can frustrate workers' efforts to address abuses and improve their jobs by switching contractors. This suggests that gaps in the law need to be addressed and, given the variety of tactics, protection should be broadly stated, but that these reforms alone would be fairly meaningless without a reliable way to get rapid relief.

Process for securing legal protection for retaliation puts an unrealistic burden on workers

It's been more than a year with my case and nothing can be resolved. The problem is that it isn't easy to find a stable job after that. Even though these are your rights - you're protected from reprisals - the law should be stronger. It is already too much time.

-Monica*, retail worker

Workers do not simply believe that complaining to the government is confusing, they know it is. It is, in fact, needlessly complicated in a way that creates significant barriers to worker-led enforcement. There is a different anti-retaliation measure for each legal right in

the workplace – health and safety, wages, discrimination, workers’ comp and organizing. Each has its own set of rules and path for workers to bring complaints to secure the protection of the law. In fact, there are over half a dozen government agencies and courts that oversee these laws, each enforcing different workplace rights. Given that workers tend to experience multiple rights abuses simultaneously, full relief would require that a worker file multiple complaints, using different rules, in multiple venues.

These complaint mechanisms are neither user-friendly nor reliable. Workers may get an attorney to help them navigate the maze if their case involves wage violations or discrimination, but are unlikely to get legal help if it has to do with health and safety, workers’ comp or organizing.¹³ In a lot of ways, workers’ organizations have stepped into this void, as our study supports, but do not have the resources to fill it. And, during the long period of time that workers are often expected to wait for a resolution, they are living paycheck to paycheck while bearing the additional costs of going to court, such as taking off time from a new job. This is particularly difficult after suffering lost wages due to illegal firings, wage theft or an injury. Workers need a simplified path to justice designed to incentivize employers to resolve claims quickly and take corrective action to be in compliance with workplace laws.

Training and support for workers as frontline partners in enforcement is needed

Public oversight should be designed to prevent abuses from occurring. That is, enforcement should be focused on addressing the causes, the processes and policies that perpetuate injustices. And resources could be more effectively used through strategic coordination across government agencies. Most importantly, workers and workers’ organizations are the first line of defense in enforcing workplace laws; they need to be recognized and supported as partners in monitoring and enforcement of workplace laws.

NEXT STEPS

In the coming year, we will complete in-depth interviews with several workers who experienced retaliation and, in many cases, pursued legal protection through existing complaint resolution mechanisms. Anchored by workers’ experiences collected through the surveys and interviews, we will publish a full report with recommendations for how to improve protections for workers.

ACKNOWLEDGEMENTS

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. In addition, we are grateful to the legal practitioners who shared their experiences with us. Thanks too to Rachel Spector, Jose L. Casco-Guerra and Audrey Son for their research assistance.

SURVEY DEMOGRAPHICS

AGE	20%	26%	25%	15%	7%
	Under 25	26-35	36-45	46-55	56-65

GENDER	49%	48%	1%
	Female	Male	Other

RACE & ETHNICITY	36%	54%	6%	1%
	Black	Latino	White	Mixed

IMMIGRATION STATUS	53%	37%	10%	Documented
	U.S. citizen	Noncitizen	27%	Undocumented

INDUSTRIES & SECTORS	23%	21%	12%	7%
	Manufacturing	Warehousing & transportation	Food service & hotels	Retail
	14%	4%	4%	14%
	Other services*	Construction	Day care & health care	Other**

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

**Miscellaneous and unidentified

TEMPORARY EMPLOYMENT	29%	12%	Manufacturing
	Temp agency	11%	Warehousing
		6%	Other

END NOTES

- * Names of quoted participants are fictitious to protect workers' identities.
1. The U.S. EEOC (Equal Employment Opportunities Commission) initiated just 12 cases without a worker complaint in 2012, and the U.S. DOL (Department of Labor) initiates about one-third of its wage investigations on its own. Alexander, C., *Anticipatory Retaliation, Threats and the Silencing of the Brown Collar Workforce*, 50 *Am. Bus. L. J.* 779, 783 (2013).
 2. For instance, federal and state health and safety inspectors combined have only enough manpower to visit every U.S. workplace once every 99 years. Center for Effective Government, *Securing the Right to a Safe and Healthy Workplace: Improve State Laws to Protect Workers* 8 (2013).
 3. Forty-five percent of workers received no documentation of their earnings and deductions in a large 2009 study of low-wage work in Chicago. Theodore, N., et al., *Unregulated Work in Chicago: The Breakdown of Workplace Protections in the Low-Wage Labor Market* 14 (2010) [hereinafter *Unregulated Work*].
 4. Low-wage work increased over the past three decades from 22 to 27% of the U.S. economy. Schmitt, J., *Low-wage Lessons*, *Ctr. Econ. & Pol'y Res.* 4 (2012).
 5. In Illinois, for every \$1 spent on social welfare, the state invests \$9 in prisons. Peck, J., et al., *Carceral Chicago: Making the Ex-offender Employability Crisis*, 32 *Int'l J. Urb. & Reg'l Res.* 251, 258 (2008).
 6. See e.g., *Unregulated Work*, supra note 3; Warehouse Workers for Justice, *Bad Jobs in Good Movement: Warehouse Work in Will County, IL* (2010); ROC Chicago, et al., *Behind the Kitchen Door: The Hidden Costs of Taking the Low Road in Chicagoland's Thriving Restaurant Industry* (2010); Bruno, R., et al., *Clean Cars, Dirty Work: Worker Rights Violations in Chicago Car Washes* (2012); Centro de Trabajadores Unidos, *Wages Denied: An Assessment of Workplace Conditions for Low-Wage Workers in Chicago's 10th Ward* (2014); Smith, R., *Temped Out: How the Domestic Outsourcing of Blue-Collar Jobs Harms America's Workers* (2014), and Ella Baker Center for Human Rights, et al., *Who Pays? The True Costs of Incarceration on Families* (2015).
 7. *Unregulated Work*, supra note 3 (finding employers illegally retaliated against 35% of workers who complained, and over a third of workers who experienced serious problems didn't report them (38%), more than 60% out of fear of retaliation); see also Warehouse Workers for Justice, supra note 6, 18-19; Centro de Trabajadores Unidos, supra note 6, 15.
 8. Rights addressed in the Fair Labor Standards Act, Title VII of the Civil Rights Act, Occupational Safety and Health Act (OSHA), National Labor Relations Act (NLRA), Illinois Human Rights Act, Illinois Minimum Wage Act, Illinois Wage Payment Act and Illinois Workers' Compensation Act.
 9. See Weil, D., *Improving Workplace Conditions through Strategic Enforcement: A Report to the Wage and Hour Division* 18-26 (2010) (identifying a subset of industries in which legal rights violations are concentrated).
 10. In these cases, workers are more likely to have the assistance of an attorney. This is because there are provisions in the law, which allow attorneys to take cases with the expectation that, if they win, they can charge the employer for the costs of their services. There are no such provisions under OSHA, NLRA or the Illinois Workers' Comp Act.
 11. See *Hoffman Plastic Compounds v. NLRB*, 535 U.S. 137 (2002).
 12. There are no penalties under the NLRA for employers who interfere with worker organizing. Punitive damages are available for workers' compensation, health and safety and discrimination cases. Fines and criminal sanctions are exclusive to wage and hour laws, but are not automatically assessed.
 13. See supra note 10.

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RESEARCH TEAM

Raise 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

National Economic and Social Rights Initiative (NESRI) partners with communities to build 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 that puts people's experiences at the center to build power, shift narratives and change policy. nesri.org

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