

The growth of low-wage and precarious work, one of the many factors of increasing inequality, has deepened the imbalance of power in the workplace, leaving ever more workers vulnerable to retaliation – being fired, punished, and intimidated in any number of ways – when they seek compensation and care for their work-related injuries and illnesses. Employers routinely abuse their power to scare, shame and prevent workers from reporting injuries and seeking health care and social protection through workers' compensation. This is a particular problem for low-wage workers, for the growing share of the workforce dependent on temporary staffing agencies and day labor arrangements, and for those who are misclassified as “independent contractors”.

I. Well-Founded Fears

Only about 50 percent of injured workers and less than 10 percent of those with the greatest needs exercise their basic right to workers' compensation for fear of retaliation. Workers who experience serious injuries or illnesses on the job are not filing workers' comp claims, despite the promise that workers' comp will provide them with needed health care and income support.¹ The gap between workers' comp claims and the number of injuries and illnesses occurring each year in U.S. workplaces is persistent and significant. One 2007 research study, funded by the National Institute for Occupational Safety and Health, found that roughly half of all injured workers are not filing for workers' comp.² And a 2009 survey conducted across the three largest metropolitan areas found that only eight percent of workers in low-wage industries who experienced a severe injury at work filed for workers' comp.³

Underreporting of occupational injuries and illnesses to public agencies helps to mask the harm caused by hazards in U.S. workplaces and, ultimately, the shortcomings of the workers' comp system. Health researchers consistently find that the public data is missing a large number of the injuries and illnesses resulting from work.⁴ A leading health economist estimates that 40 percent of work-related injuries are not reported each year, and it is even more rare for occupational diseases to get reported (the deaths from which, if accounted for, would be higher than the total number of deaths each year from motor vehicle accidents and homicides).⁵ This year, the number of persons disabled from occupational illnesses and injuries in the United States is expected to reach 8.5 million.⁶

Given the apparent promises of workers' comp, it is no surprise that when injured and ill workers “choose” to not exercise their rights, it is typically out of fear of harsh, unwanted consequences brought about by employer retaliation that threatens workers' and their families' social and economic stability and well-being. When surveyed by the U.S. Government Accountability Office in 2009, 67 percent of occupational health providers reported observing fear of retaliation among workers for reporting injuries or illnesses.⁷ 53 percent of providers experienced significant pressures from employers to evade reporting injuries to public agencies, while 47 percent reported similar pressures from workers.⁸ Researchers who have asked workers about the issue have found consistent evidence that fear of job loss and punishment for filing workers' comp claims is a significant concern to workers.⁹ This fear is widespread in low-wage industries where workers' comp claims are often rare. In fact, fear of retaliation prevents workers from raising concerns about a myriad of workplace rights that are routinely violated in these industries.¹⁰

Workers' fears are well-founded. When workers report injuries and file claims, many face intimidation and retaliation. Although data on this issue are limited, among low-wage workers surveyed in 2009 who reported a serious injury, half experienced an illegal form of retaliation.¹¹ And the number of cases of retaliation by itself fails to capture the chilling effect these abuses have (along with employer practices and policies prior to injury that fuel a repressive workplace culture) on other workers' willingness to exercise their rights in the first place.

II. The Many Faces of Retaliation

Workers experience both direct and indirect pressure from employers to not report injuries or file for workers' comp. For many workers, retaliation means getting fired, lost hours, worse work, getting passed over for a promotion, harassment, or threats to call immigration authorities or re-verify work authorizations. Increasingly, state legislatures are adding to, not subtracting from, employers' arsenal of dissuasive tools. One example is the increase in the number of states with laws that grant employers permission to mandate drug and alcohol testing following an injury at work;¹² positive results of a drug test, or even refusing to take the test, can then be used to justify retaliation against injured workers as well.

Intimidation can begin even before injuries occur. As a 2012 memo of the U.S. Department of Labor¹³ noted, some employers have adopted policies that threaten workers with and impose discipline for "unsafe behavior", explicitly shifting the blame onto injured workers for their injuries.¹⁴ Sometimes, such a policy is accompanied by monitoring designed to identify these behaviors, which may include training workers to observe and report on each other's behavior. Another type of employer program highlighted in the memo is so-called "safety incentive programs", which offer workers a bonus or reward – monetary or otherwise – for not reporting any injuries and illnesses over a period of time. Both practices focus on worker behavior, rather than the underlying hazard, and provide a framework for co-workers to "retaliate" against one another.¹⁵ The message to workers is clear.

For the growing number of people working in low-wage industries that rely on temp staffing, day labor, or misclassified "independent contractors", the very structure of these work arrangements can be hostile to workers asserting rights following an injury or illness. The U.S. Bureau of Labor Statistics estimates that about one third of the U.S. workforce is employed in some kind of precarious work arrangement, with no explicit or implicit contract for long-term employment.¹⁶ For many of these workers, asserting their rights can mean employers won't employ them the next day. And the businesses that outsource the labor-intensive parts of their business through using subcontractors, staffing agencies, franchising, and other means – in other words, the "lead businesses" in these arrangements – can further thwart the efforts of workers who speak up about problems at work by simply switching the agency or contractor with whom they do business and leaving these workers without jobs.¹⁷ Workers in these kinds of work arrangements are also more likely to lack information needed to assert their workplace rights, including which employer is responsible when there are problems at work.¹⁸ In fact, representatives of workers in the temp industry report hiring practices designed to target certain groups of workers, such as foreign-born workers, who employers consider to be less likely to know and assert their rights.¹⁹

III. A Conflict with Rights

A fundamental flaw in workers' comp systems is that they are structured in a way that puts employers' bottom line in direct conflict with injured and ill workers' rights. Designed in the early 1900s as a social insurance system providing medical benefits and partial wage replacements to workers made injured and ill on the job, employers finance the system through insurance premiums that usually increase with the number of injuries and illnesses reported.²⁰ It is in employers' interests to keep these costs low. Rather than working to increase safety, these incentives encourage employers to reduce costs by suppressing claims and the rights of injured workers.

Since the 1970s, federal law has made it illegal for employers to discriminate against workers who try to report workplace injuries or dangerous working conditions to their employers or to a public agency.²¹ Courts and legislatures in almost all states have also mandated anti-retaliation measures to hold employers accountable to injured workers' rights to workers' comp.²² Although the law has recognized the problem, it has not, in practice, provided an effective solution. Impunity for retaliation has become the norm.

Existing anti-retaliation laws are weak and difficult to enforce. Many workers' comp laws protect workers from retaliation only when the worker files or attempts to file a workers' comp claim, though a few extend the protection to all workers who experience an injury on the job.²³ The latter at least protects workers from retaliatory tactics whether a worker pursues a workers' comp claim or not. Even if a statute is broad enough to cover pre-filing actions, retaliation comes in many forms, yet many states only forbid employers from firing workers.²⁴ That means that anything else an employer can think of to do to intimidate, coerce and dissuade workers from pursuing workers' comp is not addressed, no matter how noxious, harsh or abusive it might be.

Even the best statutes that prohibit a wider range of retaliatory tactics fail to protect the most vulnerable workers, those legally working for subcontractors, temp agencies or other labor intermediaries within extended and complex supply chains.²⁵ The current definition of employer/employee relationships allows and even encourages businesses to shield themselves from liability for substandard conditions and workers' comp by outsourcing the labor-intensive parts of their business.²⁶ Encouraging low-bid competition among labor intermediaries, the lead businesses in these arrangements profit from the lower labor costs produced by noncompliance with workplace laws, intentional or not, often at little risk to themselves.²⁷

Finally, even workers who experience retaliation that actually conforms with what can be very narrow legal protections often still find accountability out of reach and wholly inadequate. Though abuses are systemic, legal remedies are limited to workers who can prove their employers have intended to cause them personal harm because they exercised their rights.²⁸ This means a worker has to produce evidence that his or her employer had a retaliatory motive. A few states have adopted a particularly stringent standard of proof, requiring workers to prove retaliation was the sole reason for the employer's negative employment action. In these cases, workers often need a "smoking gun" that dispels any other explanation an employer may offer to justify taking the action that was harmful to the worker. But how often does an employer explicitly state that the intention was specifically to punish the worker for reporting an injury?

The process for making a complaint is not necessarily straightforward either. Injured workers' rights to report hazards and injuries, and remedies for related retaliation, are protected by one set of laws and agencies, while injured workers' right to claim workers' comp, and remedies for workers' comp-related retaliation, are protected by different laws and agencies, and sometimes also involve the courts. And finding a lawyer can be a challenge. Workers have to pay their lawyers in cases involving retaliation, typically out-of-pocket or out of their damages.²⁹ Either way, many cases are not "worth" enough to be of interest to most lawyers, and most workers lack adequate savings to finance the case. Even with a lawyer, the whole process can take months or years before a resolution is reached, during which time workers suffer the consequences of their employers' retaliatory action. While courts and public agencies have some authority to seek temporary restraining orders and preliminary injunctions on behalf of workers, these tools are rarely used. This can place a tremendous and unrealistic burden on workers who need relief quickly. The longer a complaint resolution process takes and the less effectively it appears to solve workers' problems, the more likely it will have a chilling effect on other workers who experience similar issues on the job.

In short, this system does not deter employers from engaging in activities that suppress injured and ill workers' rights. In fact, it encourages it by turning avoidance of basic labor protections into a competitive advantage. Some state laws impose a small penalty on employers who are caught retaliating against injured and ill workers,³⁰ but the lack of consistency with which these practices are met with consequences, particularly for employers shielded by multi-layer subcontracting and temp work arrangements,³¹ and the insignificance of those consequences, enables employers to take on the risk of getting caught as a cost of doing business. Failure to address these reoccurring injustices sends a signal to workers that they are the ones taking a risk when they "choose" to assert their rights.

IV. Making Rights Real

Workers who experience work-related injuries and illnesses need broad and reliable legal protection for asserting their rights to workers' comp and to report hazards and injuries, free from fear of retaliation. And, when they are subject to employers' abuses of power, workers need an accessible and dependable way to hold employers accountable and deter further violations of their rights.

(a) Mending the Gaps

There are huge gaps in protection, and anti-retaliation statutes must include a far wider range of prohibited conduct including workplace discipline, demotions, involuntary transfers and cuts in hours.³² Targeted protections are also needed to curb uses of laws that allow employers to silence workers through drug and alcohol testing and immigration enforcement-related activities. A recent omnibus anti-retaliation law passed in California provides a model for prohibiting employers' abuse of immigration enforcement to threaten or punish workers who exercise rights under several labor and employment laws.³³

Protection from retaliation must also be available for injured and ill workers when they need it, as soon as they become injured or ill.³⁴ Workers face retaliation from employers simply for speaking to supervisors, co-workers, worker representatives, and others in the community about workplace hazards and injuries. Workers' comp and health and safety laws must recognize and protect workers' ability to speak out against abuses broadly – no matter to whom they express their concerns.³⁵ States also need to recognize and ban employer practices, such as workplace rules and incentive programs that blame and discipline workers made injured or ill on the job.

Governments can and should go further to empower injured and ill workers to exercise their rights, free from fear of retaliation, by eliminating the barriers created by the existing retaliation complaint resolution processes, which are too costly, too slow and yield too little. Requiring employers to pay for attorneys' fees would be an important step to ensure that injured or ill workers can find the legal expertise they need to navigate an increasingly complex system.³⁶ It is also critical that workers who bring complaints about possible workplace violations to their employers, public agencies and the courts receive quick temporary legal relief from adverse changes in their employment during lengthy investigation and resolution processes. For example, many of the federal whistleblower laws provide for reinstatement pending resolution of a case; under the Mine Safety and Health Act, a terminated worker is reinstated immediately if the agency thinks the claim is not "frivolous." The burden of proof should rest on employers to prove that they had good cause to take the actions they did. In most union contracts and the law in every industrialized country except the United States, employers have to produce a justifiable reason, or "just cause", for taking adverse employment action at any time. That is, employers must have a good reason to fire workers. This would go a long way toward giving workers more job security and legal protection from retaliation. In at least one state and several cities, if an adverse employment action follows closely after the worker has exercised a legal right, there is a legal assumption, at least for a period of time, that this action constitutes illegal retaliation.³⁷

Courts and agencies must meet employers' failure to comply with workplace laws or to correct an act of retaliation or intimidation with significant consequences – consequences that disrupt employers' profits and cannot be adjusted for as a cost of doing business. States can employ a number of different tools toward this end, including the ability to impose fines and criminal sanctions, suspend or terminate business licenses and disqualify employers for tax breaks and public contracts. What combination of these tools works best should be a focus of public data collection. Data collection needs to be not only focused on finding better methods of tracking workplace injuries and illnesses,³⁸ but also on tracking the effectiveness of public action following safety inspections and workers' complaints on deterring future rights violations.

The current lack of accountability for employers is, unfortunately, not limited to situations of injuries at work. Each labor and employment law that guarantees workers a basic standard of dignity at work, including minimum wage and non-discrimination laws, contains a narrowly defined scope of protection, requires workers to bear a tremendous burden in the process of seeking accountability from their employers and, in the best of cases, results in consequences that are too often too weak and too inconsistent to deter future violations. In fact, the patchwork system of anti-retaliation protections contained in various labor and employment statutes adds to the challenges faced by workers who seek legal protection for asserting their rights at work without fear. A scattering of different public agencies and court systems have jurisdiction over anti-retaliation cases originating from the workplace, each with its own mandate, set of rules and interpretations of law, and with next to no coordination of preventative and corrective strategies for workplace compliance. Workers need a simple way to hold employers accountable for a range of workplace violations and retaliation that delivers dependable and effective outcomes. A broad and common standard of protection across different workplace laws, a single point of access for workers to make workplace complaints, a common investigation and resolution process and adequate relief for workers (that would also increase employers' incentives to treat workers appropriately) would make the process of holding employers accountable more user-friendly and effective. Greater coordination across agencies, or even the replacement of these agencies by a single agency, could support improvements in data collection, monitoring of workplace compliance and prevention strategies.

(b) Holding Key Decision-Makers Responsible

Mending gaps in existing anti-retaliation laws is a serious and significant need, but by itself does little to protect precarious workers. Precarious workers find themselves in a quasi-underground economy with substandard pay and conditions, and lack of access to workers' comp, a situation enabled by structural arrangements such as subcontracting, temp work, day labor, and inappropriate and often illegal independent contractor arrangements.

These arrangements are re-defining employer/employee relationships in a way that largely fails to hold key decision-makers in supply chains responsible for abuses.

Deterring the use of coercion and retaliation against workers within these complicated work arrangements, and enabling workers to assert their rights without fear, requires reconnecting employment obligations with the decision-makers who set prices and have the power to monitor supply chains and prevent violations from reoccurring. There are a number of positive examples of courts and states taking steps to restore accountability in these chains of outsourced work. Courts use a variety of complex “joint employer” tests with varied results.³⁹ Many states have begun to react to this emerging reality as well. Illinois, Massachusetts and California have passed laws to hold lead businesses in certain industry supply chains jointly accountable along with their contractors.⁴⁰ California also forbids companies from accepting contract bids for work that they should know will not provide the contractor with sufficient funds to comply with minimum wage and other workplace laws.⁴¹ Workers have led the way in innovating models of supply chain accountability. For instance, the Coalition of Immokalee Workers' unique Fair Food Program establishes a Code of Conduct in Florida's tomato fields to curb harsh abuses of farm workers by growers through contracts between the workers' group and major buyers of Florida's tomatoes.⁴² Yet more is needed to comprehensively re-regulate outsourced work across low-wage industries, hold lead businesses responsible for working conditions and, in some cases, prohibit outsourcing when accountability is not possible. This requires a broad policy framework for holding lead businesses accountable, such as the framework recently proposed by the National Employment Law Project (NELP). NELP proposes explicitly attaching responsibility to any lead business that outsources any part of its business operations for workers' rights compliance anywhere along its supply chain.⁴³

(c) Structural Change

Financial incentives – such as lower workers' comp insurance rates for employers that have no or few reported injuries at their workplace – that encourage employers to suppress workers' rights create a conflict that drives retaliatory abuses. Addressing this structural problem should be a priority. For instance, in the place of the “experience rating” system, which ties employers' premiums to the historic costs of employees' workers' comp claims, and therefore to injury reporting, workers' organizations and advocates have called for collective industry tax rates or a corporate, wealth or income tax to publicly finance the workers' comp system. And, of course, when workers can access medical care, income support and other benefits outside of the employment relationship, employers have fewer retaliatory tools at their disposal and workers can more easily walk away from abusive work situations.

Human rights offer a framework that starts with basic human needs and places clear obligations on governments and private actors to ensure that people's needs are adequately met. Everyone has a right to health care and economic security without any kind of discrimination, including their work or economic status. Workers' comp is one of a number of distinct systems created through public policy to offer social protection and health care to some people in certain scenarios. But governments must always ensure these rights to all people, not just to some under some circumstances, an obligation that is far from being met with this scattered approach.

V. Summary of Policy Recommendations

1. ***For injured and ill workers, mend the gaps in retaliation provisions in workers' comp and health and safety statutes***
 - » **Provide a broad scope of legal protection from retaliation**
 - Prohibit a range of retaliatory conduct, ban the use of federal and state laws that empower employers to engage in post-injury retaliatory drug and alcohol testing and immigration-related enforcement and end employer policies that blame and discipline workers made injured and ill on the job
 - Empower workers to speak out broadly against abuses in the workplace, including when they become injured or ill because of work
 - » **Eliminate the undue burdens placed on workers by retaliation complaint resolution processes**
 - Make attorneys' fees available for workers' complaints
 - Prioritize temporary legal relief from adverse employer action for workers who bring complaints about possible workplace violations during lengthy investigation and resolution processes
 - Shift the burden of proving retaliatory motive from workers to employers through rebuttable presumptions of illegal retaliation following an injury, illness or complaint about unsafe conditions
 - » **Make consequences for noncompliance and retaliation significant** through a combination of fines and criminal sanctions, suspension or termination business licenses and disqualification for tax breaks and public contracts
 - » **Improve public data collection**
 - Track workplace injuries and illnesses by drawing on a range of sources including health records, not just employers' self-reported logs of work-related injuries and illnesses
 - Track the effectiveness of public action following safety inspections and workers' complaints on deterring future rights violations
2. ***For all workers, including injured and ill workers, provide a user-friendly way to hold employers accountable*** for a range of workplace violations and retaliation: a broad and common standard of protection across different workplace laws, a single point of access for workers to make workplace complaints and a common investigation and resolution process
3. **Hold key decision-makers responsible for noncompliance and retaliation in outsourced work** through joint liability for lead businesses in these work arrangements
4. **Fund workers' comp through collective industry tax rates or a corporate, wealth or income tax** instead of employer-based insurance that utilizes experience rating
5. **Provide universal access to health care, income support and other benefits as public goods**

Endnotes

1. Historic exclusions have included farm workers and domestic workers.
2. Lakdawalla, DN, et al., How Does Health Insurance Affect Workers' Compensation Filing?, 45 *ECONOMIC INQUIRY* 286 (2007).
3. Bernhardt, A, et al., Broken Laws, Unprotected Workers (2009) [hereinafter Broken Laws].
4. Boden, LI and Ozonoff A, Capture-Recapture Estimates of Nonfatal Workplace Injuries and Illnesses, 18 *ANNALS OF EPIDEMIOLOGY* 500 (2008); Rosenman, KD, et al., How Much Work-Related Injury and Illness is Missed By the Current National Surveillance System?, 48 *JOURNAL OF OCCUPATIONAL AND ENVIRONMENTAL MEDICINE* 357 (2006).
5. Leigh, JP, Economic Burden of Occupational Injury and Illness in the United States, *THE MILBANK QUARTERLY* (2011).
6. Daub, H, et al., Social Security Disability Insurance, 1986-2006: Statement by the Social Security Advisory Board, 66 *SOCIAL SECURITY BULLETIN* 1 (2006).
7. GAO (General Accountability Office), Workplace Safety and Health: Enhancing OSHA's Records Audit Process Could Improve the Accuracy of Worker Injury and Illness Data (2009).
8. Id.
9. Spieler, EA, & Burton, JF, The Lack of Correspondence Between Work-Related Disability and Receipt of Workers' Compensation Benefits, 55 *AMERICAN JOURNAL OF INDUSTRIAL MEDICINE* 487 (2012) (citing several studies).
10. See Broken Laws, supra note 3.
11. Id.
12. Many states allow employers to demand workers submit to drug and alcohol testing after a job injury. At least 6 states encourage drug testing, making it a requirement for employers to qualify for an insurance premium discount: Alabama, Georgia, Mississippi, Ohio, Tennessee and Wyoming. Society for Human Resources Management, State Drug Testing Laws (2013).
13. Fairfax, U.S. Department of Labor (memo), Employer Safety Incentive and Disincentive Policies and Practices (2012).
14. See also Lipscomb, HJ, et al., Non-Reporting of Work Injuries and Aspects of Jobsite Safety Climate and Behavioral-Based Safety Elements Among Carpenters in Washington State, *AMERICAN JOURNAL OF INDUSTRIAL MEDICINE* (2015) (finding formal and informal policies and practices on job sites influence non-reporting of injuries and fear of retaliation among union workers).
15. See U.S. Steelworkers, Behavior-Based Safety/ 'Blame the Worker' Safety Programs (2010).
16. GAO, Employment arrangements: improved outreach could help ensure proper worker classification (2006).
17. Ruckelshaus, C, et al., Who's the Boss: Restoring Accountability for Labor Standards in Outsourced Work (2014).
18. Spieler, supra note 9.
19. See Peck, J, Theodore, N, Contingent Chicago: Restructuring Spaces of Temporary Labor, 25 *INTERNATIONAL JOURNAL OF URBAN AND REGIONAL RESEARCH* 471 (2001).
20. For a discussion of the theories behind experience rating and behavioral incentives, see Tompa, E, et al., Update on a Systemic Literature Review on the Effectiveness of Experience Rating, 10 *POLICY AND PRACTICE IN HEALTH AND SAFETY* 63 (2012); Chapter 6 on Employer Incentives and Experience Ratings in *Funding Fairness: A Report on Ontario's Workplace Safety and Insurance System* (2010) at 77.
21. The Occupational Health and Safety Act, 29 U.S.C., Section 11(c); see also Section 105(c) of the Mine Safety and Health Act.
22. Thirty-seven states' workers' comp statutes include provisions prohibiting retaliation, while courts in 12 of the states without statutory prohibitions recognize retaliation under common law. In Illinois, the Workers' Comp Act contains an anti-retaliation provision, but provides no remedy, which has prompted courts in the state to create one under common law. See Altman, LM, et al., Littler's Workers' Compensation Retaliation Survey (2012).
23. Seventeen states limit protection only to those cases in which a worker files or attempts to file a claim, while California, for instance, protects workers who are "injured in the course of employment" and Hawaii protects workers "who suffer any work injury compensable under workers' compensation." Littler, supra note 22.
24. Id.
25. See, e.g., U.S. Department of Occupational Safety and Health Administration, Adding Inequality to Injury: The Costs of Failing to Protect Workers on the Job (2015).
26. Pierce O, Larson J, Grabell M, How We Calculated Injury Rates for Temp and Non-temp Workers, *PROPUBLICA*, Dec. 18, 2013.
27. Ruckelshaus, supra note 17.
28. The most common legal remedies include lost wages and other financial costs caused by the retaliation, while some states may also require an employer to rehire a worker or impose a small fine on the employer. See Littler, supra note 22.
29. Twelve states allow workers with successful retaliation claims to recover attorneys' fees from their employers in court and four states allow attorneys' fees in proceedings with an administrative body. Id.
30. Eight states have such provisions, most in the form of fines. Only one state, California, provides for a criminal misdemeanor charge. Id.
31. National Employment Law Project, Building Robust Labor Standards Enforcement Regimes (March 2015) [hereinafter Robust Enforcement].
32. Other labor and employment laws with anti-retaliation provisions broadly prohibit retaliatory "adverse employment actions", which has been defined as any action that a "reasonable employee would find to be materially adverse such that the employee would be dissuaded from engaging in the protected activity".
33. In October 2013, California passed three bills, AB 263, AB 524, and SB 666, which took effect on January 1, 2014.
34. California broadly protects all workers who experience an injury on the job. Hawaii similarly protects workers who suffer any work injury covered by workers' comp. Littler, supra note 22.
35. Under Title VII of the Civil Rights Act, a person is protected from retaliation if she "explicitly or implicitly communicates . . . a belief that [the employer's] activity constitutes a form of employment discrimination." EEOC Compliance Manual Sec. 8-II B.1
36. See supra note 29.
37. California's prohibitions against unfair immigration-related employer actions include a rebuttable presumption, as does San Francisco's paid sick leave protections, and minimum wage laws in San Francisco, Santa Fe, Oakland, San Diego and Washington, D.C. See Robust Enforcement, supra note 31.
38. Public data on occupational injuries and illnesses cannot rely solely on employers' self-reporting. Instead, it should draw from a range of sources, including health records. National Research Council, *Counting Injuries and Illnesses in the Workplace: Proposals for a Better System* (Washington, DC: National Academic Press, 1987). A multi-source data collection process was adopted in 1992 to count work-related fatalities, after research showed employer self-reporting of fatalities missed 50% of incidences. See id.
39. See Ruckelshaus, C, Goldstein, B, Legal Landscape for Contingent Workers in the United States.
40. Referenced in Ruckelshaus, supra note 17, and Robust Enforcement, supra note 31.
41. Section 2810 of the California Labor Code. For workers to recover from the contracting party, they must show that the party outsourcing work should have known the funds were insufficient.
42. Fair Food Standards Council, <http://fairfoodstandards.org/about.html>.
43. Ruckelshaus, supra note 17.