

Worker-Powered Enforcement

Proposals for building & scaling measurably effective enforcement models through public policy



Discrimination and retaliation by employers in the workplace deny low-wage workers the ability to defend their rights on the job and organize for higher wages and better conditions, especially immigrant working people and people of color working to make ends meet.¹ These attacks have been bolstered and reinforced by attacks undermining our legal standards and enforcement systems. At the behest of corporate lobbyists, public representatives have shielded from liability the companies that shape workers' conditions through their business practices and hamstrung enforcement bodies with limited resources and inadequate power to protect workers from abuse.²

This paper proposes a framework for building and institutionalizing worker power to enforce the right to work with dignity through strategic public policy interventions. It was conceived in collaboration with a small cohort of worker centers at the forefront of innovating models of enforcement³ and draws heavily on lessons from the only proven model for shifting the power dynamics that perpetuate workplace abuse in today's complex labor market, the Worker-driven Social Responsibility (WSR) model.⁴

This paper is divided into three sections. The first section proposes a comprehensive, high-bar public enforcement model that embeds worker-led structures throughout the enforcement ecosystem with the requisite power to set standards, identify abuse, and deliver timely protection to workers and swift consequences to noncompliant employers. The second section offers strategies for leveraging public policy to support the growth of measurably effective private enforcement models. And the third identifies policy wins that incrementally advance the enforcement models outlined in the first two sections, while creating opportunities for building worker power.

A holistic, high-bar public enforcement model

Workers' organizations across the country are building and asserting their collective power to transform the way workers' rights are determined and implemented. Critical innovations in worker-led structures, accountability mechanisms and decision-making processes are captured in private agreements and public policy. But only in private agreements have workers' organizations fully realized models of enforcement that effectively shift the dynamics that perpetuate abuse. The challenges of achieving similar success through public policy are numerous, including but not limited to: the need to build and maintain complex coalitions with enough political power to take on the outsized influence of corporations; the limitations on local policy that companies are frequently able to put into place at the state and federal level; and the ability of companies to pit communities against each other by taking advantage of their fundamental need for jobs and income. But, under the right set of circumstances, a high-bar public enforcement model is a valuable tool in our efforts to extend a baseline of protections to the millions of low-wage workers whose rights are undermined by the lawlessness of the existing labor market and are not currently well-positioned to secure either a corporate supply chain agreement or a union contract.

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¹ See, e.g., Scott, Brittany, *Opening the Door: Ending Racial Discrimination in Industrial Temp Hiring Through Innovative Enforcement*, Partners for Dignity & Rights (2021), <https://dignityandrights.org/wp-content/uploads/2021/03/Opening-the-Door-Report.pdf>.

² See, e.g., Martelle, Scott, *Confronting the Gloves-Off Economy: America's Broken Labor Standards and How to Fix Them* (ed., Annette Bernhardt, et al., 2009), https://cepr.net/documents/publications/gloves_off_final.pdf.

³ These worker centers include ARISE Chicago, Centro de Trabajadores Unidos en la Lucha, Chicago Workers' Collaborative, Chinese Progressive Association of San Francisco, National Domestic Workers Alliance – NY Chapter, Somos un Pueblo Unido, Workers' Defense Project, and Workers' Dignity.

⁴ The model has been recognized by researchers and major institutions, including the International Labour Organization, while the Coalition of Immokalee Workers, which created the first WSR program in the United States, has received national recognition, including the U.S. Presidential Medal for Extraordinary Efforts to Combat Human Trafficking in Persons. See also, <http://wsr-network.org>.

There are several principles that cut across the component parts of effective enforcement programs, including:

- 1) All impacted workers must be able to influence industry standards, monitoring and enforcement.
- 2) Companies that shape workers' conditions through their business practices – rarely workers' legal employers – must be held accountable for responsible contracting.
- 3) Workers, the frontline monitors of their own rights, must be universally empowered and protected in this role, including through worker-to-worker education and a simple complaint mechanism that delivers timely resolutions, especially in case of retaliation in any form, which, unless immediately remedied, must be met with swift and serious consequences.
- 4) Investigations of abuse and verifications of compliance must be adequately resourced and rigorous.
- 5) Consequences for employer non-compliance should be economically meaningful and certain, with zero tolerance for the most severe forms of abuse and incentives for corrective action for lesser offenses.

Given that nowhere has public policy embraced all of these principles, this section identifies and builds off of established, progressive public policies – like standards boards, co-enforcement, employer licensing, and responsible contracting – while also proposing new policy strategies that parallel those that largely only exist in private agreements. Weaving these pieces together, this section proposes five pillars of a comprehensive public model for implementing a Worker-Powered Enforcement framework.

1. Industry standards & implementation boards

Wage and standards boards, which exist in four states, are publicly mandated to set industry-based standards,⁵ but are criticized as tokenizing workers' voices and lacking democratic accountability to the workers they represent, especially to working class immigrant communities and communities of color that are disproportionately impacted by violations.⁶ There is also no similar structure through which workers have a role in governing how standards are implemented and enforced. To ensure workers' voices are not tokenized, a majority of board seats should be filled using selection criteria that ensures their bona fide representation. For instance, the criteria might prioritize representatives of organizations that not only have a track record of advocacy for the interests of impacted workers but also have governing structures that promote the decision-making power of those workers and their communities. A board's mandate could also be expanded to include overseeing implementation of standards by enforcement bodies,⁷ such as by setting metrics for and reviewing performance of agency programs and playing a role in hiring, training and reviewing appeals of decisions by public auditors. In addition to institutional power held by worker and community representatives, a standards *and implementation* board, if adequately resourced, could plan and oversee popular participatory processes that broadly engage workers in setting their workplace standards, educating coworkers on their rights under those standards, and evaluating agency programs.⁸

2. Co-enforcement

Worker-led monitoring is essential to unearthing the most insidious abuses that are hidden from outside investigators. Worker-to-worker education is one of the critical components of worker-led monitoring. Peer education builds workers' trust and capacity to exercise their rights through formal complaint mechanisms, as well as know-how they can use to exercise collective power in the workplace. In the public realm, workers'

⁵ These states -- California, New Jersey and New York – have laws that allow for the creation of standards boards by executive order. New York used its power to create a wage board to set the minimum hourly wage for fast food workers to \$15 in 2015. In California, wage orders govern 17 industries. In other states, legislation would need to be passed to establish a standards board. Cities may also be able to establish standards boards, so long as their state doesn't preempt it, which accounts for roughly half the states. Most recently, Seattle passed a law in 2018 creating a standards boards for domestic workers.

⁶ See, e.g., Andrias, Kate, et al., *Workers' Boards: A Brief Overview*, Center for American Progress (Dec. 2019), <https://www.americanprogress.org/article/workers-boards-brief-overview/>.

⁷ The Minneapolis Workplace Advisory Committee has a more expansive mandate, but only has the power to recommend. Proposals for formal oversight powers are pulled from both labor and non-labor models.

⁸ Participatory budgeting models that use needs assessments and popular processes for new initiative development may offer relevant lessons.

organizations have introduced and spread the “co-enforcement” model since 2006.⁹ Co-enforcement involves public enforcement agencies contracting with workers’ organizations and service providers to do outreach and know-your-rights training with low-wage workers and to support these workers in bringing complaints of rights violation. In recent years, there is growing recognition that co-enforcement is only meaningful when the community partners are groups that build collective worker power and that all workers should be educated as frontline monitors, but, with the limited size and capacity of non-profit organizing groups, getting to scale is a challenge. Janitorial workers in California may have introduced an approach to address this limitation when, in 2018, they won a state mandate requiring all janitorial employers to pay workers’ organizations for biannual, on-site know-your-rights training designed by workers’ organizations and facilitated by janitorial workers trained by their organizations.¹⁰ While the California law is limited to a particular industry and a particular issue, sexual harassment, the approach could be a strategy for more broadly bringing the co-enforcement model to scale. The implementation of other popular processes overseen by a standards and implementation board (see above) might use an outreach strategy similar to co-enforcement, or it could use the on-site strategy like the peer education model introduced by California janitors to reach workers at their workplaces on paid time.

3. Employer licensing for abuse prevention

Licenses are generally required at varying levels of government to legally operate a business. Recognizing the potential corrective power of disrupting those operations, several cities have enacted legislation that enables them to suspend or revoke a license in case of a workplace violation.¹¹ This only happens, however, if a violation is detected in the first place. One critical intervention is to make licenses contingent on employers meeting requirements that enable more effective compliance monitoring. We can draw insights from Worker-driven Social Responsibility (WSR) programs, which have effectively leveraged market consequences to enable their monitors to verify compliance. A business license and its regular renewal should only be approved for an employer that:¹² 1) remains in compliance with minimum legal standards, 2) cooperates with compliance monitoring and conflict resolution processes, 3) ensures all workers are provided with worker-to-worker education on paid time, and 4) reports subcontractors, payroll and other proofs needed to verify legal compliance.¹³ Failing to timely correct a failure to do any of the above needs to result in a period of license suspension or ineligibility, with zero tolerance for the most severe forms of abuse. In an effort to truly curb the worst abuses, cities should act quickly to revoke licenses when an employer fails to take immediate action in cases of retaliation,¹⁴ a serious safety violation, violence or sexual assault.¹⁵

4. Responsible contractor registration & fee

Responsible contracting laws are meant to hold accountable companies that shape workers’ conditions through their purchasing practices. For instance, California’s responsible contracting law requires companies to only contract for labor at prices sufficient to comply with workplace laws.¹⁶ Comparatively, a participating

⁹ The first co-enforcement program was developed in the early 2000s in San Francisco, led by the Chinese Progressive Association. In recent years, the model has been spread by worker centers to places like Minneapolis, Chicago and New York.

¹⁰ The Property Service Workers Protection Act, AB-1978 (2015), as amended by the Janitor Survivor Empowerment Act, AB-547 (2019), advanced by SEIU-United Service Workers West.

¹¹ See, e.g., Koonse, Tia, et al., *Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships*, UCLA Center for Labor Research and Education & UC Berkeley Center for Labor Research and Education (Oct 2015), <https://laborcenter.berkeley.edu/pdf/2015/minimum-wage-enforcement.pdf>.

¹² To close relevant loopholes, “employer” must be defined to include joint employment where temp staffing agencies and labor brokers are involved, or these practices must be limited altogether. See, e.g., Brittany Scott, *Temporary Work, Permanent Abuse: How Big Business Destroys Good Jobs*, Partners for Dignity & Rights (2016), https://dignityandrights.org/wp-content/uploads/2017/03/Temp_Work_FINAL_email.pdf. Likewise, a presumption of employment is needed to address misclassification of workers as independent contractors. See Massachusetts Law, Chapter 149, Section 148B, puts the burden on employers to prove workers are not employees.

¹³ See also *infra* note 10. California requires janitorial companies to register and pay a fee. A company’s registration will be rejected if it fails to meet reporting and peer-to-peer worker sexual harassment education requirements.

¹⁴ “Retaliation” must be defined broadly to capture the myriad ways employers intimidate and harass workers from speaking up about abuse. The just cause standard and related progressive discipline rules that have historically been won in union contracts and internationally in law, are considered the gold standard of protection, eliminating employers’ arbitrary justifications for retaliatory treatment.

¹⁵ WSR programs are designed to enable their monitors to rapidly review these cases and require employers to immediately address them.

¹⁶ California’s responsible contracting law, Cal. Labor Code § 2810, applies to construction, farm work, garment, janitorial, security, and warehouse contractors.

buyer in a WSR program is legally bound to only do business with employers that are verified as being in compliance with minimum standards, creating market consequences for non-compliance. “Lead companies” – major brands, franchises, and retail companies – vary by industry, but, in many, a large company or bloc of companies have sufficient bargaining power vis a vis a contractor to influence and determine its employees’ terms and conditions.¹⁷ Shielded from legal liability, this power translates into downward price pressure that incentivizes contractors to cut costs, too often in violation of workers’ rights. Flipping these incentives is critical; lead companies must be liable for requiring contractors to comply with workplace laws, just as they do product safety and service standards. An annual registration process for lead companies would help facilitate a public process for verifying compliance under a responsible contracting law (i.e., exclusive use of licensed contractors verified as compliant as described above), as well as the collection of fees from lead companies to cover the costs of compliance monitoring and conflict resolution.¹⁸ If a company uses a noncompliant contractor or fails to register or pay a fee, immediate and significant penalties must be levied, backed by liens on company property.¹⁹

5. Compliance monitoring & conflict resolution processes

Public compliance monitoring and enforcement processes are deeply broken with myriad issues and require dramatic restructuring, resourcing and trust rebuilding among impacted workers. The third-party monitors of WSR programs offer critical insights into what this should look like. WSR monitors are industry-focused experts (rather than issue-focused), which enables them to perform their two main duties: 1) identifying abuse via rigorous compliance audits and investigations (reviewing records, visiting worksites, talking to workers and other personnel) and, 2) developing corrective action plans with employers to help avoid the consequences of continued non-compliance. In the public realm, regular audits could be built into yearly licensing and registration processes. Agency investigations should also be triggerable by worker or even third-party complaints, as well as the need to monitor employers’ corrective action plans.²⁰ Agencies need an expedited – 30-day maximum – review process for prioritizing the most egregious offenses, like retaliation, in order to deliver rapid relief to workers in these time-sensitive scenarios. This process should be streamlined and put the onus on employers to produce evidence of their legal compliance.²¹

¹⁷ See, e.g., Barenberg, Mark, *Widening the Scope of Worker Organizing: Legal Reforms to Facilitate Multi-Employer Organizing, Bargaining, and Striking*, Roosevelt Institute (2015) (suggesting a definition for indirect employers based on bargaining power); see also Worker Flexibility and Small Business Protection Act of 2020, S.4738 (assigning liability to companies “with the legal capacity, used or not, direct or indirect, to exert direction or control over terms or conditions.”)

¹⁸ California requires businesses in certain high-violation industries to register with the state and imposes an annual fee, which generates funds for enforcement, regardless of whether an individual employer has violated the law. For example, California’s garment contractors are required to register and renew their registration with the state’s Department of Labor and pay a fee used to fund labor enforcement in the industry. See Cal. Labor Code § 2675.5. Similarly, workers’ compensation assessments fund the costs of work-related injuries in all workplaces.

¹⁹ For instance, a penalty for use of an unlicensed contractor could equal the value of the contract with that contractor, or a penalty for failing to register and pay the fee could equal the value of the amount owed plus the contracts not registered.

²⁰ See Weil, David, *Improving Workplace Conditions Through Strategic Enforcement: A Report to the Wage and Hour Division* (2010). Enabling enforcement agencies to triage complaints allows them to prioritize the worst abuses and make room for “strategic enforcement,” which recognizes that complaints can be low and repressed in industries with the worst compliance records, and agencies need to be able to investigate these employers without worker complaints. Departments of Labor in California and Seattle, Washington, have developed strategic enforcement and triage monitoring programs.

²¹ Our resource-intensive legal process favors deep-pocketed companies that can drown workers and public agencies alike in technical procedures like discovery that drag out resolution processes for months and even years. Critically, we need to shift the burden of proof from workers (that they were retaliated against) to employers (that adverse treatment of workers is just) and apply strict time limits on this duty to prevent the harms of delayed relief to workers. Furthermore, the process can be significantly simplified and put workers and agencies on more even footing by dramatically limiting the length of hearings, arguments, and replies, and limiting the facts that can be disputed to those timely submitted to the agency. In 2020, SEIU-32BJ won a remarkable just cause law in New York City (Int. 1396-A and 1415-A) that extends the standard to fast food workers and creates a streamlined arbitration process for workers to challenge employers to prove “just cause” when fired.

Summary of High-Bar Public Enforcement Model

Four structures created through public policy	Standards & implementation boards <i>Industry-based boards give workers & their orgs formal power</i>	Co-enforcement <i>Rights education for all workers, by workers, with support from workers' orgs</i>	Employer licensing for abuse prevention <i>Licensing requires verified compliance, cooperation with audits & corrective action plans, and immediate response to serious abuse</i>	Responsible contractor registration <i>Lead companies are liable for responsible contracting and funding enforcement</i>
Standard-setting	Oversees popular standard-setting processes	Workers' orgs train worker leaders who engage other workers in popular processes	Employers comply with legal standards or lose licenses Zero tolerance for retaliation, unsafe or violent workplaces	To do business, lead companies can contract only with licensed employers
Monitoring	Oversees worker-to-worker training and agency auditing programs	Worker leaders train all workers on their legal rights with the support of workers' orgs	Worker-to-worker training on paid time Report subcontracts & proofs of compliance Regular, rigorous agency audits	Report contracts Pay fee to cover all monitoring and compliance efforts
Compliance	Oversees popular evaluation process and review of agency programs Decides appeals of agency decisions	Worker complaints and intel from orgs can trigger audits Popular process for evaluating agency programs	Expedited agency review of zero tolerance offenses Corrective action plan for other offenses For violations, loss of license for a period - longer if repeated	Swift, serious penalties backed by liens for violations

Publicly supported private enforcement models

Effective private enforcement programs are hard-won victories that institutionalize the power built by workers grappling with workplace abuse. To achieve scale and reach more workers in parts of the country with more worker-friendly politics, worker organizations may be able to leverage public powers to support and grow effective private enforcement models. For instance, in many jurisdictions, local or state governments can:

- 1) Condition permits, licenses, registration, or public money and other subsidies that companies need to do business on their participation in a program that covers workers whose conditions their businesses shape;
- 2) Make participation in a program that covers the labor-intensive parts of a contractor's business a qualification for public procurement of goods and service; and
- 3) Create funding programs that support the operation of a private program.

Public policy should be explicitly tailored to support programs that are led by workers, captured in legally-binding agreements, and deliver measurable outcomes for workers. For workers in supply chains, the Worker-driven Social Responsibility (WSR) model is a shining example.²² WSR programs are rooted in legally-binding

²² The WSR model has proven to be effective across three continents. Unions have been the driving force behind the success of WSR in the garment industry abroad, while, in the U.S., community-based human rights organizations have pioneered the model in the agricultural industry.

agreements that obligate major brands and retailers to use their purchasing power to compel suppliers to comply with minimum standards, as verified by an independent third-party monitor. Critically, worker organizations can enforce these agreements and are deeply engaged in worker-to-worker education, while the monitor's complaint resolution mechanism activates workers as frontline monitors of their own rights. Government should also protect and enable unionization efforts. We must also ensure that our public policy initiatives do not promote ineffective programs, like corporate responsibility initiatives that lack meaningful monitoring and enforcement mechanisms, which create additional barriers to effective, worker-led programs.

Incremental wins: creating opportunities for building power through public policy

In the long-term work of winning bold, transformative models, as described above, incremental victories may not only be a way to start to implement the models, but also to create opportunities for workers' organizations to build power. Shorter-term campaigns can create new resources for organizing; provide access to workers and information; build structures for worker participation, collaboration and oversight; and demonstrate the effectiveness of worker-powered enforcement in a particular industry or in relation to a priority issue for workers, such as wage theft, sexual harassment, or discrimination.

Co-enforcement programs have created public funds for workers' organizations who are reaching out to and training low-wage workers on their legal rights in the workplace. Recent innovations on co-enforcement have integrated important, novel elements, including requirements for employers that all workers receive worker-to-worker training.²³ Such innovations on the co-enforcement model suggest a potential path for scaling worker-to-worker education, while institutionalizing one of the pillars of the worker-powered enforcement framework -- worker-led monitoring.

Standards boards are industry-based standard-setting structures. Recent innovations focus on democratically engaging workers in the industry and broadening the purview of the boards to include oversight of standards implementation and enforcement. In Minneapolis, the Workplace Advisory Committee consists of a minority of business representatives and a combined majority of worker, community, and public representatives, and has a broad mandate to recommend policies that improve standards and enforcement.²⁴ Most recently, the Committee created a worker-led subcommittee – a structure through which workers directly influence the rules and policies that the Committee advances in collaboration with the city. Such innovations in standards boards demonstrate how this model might be designed to facilitate worker engagement and organizing, while institutionalizing a pillar of the worker-powered enforcement framework.

Recordkeeping and reporting requirements make new information available to workers that can help them shape and strengthen worker-led campaigns. The peer-to-peer education mandate for janitorial workers championed by SEIU-USWW in California was attached, in that same law, to a requirement that employers register with the state in order to do business.²⁵ Not only is the registration requirement a means to enforce the worker education mandate, it is also a means to enforce new recordkeeping and reporting requirements, which includes information about subcontractors and franchise agreements. Additionally, the registration requirement creates a new, dedicated and equitable source of funding for labor enforcement activities with an annual registration fee.

A **narrowly focused program** may model more measurably effective processes for delivering timely protection to workers and holding businesses accountable. This could look like a program focused on a particular subset of workers or a new process to expedite the resolution of priority complaints, such as in cases of discrimination and retaliation. In New York City, fast food workers recently won not only a just cause standard of protection against arbitrary discipline and firing, but also a new arbitration forum to

²³ See *infra* note 10.

²⁴ See *infra* note 7.

²⁵ See *infra* note 10.

streamline workers' access to relief when they have experienced unjust treatment.²⁶ Additionally, the industry-wide peer-to-peer education requirement for California's janitorial companies is initially limited to the subject of sexual harassment, but could be expanded to address other types of abuse.

Shorter-term wins can create new worker-led structures, accountability mechanisms, and processes that can be built upon in future campaigns. One of these incremental wins has the potential to create new resources and access to the most-impacted workers, while helping to gain information for workers' organizations that can be leveraged for ongoing organizing to eventually achieve the five pillars of a Worker-Powered Enforcement framework that are required to truly shift power and prevent abuse.

²⁶ See *infra* note 21.