

FREEDOM NETWORK USA

TO EMPOWER TRAFFICKED AND ENSLAVED PERSONS

HUMAN TRAFFICKING AND WORKER'S RIGHTS

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Human trafficking places women, men and children in the most extreme forms of labor and sexual exploitation. Human Trafficking is a significant human rights violation and occurs when a person is forced, coerced, or defrauded, through sexual, physical, and/or psychological violence, to perform work in domestic servitude and/or industries such as farming, restaurants, hotels, factories, and commercial sex. To help shield people from exploitative working conditions that can lead to trafficking, the government must ensure that it increases opportunities for workers to learn about their rights, improve protections for all workers, and strictly enforce these protections. These measures, in combination with employers' recognizing worker's rights, will ultimately enable workers to live with freedom and dignity.

Labor rights are human rights

Labor rights protect workers from employers or policies that endanger a worker's health or freedom. In 1948, the world's governments adopted the Universal Declaration of Human Rights (UDHR), recognizing certain labor standards as basic human rights. Article 23 of the UDHR guarantees workers' right to freedom of association, to just and favorable work conditions, to form and join trade unions, to equal pay for equal work, and to a wage that ensures a worker an existence worthy of human dignity. The International Labor Organization strengthened these protections by elaborating on them in four core labor conventions.¹ Consequently, denial of any of these protections is viewed as a human rights violation and labor exploitation, and can also indicate that human trafficking is taking place.

Labor exploitation and human trafficking

Labor exploitation operates on a continuum, where small infractions can lead to larger abuses like human trafficking. Human trafficking tends to occur in industries where the rates of employment law violations are high. As employers acknowledge the rights of their workers, and workers learn about their rights, the likelihood and incidence of trafficking will decrease. In the United States, federal and state laws protect all workers from labor exploitation. This is true whether a person works in formal or informal sectors, or whether a person is a United States citizen, legal permanent resident, authorized foreign worker, or undocumented migrant.

All workers within the United States are entitled to basic labor rights

United States law maintains that all workers have rights, regardless of their immigration status.² Undocumented workers are entitled to the following basic rights:

- The right to protection against employer retaliation or threats.
- The right to minimum wage.
- The right to overtime pay.
- The right to protection against discrimination and sexual harassment.
- The right to a healthy and safe work place, including education on hazardous materials and the right to free protective equipment for dangerous jobs.
- The right to join or organize a union.
- The right to leave an abusive employment situation.

Exercising these core labor rights can help to empower vulnerable workers, and protect against the risk of human trafficking. In particular, union organizing can provide a strong safeguard against workplace abuses that can lead to trafficking. When workers organize they have an opportunity to voice their concerns about wages, hours, and the overall

¹ Freedom of Association and Protection of the Right to Organise Convention, 1948; Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951; Right to Organise and Collective Bargaining Convention, 1949; Abolition of Forced Labour Convention, 1957.

² These rights are explained in detail at: <http://travel.state.gov/pdf/Pamphlet-Order.pdf>

work environment. Unfortunately, evidence shows us that employers often prevent workers from organizing. A 2008 study found that nearly 25% of the workforce in the United States was barred from its right to join a union.³ In workplaces where workers did organize, over half of workers' supervisors had directly threatened them, and more than one-third made a practice of firing employees for their activity with unions.⁴

Labor exploitation may be compounded when a worker is a foreign national

Undocumented workers are at particular risk for labor exploitation and human trafficking- a risk that emerges the moment they begin their journey to the United States. Stringent border control endangers undocumented migrants because it limits safe legal options for migration. The risk of exploitation may be heightened for those who find employment, as employers can easily manipulate workers with the threat of deportation. These threats can compel workers to stay in abusive, unsafe and substandard work environments, resulting in human trafficking.

The Department of Labor (DOL) enforces the Fair Labor Standards Act and the Migrant and Seasonal Agricultural Worker Protection Act providing this vulnerable population with minimum protections. The DOL is also responsible for interviewing migrant workers in order to identify potential trafficked persons. The effectiveness of these protections, however, is unclear, as the number of investigating agents pales in comparison to the number of worksites requiring monitoring and investigation.

Labor exploitation may be compounded when the person works in informal sectors

Domestic workers, day laborers, and others performing informal work are at a heightened risk for human trafficking due to a variety of factors. First, their employment situation may prevent them from taking advantage of labor rights to which they are entitled. For instance, a domestic worker may find himself isolated in a home with an employer, while a day laborer may find herself working for a variety of employers with little regularity. Both of these circumstances prevent workers from identifying professional labor rights organizers or other workers who can help them learn about and access employment protections. Second, informal workers are sometimes excluded from labor laws that typically protect workers in formal sectors. Domestic workers, for instance, have historically been excluded from labor laws that protect against discrimination and provide the right to bargain collectively.⁵

Recommendations

Enforcing labor protections and recognizing worker's rights will help shield people from exploitative working conditions that can lead to human trafficking. The United States government must increase opportunities for workers to learn about their rights and improve protections for vulnerable workers. The government should also consider the following:

1. Support legislation that will provide core labor protections for all workers. For example, signing the Employee Free Choice Act (2009)⁶ into law would mandate the National Labor Relations Board to seek injunctions against employers who discriminate against employees attempting to organize a union.
2. Support workers in their efforts to organize⁷ so that they can better access and exercise their labor rights. The New York Domestic Workers Bill of Rights⁷ was recently signed into law and can be used as a model of the comprehensive response that is needed to address the vulnerabilities and abuse of domestic workers.
3. Increase resources for the Department of Labor, specifically increasing the number of employees investigating claims of labor exploitation and other workplace abuses.
4. Increase funding for labor rights education, specifically allocating funds to community organizations conducting outreach to vulnerable workers and their communities.
5. Create new legal immigration options for migrant workers.
6. Create mechanisms that allow legal migrant workers to more easily report exploitative work environments and to change employers when or if abuse occurs.

³ *The Haves and the Have-Nots: How American Labor Law Denies a Quarter of the Workforce Collective Bargaining Rights*, American Rights at Work, November 2008.

⁴ *Id.*

⁵ Full Text of the New York Domestic Workers Bill of Rights, signed on August 31, 2010, can be found at <http://public.leginfo.state.ny.us/menuetf.cgi>.

⁶ H.R 1409, S. 560

⁷ In June 2010, New York became the first state to pass legislation providing domestic workers with basic labor protections (S. 2311).