

Introduction: Immigrant Workers in the U.S. Economy and the States' Role in Protecting Their Rights

It is estimated that between 28 and 30 million immigrants live in the United States. This is slightly more than 10.4% of the U.S. population.¹ Ninety percent of these are of working age.² Immigrants, both documented and undocumented, work long hours at the lowest-paid and most dangerous jobs in the U.S. economy. One in four low-wage workers in the United States is an immigrant.

Many immigrants in the U.S. workforce are undocumented. Though war and poverty in many immigrants' home countries make coming to the United States the only avenue to a better life, restrictive U.S. immigration laws mean that only a fraction of immigrants are able legally to enter and remain in the United States.

One need only open the local papers to understand the risks that low-wage immigrant workers face in trying to work and make a better life for themselves in the U.S.:

On September 28, 2003, four migrants were killed when the vehicle in which they were traveling crashed on westbound highway 78 in Imperial County, California, about 20 miles north of the Mexican border. The Border Patrol was pursuing the vehicle; the driver was injured and is being charged with smuggling.

On the same day, Border Patrol agents found the body of Martin Corral Chaidez in Douglas, Arizona. Corral's 17-year old nephew, who crossed the border with him the night before, led agents to the site.

Data provided by Latin American consulates in Arizona and area medical examiners' offices suggests that at least 181 people may have died in the Tucson area over the past year; Border Patrol only tracks deaths discovered by its agents or reported by other law enforcement agencies.

According to preliminary Border Patrol figures, 346 people died along the 2,000-mile U.S. border with Mexico over the past fiscal year. The previous year's death toll was 320.³

Eight migrants were murdered in a similar way over a span of eight months in Arizona. Joe Arpaio, the sheriff of Maricopa County, declared war against the criminals who have carried out the execution-style slayings between March and October, 2002. Arpaio believes that the victims may have been killed by human traffickers when they could not afford to pay for their entry to the U.S.⁴

¹ Urban Institute, *Tabulations of 1990 Census and March 1999 Current Population Survey*.

² Current Population Survey (March 2000), PGP-3.

³ *Border Deaths hit Record High*, compiled by WEEKLY NEWS UPDATE ON THE AMERICAS, available at <http://www.americas.org/news/nir/20031003_border_deaths_hit_record_high.asp>

⁴ *Eight Migrants Murdered in Similar Way over Eight Months in Arizona*, reprinted from *EL DIARIO (CIUDAD JUAREZ)* (Oct. 19, 2002), available at <http://frontera.nmsu.edu>.

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The Urban Institute in Washington, D.C. estimates that there are about eight and a half million immigrants who are undocumented in the United States. About 4.7 million of these, or 55%, come from Mexico. About 1.9 million come from other nations in Latin America, and 1.1 million come from Asia. A few hundred thousand undocumented immigrants come from Europe, Canada, and Africa.⁵

A recent study by the Pew Hispanic Center finds 5 million undocumented immigrant workers in the United States economy. The manufacturing sector employs 1.2 million undocumented workers. The services sector employs 1.3 million undocumented workers. One million to 1.4 million undocumented workers labor in the fields. Six hundred thousand more work in construction and seven hundred thousand work in restaurants.⁶

Many of these same industries are known for low wages, dangerous conditions, and frequent violations of labor laws. A Department of Labor (DOL) survey found that in 2000, 100% of all poultry processing plants were non-compliant with federal wage and hour laws.⁷ A separate U.S. DOL survey found that in 1996 half of all garment-manufacturing businesses in New York City could be characterized as sweatshops, and a DOL survey in agriculture focused on cucumbers, lettuce, and onions, revealed that compliance with labor and employment laws in these industries was unacceptably low.⁸

Injuries and deaths of Hispanic workers engaged in hazardous employment are extremely high and increasing. A study by the National Academy of Sciences, described in an article for the Washington Post, reports that foreign-born Latino men are now nearly 2½ times more likely to be killed on the job than the average U.S. worker.⁹ In the year 2000, construction fatalities involving Hispanic workers increased by 24%, while Hispanic employment was up only 6%.¹⁰ In 2001, farm workers employed in the production of crops accounted for only 1% of the workforce, but represented 6% of the occupational deaths.¹¹ In that year, there were 49 farm fatalities in the state of California alone;¹² in California, 81% percent of farm workers are foreign-born, mainly from Mexico.¹³ New York has the nation's highest rate of immigrants killed in the workplace, with foreign-born workers accounting for 3 out of every 10 workplace deaths.¹⁴

⁵ Michael Fix and Passel, Jeffrey S., *Immigration and Immigrants: Setting the Record Straight*, The Urban Institute (May 1994), available at <<http://www.urban.org/pubs/immig/immig.htm>>

⁶ B. Lindsay Lowell and Roberto Suro, *How many undocumented: The numbers behind the U.S.—Mexico Migration Talks*, available at <<http://www.pewhispanic.org/site/docs/pdf/howmanyundocumented.pdf>>

⁷ U.S. Department of Labor, FY 2000 Poultry Processing Compliance Report (2000).

⁸ *Labor Department: Close to Half of Garment Contractors Violating FLSA*, DAILY LAB. REP. (BNA) 87(May 6, 1996); U.S. Department of Labor, Compliance Highlights, 1,3 (Nov. 1999).

⁹ Nurith C. Aisenman, *Harsh Reward for Hard Labor*, THE WASHINGTON POST C01(Dec. 29, 2002).

¹⁰ Bureau of Labor Statistics, NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES IN 2000 (Aug. 14, 2001).

¹¹ U.S. Department of Labor, Bureau of Labor Statistics, NATIONAL CENSUS OF FATAL OCCUPATIONAL INJURIES, 2001, Table 2: Fatal Occupational injuries and employment by industry (Sep. 25, 2002), available at <<http://stats.bls.gov/news.release/cfoi.t04.htm>>

¹² Andy Furillo, *Farm death sparks manslaughter charge*, SACRAMENTO BEE (Dec. 18, 2001).

¹³ U.S. Department of Labor, FINDINGS FROM THE NATIONAL AGRICULTURAL WORKERS SURVEY (NAWS) (2000) at 5.

¹⁴ Thomas Maier, *Death on the Job: Immigrants at Risk*, NY NEWSDAY (Dec. 16, 2001).

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Maximizing State Law Protections in an Anti-Immigrant Climate

Prior to September 11, 2001, advocates were working closely with the Bush Administration to develop a legalization program that would allow undocumented workers, at long last, to take part in the civic life of the country. In 2000, labor leaders had adopted a pro-legalization resolution that had captured the enthusiasm and energy of many immigrant workers.¹⁵ President Bush and Mexican President Fox seemed close to agreement on a legalization program that would have enabled hundreds of thousands of immigrant workers to legalize. After September 11, these hopes died, as the federal government and Congress began concentrating on harsh “anti-terrorism” measures. Congress quickly passed the “Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001” (USA PATRIOT Act). It soon was reported that immigration enforcement would be stepped up, and focused on an ever-lengthening list of government-identified “suspects”: immigrant students, immigrants who had overstayed their visas, immigrants of Middle Eastern and South Asian origin. More recently, the Justice Department and Congress have raised the prospect of local police enforcement of immigration laws.¹⁶

The U.S. Supreme Court’s recent decision in *Hoffman Plastic Compounds v. NLRB*,¹⁷ finding that undocumented workers are not entitled to back pay when they are illegally fired after taking part in union organizing campaigns, contributes to the perception that immigrant workers have no enforceable rights in the United States.

As has occurred historically each time anti-immigrant sentiment has dominated the federal policy scene, states are now required to step into the breach. At the state level, authorities often understand better what immigrant workers mean to a local economy. They often have closer experience with the kinds of abuses immigrants suffer, and a better understanding of the duty of agencies and police authorities to protect all local residents. This paper is intended as a guide to model legislation that states and localities can pass to protect immigrant workers. Each chapter provides background on a particular issue, as well as model legislation and talking points for advocates and legislatures wishing to assure immigrants in their communities that they will not be given second-class treatment under labor and employment laws.

While regulation of immigration itself is a matter of federal concern, there are many areas in which state and local governments can act to afford better access to work-related benefits and better protections under existing state labor and labor-related laws. This report focuses on five of these areas. These are language access to government benefits and services for limited English proficient individuals, confidentiality provisions that protect immigrant workers’ access to public services, drivers’ licensing provisions, equal employment rights and remedies for undocumented workers, and undocumented workers’ access to critical workers’ compensation programs.

This publication provides examples of some of the state and local laws now on the books that protect the most vulnerable of immigrant workers - the undocumented and those that do not speak English well enough to navigate state and federal bureaucracies. The report highlights model bills that have not yet made their way into law. In

¹⁵ See July 31, 2001 AFL-CIO Executive Council Statement, available at <http://www.aflcio.org/publ/estatemts/jul2001/immigration.htm>.

¹⁶ This is described in greater detail in Chapter 2, *infra*.

¹⁷ 535 U.S. 137, 122 S.Ct. 1275, 152 L.Ed. 271 (2002).

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addition, the report profiles selected campaigns for increased labor protections, and provides talking points to assist in campaigns.

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