The Invisible Corner: Expanding Workplace Rights for Female Day Laborers

Elizabeth J. Kennedy†

Governmental approaches to regulating day labor markets have focused principally on industries such as construction, landscaping and agriculture, in which day labor is performed almost exclusively by men. Legal and social science scholarship regarding day labor has largely ignored the significant numbers of women working in domestic industries like housekeeping and child-care. Such workers are in all respects “day laborers,” who contract for no more than a day’s or a few hours’ pay, and who experience the acute contingency and imbalance of economic and political power that typify the day labor employment relationship. Despite some progressive advances for day laborers generally, including the creation of formal hiring sites, women are often forced to search for domestic day labor in unregulated public and private spaces, with few legal protections.

The Article considers why women have largely been excluded from legislation and public policies designed to regulate day labor markets and improve day laborers’ working conditions. The Article explores new models of regulation, organizing and advocacy that can help shift the current imbalance of power between domestic day laborers and their employers. Alternative models for improving working conditions for female day laborers are particularly important because domestic workers are specifically exempted from many of the major federal and state laws designed to protect employees, and are therefore particularly vulnerable to abuse and exploitation by unscrupulous employers. Through the development of worker cooperatives and collectives, domestic workers have successfully organized for greater workplace protections and transformative changes within the domestic work industries. The Article recommends that federal, state and local lawmakers reexamine the historically gendered approach to day labor and enact

† Assistant Professor, Law & Social Responsibility Department, Sellinger School of Business and Management, Loyola University Maryland.
legislation to bridge the gap between existing employment laws and the realities of domestic day labor markets.

I. INTRODUCTION ......................................................................................... 127

II. BACKGROUND: THE DAY LABOR MARKET .................................................. 132
A. Local Demographics, National Phenomenon .................................. 132
B. The Changing Face of Day Labor ......................................................... 136
C. The Vulnerability of Domestic Workers ................................................ 138
D. The Unique Vulnerability of Female Day Laborers .............................. 140

III. LEGISLATIVE AND PUBLIC POLICY APPROACHES: TO PUNISH OR PROTECT? ................................................................................................................................. 144
A. Punitive Policies .................................................................................. 145
B. Protective Policies .............................................................................. 146
C. Legislative Approaches Should be Inclusive of Domestic Day Laborers .......................................................................................................................... 150

IV. SHIFTING THE BALANCE OF POWER .......................................................... 151
A. Empowering Female Day Laborers ...................................................... 151
B. Regulating Employers ......................................................................... 153
C. Expanding Workplace Protections ......................................................... 155

V. CONCLUSION .................................................................................................. 158

I.
INTRODUCTION

The pack of workers shifts silently from one foot to the other, keeping time in an endless wait for work that may or may not come. Each approaching stranger represents the possibility of a day’s wages, for which there are always more takers than there are opportunities.¹ They have come here from Mexico, Guatemala, Honduras and Poland, searching for work almost everywhere else before lining up, once again, on this cold corner in Brooklyn.² Unlike the experiences of their brothers, fathers, cousins and sons, whose presence on similar street corners is met with hostility, arrests, epithets and violence, this group of workers attracts little attention from


passersby. They are members of a national workforce of over 117,000, yet their daily search for work goes unnoticed by possible foes and potential allies alike. These workers are not men searching for construction, landscaping or excavation jobs, and their employers do not arrive in pickup trucks to assemble work crews. These workers are women. They offer domestic labor at discount prices to members of the predominately Chasidic Jewish community, other women who approach on foot looking for someone to clean their home for that day only—women hiring women in an unregulated, underpaid and largely invisible contingent economy.

Popular press accounts and policy reports tend to depict day laborers as a homogenous group of undocumented male migrants gathered in parking lots or alongside home improvement stores, ready to accept below-

3. Invisible to Most, supra note 1.
4. On the Corner, supra note 2, at i. See also Invisible to Most, supra note 1. Rhacel Salazar Parreñas, a sociologist who has written extensively about the feminization of migration, explains, "The space that these women occupy, the public spaces in the city, are just like fleeting moments. They don't really have a place in the city that's visible, so it's easy to ignore them." Id.
5. Female Day Laborers, supra note 1. Cultural norms compound the tension between these two groups of women. The Satmars, a community of Chasids in Williamsburg who strive to live the way their ancestors did in Eastern Europe, require that the domestic workers they hire scrub the floor on their knees rather than use a mop. The female workers reported feeling "like a slave" and being humiliated, while the employers scoffed at the criticism.
7. See, e.g., Robin Toma and Jill Esbenshade, Day Laborer Hiring Sites: Constructive Approaches to Community Conflict, L.A. County Human Relations Commission (2001), 1, available at http://www.ncjrs.gov/pdffiles1/bja/189914.pdf ("By 'day laborers,' we are referring to people, usually men, who gather on sidewalks, parking lots, near building supply stores, or wherever they can be visible to potential employers, waiting to get hired for short-term jobs, whether it be cleaning a yard, moving heavy furniture, putting on a new roof, or painting a room."). See also, Arturo Gonzalez, Day Labor in the Golden State, California Economic Policy, vol. 3, no. 3 (July 2007), 2, available at http://www.ppic.org/content/pubs/cep/EP_707AGEP.pdf ("In many cities across the United States, men—and in rare cases, women—gather in the early morning at street corners, parking lots, store-fronts and busy intersections in search of employment. Popularly known as day laborers, these men wait for employers seeking to hire temporary workers, turning otherwise common areas into open-air markets where labor services are exchanged daily."). See also, ROB T. GUERETTE, U.S. DEPT OF JUSTICE, DISORDER AT DAY LABORER SITE 2 (2006), available at http://www.cops.usdoj.gov/files/RIC/Publications/e09061311.pdf ("Day laborers are those who congregate in public places seeking manual-labor jobs such as construction, gardening, landscaping, and farming.").
market wages in exchange for temporary manual work. While the demand for workers willing to toil cheaply, quickly and dangerously is often filled by migrant men, there is a small but growing female day labor market for housekeeping, child-care and other domestic services. In addition to the racial discrimination, economic exploitation and physical abuse that many male day laborers experience, female day laborers encounter particular barriers to establishing safe and just workplaces. Despite some progressive changes for day laborers generally, such as the creation of regulated hiring sites, female day laborers are often forced to search for work in more unregulated public and private spaces, with some choosing to look for domestic day labor on open-air street corners like their male counterparts, and others searching through more informal referral networks that generally characterize domestic work.

At this corner of Marcy and Division Avenues in Brooklyn, initial attempts by local religious leaders to relocate the women off the corner and

---


In 2008, Hispanics comprised 49.4 percent of the foreign-born labor force compared with 7.8 percent of the native-born labor force. Asians made up 22.4 percent of the foreign-born labor force compared with 1.3 percent of the native-born labor force. . . . In 2008, foreign-born workers were more likely than their native-born counterparts to be employed in service occupations (23.2 versus 15.6 percent); in production, transportation, and material moving occupations (16.4 versus 11.5 percent); and in natural resources, construction, and maintenance occupations (15.1 versus 9.3 percent). . . . Compared with native-born women, foreign-born women were more likely to be employed in service occupations and in production, transportation and material moving occupations. In 2008, the median usual weekly earnings of foreign-born full-time wage and salary workers were $595, compared with $744 for the native born. Among men, median earnings were $613 per week for the foreign born, compared with $842 for the native born; the median for foreign-born women was $557, compared with $651 for the native born.

Id. About 2 percent of day laborers surveyed nationwide are women. ON THE CORNER, supra note 2, at 17.


10. See, e.g., Day Laborer Centers See Some New Faces, supra note 6; Female Day Laborers, supra note 1. At a day labor center in Hollywood, California, a female day laborer who reportedly spent months searching for work at clothing factories, fast-food restaurants and even a mini-market, explains, "If the men can find work here, I can too . . . With papers, without papers, men or women, we all come to look for work." Day Labor Centers See Some New Faces, supra note 6.
into a more regulated and protected space fell apart when the domestic day laborers were told (presumably by potential employers) that they would not be picked up in a Catholic church, the proposed site. Five years later, still lacking a formal hiring site, women searching for domestic day labor continue to gather each morning on the same open-air corner. In neighboring Long Island, the increasing presence of male day laborers in recent years incited a hostile and sometimes violent community debate that eventually led to the creation of several government-sponsored day labor worker centers. By contrast, female day laborers—in Brooklyn and elsewhere—do not appear to generate the same level of organized community animus that forces local governments to take steps toward regulating domestic day labor markets. They remain figuratively and at times literally, on the corner, off the public policy agenda, and out in the cold.

This Article considers why women have largely been excluded from legislation and public policy designed to regulate day labor markets and improve day laborers' working conditions, and suggests how local and state governments can shift the acute imbalance of power between domestic day laborers and their employers. Day labor centers have been described as the "emergency rooms of today's sick economy." The recent downturn in the U.S. economy has resulted in a growing number of workers turning to day labor as their only viable employment option. But the downturn has also dried up demand for labor in the construction industry, historically one of the largest employers of male day laborers. This particular set of economic and political conditions presents local and state governments with an unprecedented opportunity to reassess, modify and expand workplace

13. Sewell Chan, City to Consider Job Centers for Day Labor, N.Y. Times, June 16, 2006, available at http://www.nytimes.com/2006/06/16/nyregion/16laborers.html. Long Island's Nassau County has two taxpayer-supported day labor centers, in Glen Cove and Freeport, and Suffolk County has one, in Huntington Station.
14. Female Day Laborers, supra note 1.
15. Id.
rights for their most vulnerable constituents, which include domestic day laborers.

Part II of this Article discusses the demographics and operation of day labor markets nationally, and explains the unique vulnerabilities of female day laborers. Part III examines the differing approaches that state and local governments have taken to classifying, regulating and improving day labor, and the reasons why those approaches have failed to elevate the working conditions and economic position of women in day labor markets. Part IV outlines a more comprehensive method of attacking the problems that confront female day laborers.

The nature of domestic work and the demographics of the workforce make organizing and advocating for expanded workplace rights difficult. Several recent successful campaigns in the home health care and child care industries suggest, however, that such obstacles are not insurmountable. Using new models of organizing, regulation and advocacy, female day laborers and their supporters can shift the balance of power and improve their working conditions and economic position.


19. Like those of domestic housekeepers, wages for child-care providers are among the lowest in the economy, and historically less than five percent of child-care providers have been unionized. Fred P. Brooks, New Turf for Organizing: Family Child Care Providers, 29 LAB. STUD. J. 4, 47 (2005). In 2005, former Governor Rod Blagojovich issued an executive order giving Illinois child care workers the right to organize, paving the way for a victory by the Service Employees International Union (SEIU) the following month. Steven Greenhouse, Illinois Victory Caps Service Union Drive, N.Y. TIMES, Apr. 8, 2005. Two years later, former New York Governor Eliot Spitzer signed an executive order granting 60,000 home-based child care providers in New York State the right to unionize. N.Y. Exec. Order No. 12, N.Y. COMP. CODES R. & REGS. tit. 9, § 6.12 (2007). See also Steven Greenhouse, Child Care Workers Get Right to Unionize, N.Y. TIMES, May 12, 2007. The executive order led to subsequent union victories by the United Federation of Teachers and the Civil Service Employees Association. Steven Greenhouse, 17,000 Child Care Providers Joining Union, N.Y. TIMES, Feb. 16, 2008. Across the country, unions have used such innovative approaches to overcome obstacles to organizing child care workers. In addition to the Illinois and New York victories, the Association of State, County and Municipal Employees (AFSCME), SEIU, the United Auto Workers and the Association of Community Organizations for Reform Now (ACORN), have successfully organized low-wage child care providers in New York, Massachusetts, Seattle, Pennsylvania, and Los Angeles. Brooks, supra.

II. BACKGROUND: THE DAY LABOR MARKET

A. Local Demographics, National Phenomenon

While the legal, political and community responses to day labor markets are largely local, day labor is a national phenomenon. The most recent nation-wide survey located day laborers in 139 cities in 20 states. During the housing boom of the past decade, day labor provided a primary source of work for men and women whose economic vulnerability and immigration status kept wages low, hours long and workplace protections nearly nonexistent. Consequently, concentrations of day laborers mirror the map of national real estate development growth, with the largest populations on the West and East coasts and the smallest concentrations in the Midwest. More than half of day laborers were born in Mexico, fourteen percent were born in Guatemala, and eight percent were born in Honduras. U.S.-born workers comprise between seven and fourteen percent of the day labor workforce, though in the southern region of the country that number rises to at least twenty percent. Forty percent of day laborers report having lived in the United States for more than six years, and almost ten percent has been in the country for more than twenty years.

Day labor markets exhibit fluid dimensions, with new workers entering the market and other workers leaving it each day. Day laborers primarily search for work on a full-time basis, and the vast majority (eighty-three percent) relies on day labor as their sole source of income. Those looking for work in the male-dominated construction and landscaping industries are organized informally in parking lots and on street corners, or formally by

---

22. Immigrant Day Laborers, supra note 8, at 26. This figure includes the District of Columbia. Participants in the survey searched for work in the communities they live, whether inner cities, rural areas, suburbs, exurbs or industrial-growth areas in cities such as Atlanta, Hempstead (NY), Houston, Las Vegas, Phoenix, Portland, San Jose, and Seattle.
23. Day labor agencies, as the primary source of underemployed workers, have been characterized as “institutionalizing the reserve army” of the corporate economy by providing firms with a reliable, stable and organized source of underemployed workers. Gretchen Purser, Waiting for Work: An Ethnography of a Day Labor Agency 11 (Inst. for the Study of Soc. Change, Univ. of Cal. ISSC Working Paper Series 2005-2006.15), available at http://escholarship.org/uc/item/5vg5d05d. See also PROTECTING HUMAN RIGHTS IN A GLOBAL ECONOMY, supra note 9, at 6.
24. ON THE CORNER, supra note 2, at i. The West had 42% of the surveyed day laborer population, followed by the East (23%), Southwest (18%), South (12%) and Midwest (4%). Id.
25. Id. at 17.
26. Id. Valenzuela estimates that the proportion of U.S.-born day laborers has at least doubled (to fourteen percent since the release of the National Day Labor Survey. Unemployed U.S.-born Workers Seek Day-Labor Jobs, supra note 17.
27. Immigrant Day Laborers, supra note 8, at 25.
28. ON THE CORNER, supra note 2, at ii.
temporary agencies or day labor centers—often run by a non-profit or faith-based organization in partnership with local government agencies. Only twenty-one percent of day laborers search for work at a day labor worker center. The others find work by standing at informal sites, such as in front of businesses (24 percent), home improvement stores (22 percent), gas stations (10 percent) and on busy streets (8 percent). They choose sites near residential neighborhoods, and tend to concentrate where there are a large number of construction, manufacturing, farming and other industries dependent on relatively unskilled manual labor. Employers hire day laborers only when needed, after little to no negotiation regarding wages, working conditions or the type of work to be performed.

Day labor markets are not a recent phenomenon: poverty, structural adjustment policies, and political persecution have historically made the United States a destination for those whose economic insecurity and socio-political vulnerability limit their employment options to contingent work arrangements. For over two centuries, Irish, Italian, Russian, Polish and Mexican immigrants participated in day labor markets on water fronts and in fields, factories and warehouses, building the infrastructure of a burgeoning industrial economy. African-American and Irish immigrant women found domestic work at the turn of the 20th century in much the same way domestic day laborers do today.

Immigration and market bubbles are not the only engines driving the growth of day labor markets. Following World War II, more and more
workers obtained employment through temporary staffing agencies, largely unregulated "middlemen" that charge fees to deploy the underemployed.\textsuperscript{37} During the 1990s, in response to welfare reform and other cutbacks to the socio-economic safety net, the day labor industry experienced precipitous growth, especially in temporary staffing agencies.\textsuperscript{38}

As a practical matter, day laborers work largely outside the protection of federal and state laws enacted to guard against workplace abuses. Although federal laws such as the Fair Labor Standards Act of 1938 (FLSA) and the Occupational Safety and Health Act (OSH Act) provide minimum workplace standards for employees, including those who work as day laborers, the agencies charged with enforcing those protections on behalf of day laborers face significant barriers.\textsuperscript{39} These barriers include: a lack of comprehensive data on day labor markets (e.g., an undercounting of individuals working as day laborers results in an underfunding of targeted enforcement efforts within those markets); the Department of Labor's traditional reliance on self-reporting as a mechanism of enforcing workplace standards (e.g., day laborers are reluctant to report wage and hour or safety violations to the Department of Labor for a variety of reasons, including language difficulties, fear of deportation, or length of time to resolve complaint); and governmental inspection protocols (e.g., providing employers with advance notice and performing fewer workplace inspections) that are inadequate or ill-suited to many non-standard employment situations, including day labor.\textsuperscript{40} Similar barriers to enforcing complementary state and local legislation have been documented.\textsuperscript{41}

Almost half of all respondents in a recent day labor survey reported having to work full days without breaks, being denied food and water, being forced to work longer than they had originally contracted for, being abandoned at the worksite, and suffering physical violence.\textsuperscript{42} Day laborers often perform hazardous jobs in industries with little, if any, meaningful

\textsuperscript{37} Immigrant Day Laborers, supra note 8, at 27.
\textsuperscript{38} Id. at 27. See also, Daniel Kerr & Christopher Dole, Cracking the Temp Trap: Day Laborers' Grievances and Strategies for Change in Cleveland, Ohio, 29 LAB. STUD. J. 4, 91 (2005).
\textsuperscript{39} REPORT TO THE HON. LUIS GUTIERREZ, HOUSE OF REPRESENTATIVES, U.S. GOV'T ACCOUNTABILITY OFFICE, WORKER PROTECTION: LABORS EFFORTS TO ENFORCE PROTECTIONS FOR DAY LABORERS COULD BENEFIT FROM BETTER DATA AND GUIDANCE (2002), 12, available at http://www.gao.gov/new.items/d02925.pdf [hereinafter Worker Protection: Day Laborers]. The protections of these laws do not extend to independent contractors. Id.
\textsuperscript{40} Id. at 13-18. See also, TESTIMONY BEFORE THE COMMITTEE ON EDUCATION AND LABOR, HOUSE OF REPRESENTATIVES, U.S. GOV'T ACCOUNTABILITY OFFICE, DEPARTMENT OF LABOR: WAGE AND HOUR DIVISION'S COMPLAINT INTAKE AND INVESTIGATIVE PROCESSES LEAVE LOW WAGE WORKERS VULNERABLE TO WAGE THEFT 4 (2009).
\textsuperscript{42} Immigrant Day Laborers, supra note 8, at 26.
enforcement of health and safety laws. Oral "employment contracts" entered into at the time of hire in no way bind an employer to honor any promises of continued employment, whether from one day to the next or from hour to hour. Moreover, due to fears of employer reprisal, coupled with general ignorance regarding legal rights and remedies, contingent workers file employment claims against their employers at lower rates than workers with more stable employment.

Low wages are endemic to the day labor market, and obtaining reliable, current information on day laborer wages is difficult in the absence of targeted government surveys. According to the most recent national survey of day laborers, workers who search for day labor jobs on a full time basis (i.e., four or more days a week) had median monthly earnings of $700. However, one-quarter of full-time day laborers earned $400 or less that month. Almost half of all day laborers surveyed reported being paid less than they had contracted for, or in some cases not at all.

Despite chronic mistreatment and systemic grievances, the ability of day laborers to organize for better wages and improved working conditions is limited by an intensive repression of labor organizing, repressive U.S. immigration policies that offer little hope of amnesty for workers who speak out, and the perpetual underfunding of agencies charged with

43. While abuses such as non-payment for work, violence, robbery, threats and other human rights violations have been well documented, there is a marked lack of data on the occupational health and safety issues faced by day laborers. Contingent workers, for reasons including fear of employer reprisal, deportation and lack of knowledge regarding rights and remedies, file workers compensation claims at lower rates than workers with more stable employment. RICK NEITZEL & NOAH SEIXAS, DAY LABOR SAFETY AND HEALTH INITIATIVE REPORT 4-5 (2005), available at http://staff.washington.edu/neitzel/Daylabor.pdf.

44. ON THE CORNER, supra note 2, at 6.

45. Id. at 5; see also, Worker Protection: Day Laborers, supra note 39 at 15.

46. The Government Accountability Office states that "the size of the day labor population may be greater than nationally available data suggest. Worker Protection: Day Laborers, supra note 39 at 14. The most recent Bureau of Labor Statistics data on day laborer demographics and wages is derived from a small sample of day laborers surveyed in 2005. See U.S. DEPT OF LABOR, BUREAU OF LABOR STATISTICS, CONTINGENT AND ALTERNATIVE WORK ARRANGEMENTS (2005), available at http://www.bls.gov/news.release/conemp.toc.htm. The National Day Labor Survey, while a nationally representative sample of 2,660 day laborers, was conducted in the summer of 2004. See DAY LABOR IN THE GOLDEN STATE, supra note 7 at 1 ("Although day labor has become an ever-increasing topic of interest, a lack of data hampers the crafting of informed policies.").

47. ON THE CORNER, supra note 2, at 11.

48. Id.

49. Id. at 19. At the District of Columbia's Office of Wage-Hour, the number of workers seeking help to recover stolen wages rose to 523 in 2009, an increase of more than twenty percent from 2008. N.C. Aizenman, Immigrants Vulnerable as Bosses Shortchange Workers, WASH. POST, Mar. 17, 2010.

50. See, e.g., KATE BRONFENBRENNER, NO HOLDS BARRED: THE INTENSIFICATION OF EMPLOYER OPPOSITION TO ORGANIZING, ECONOMIC POLICY INSTITUTE BRIEFING PAPER No. 235 (2009), available at http://epi.3cdn.net/edc3b3dc172dd109af_0ym6iit96d.pdf.

51. While the U.S. Department of Labor has recently announced that it will delegate authority to its Wage and Hour Division to identify potential victims of federal and state laws in the course of its
enforcing existing labor and employment laws.\textsuperscript{52} For unauthorized workers, the threat of deportation has a chilling effect on their willingness to enforce their workplace rights.\textsuperscript{53} Unauthorized workers are thus subject to even higher rates of exploitation, wage theft, and hazardous working conditions.\textsuperscript{54}

\textbf{B. The Changing Face of Day Labor}

The top five occupations of day laborers surveyed at traditional hiring sites are construction laborer, gardener/landscaper, painter, roofer, and drywall installer.\textsuperscript{55} The women who find work as day laborers are most often engaged in domestic work, in jobs such as housecleaning, child care and elder care.\textsuperscript{56} The National Day Labor Survey, which profiled 2,660 day laborers searching for work at both formal and informal hiring sites, revealed that women make up only two percent of the national day labor workforce—a parenthetical idiosyncrasy rather than a formidable population deserving of public and political attention.\textsuperscript{57} However, this workplace investigations, in order to provide such trafficking victims with "U Nonimmigrant Status Visas," the list of "qualifying criminal activities" does not specifically include the violation of health and safety or wage and hour protections. U.S. DEPARTMENT OF LABOR, news release, US LABOR DEPARTMENT TO EXERCISE AUTHORITY TO CERTIFY APPLICATIONS FOR U VISAS (Mar. 15, 2010), available at http://www.dol.gov/opa/media/press/opa/OPA20100312.htm.

\textsuperscript{52} For example, federal resources for enforcing wage and hour laws have declined significantly over the past several decades. Specifically, between 1975 and 2004, the number of workplace investigators declined by 14% and the number of compliance actions completed declined by 36%—while the number of covered workers grew by 55%, and the number of covered establishments grew by 112%. ANNETTE BERNHARDT, SIOBHAN MCGRATH, & JAMES DEFILIPPIS, BRENNA. CTR. FOR JUSTICE, UNREGULATED WORK IN THE GLOBAL CITY: EMPLOYMENT AND LABOR LAW VIOLATIONS IN NEW YORK CITY 31, available at http://nelp.3cdn.net/cc4d61e59425fe5d65d65gaq4.pdf. See also NATIONAL EMPLOYMENT LAW PROJECT, Rebuilding a Good Jobs Economy: A Blueprint for Recovery (2008), at 10, available at http://nelp.3cdn.net/107e65168f65eac6e_11m6ibpdr.pdf [hereinafter Rebuilding a Good Jobs Economy].


\textsuperscript{54} MANEY ET AL., supra note 9, at 6. See also, N.C. Auzenman, Immigrants Vulnerable as Bosses Shortchange Workers, supra note 49 (immigrants who lack legal status are particularly vulnerable to wage theft by employers); Kati L. Griffith, U.S. Migrant Worker Law: The Interstices of Immigration Law and Employment Law, 31 COMP. LAB. & POL'Y J 125, 140.

\textsuperscript{55} ON THE CORNER, supra note 2, at ii. The study found that forty-three percent of contractors for day laborer are involved in the construction trades.

\textsuperscript{56} While the domestic day labor market is often referred to as "informal," that term is more accurately associated with work performed in illegal conditions and considered "underground." Domestic day labor, and the market in which it operates, is legal but largely unregulated, due to a lack of sufficient employment and labor protections as well as a lack of enforcement with respect to the laws and regulations that do exist. Other examples of industries with unregulated work include restaurants and food service, child care, nail and beauty salons, and building cleaning and security. See UNREGULATED WORK IN THE GLOBAL CITY, supra note 52 at 16.

\textsuperscript{57} ON THE CORNER, supra note 2, at 17. See also Undocumented Migrants Join Men, supra note 6 and Day Labor Centers See Some New Faces, supra note 6.
figure inappropriately excludes the significant number of women working in domestic jobs who are in all respects day laborers—women who contract for no more than a day’s or a few hours’ pay, and who experience the acute contingency and imbalance of economic and political power that typify the day labor employment relationship. Absent from the surveys and discussions are the women hired as daily elder-care attendants through word-of-mouth references, or those soliciting temporary housecleaning gigs through websites like www.craigslist.org, or those distributing dog-walking flyers on the doorsteps of suburbia. Though you may not find them on the corner, these women are also day laborers.

The domestic work industry is on the rise, fueled by changes in local and global economies that have led to increases in both the demand and the supply (due largely to the migration of women from countries that provide few opportunities for more formal jobs at sustainable wages) of household labor. An increase in the number of weekly hours worked by all wage earners, combined with an increase in women’s participation in the workforce, has increased the necessity for and ability of homeowners to hire domestic workers. In cities and suburbs across the country, middle and upper class families increasingly rely on domestic workers to cover the proverbial “second shift.” For example, the size of New York’s domestic work industry workforce increased by twenty-four percent from 1990 to 2000, a period which saw only a ten percent growth in the workforce overall. The U.S. Department of Labor estimates that the number of maid and housekeeping jobs will increase at a rate of 12.7 percent between 2006 and 2016. By performing household work on-demand, domestic day

---

58. A recent study released by the Paris-based Organization for Economic Cooperation and Development finds that more than “half the world’s workers, especially women in poor countries, are in informal jobs with low pay and no protections,” a figure estimated to increase in response to the global economic downturn. Angela Charlton, Study: Informal Employment at Record Levels, ASSOCIATED PRESS, Apr. 8, 2009, available at http://abcnews.go.com/Business/wireStory?id=7286399. Global restructuring has created “push and pull” forces that in turn have generated an easily exploitable supply of domestic laborers imported from developing countries to the U.S. Donna E. Young, Working across Borders: Global Restructuring and Women’s Work, 2001 UTAH L. REV. 1, 8 (2001) [hereinafter Working across Borders]. See also, ANNETTE BERNHARDT, SIOBHAN McGrath, & JAMES DEFLIPPIS, BRENNA#N CTR. FOR JUSTICE, UNREGULATED WORK IN THE GLOBAL CITY: EMPLOYMENT AND LABOR LAW VIOLATIONS IN NEW YORK CITY, available at http://nelp.3cdn.net/cc4d61e5942f9cfd5_d6m6gbaq4.pdf.

59. DOMESTIC WORKERS UNITED & DATACENTER, supra note 18, at 9. The domestic work industry has been described as an “occupation ghetto,” in which immigrant women of color are stuck in poorly paid and abusive domestic jobs.

60. Increases in workforce participation by women and the length of the workweek for both men and women have left homeowners with less time to perform domestic chores. Greg W. Kettles, Day Labor Markets and Public Space, 78 U. MO. K.C. L. REV. 139, 158 (2009) [hereinafter Day Labor Markets and Public Space].

61. DOMESTIC WORKERS UNITED & DATACENTER, supra note 18, at 9.

laborers support their employers’ participation in the global economy while perpetuating the illusion of a family in which two wage earners “do it all.”

As more permanent, higher-paying jobs in the collapsing light manufacturing and textile industries disappear—jobs historically filled by immigrant female workers—more women find themselves searching for lower-wage, contingent domestic work. Nearly forty-four percent of the nation’s low-wage immigrant work force is female, and the number of maids and housekeepers nationwide is only slightly less than the number of construction laborers. While there are more male immigrant day laborers than female, that gap is closing. When policy makers, community organizations and worker advocates limit the discussion of day labor to workers in the construction and related industries, they exclude female day laborers from legislative and collective opportunities to improve working conditions in domestic day labor markets.

C. The Vulnerability of Domestic Workers

The U.S. Census Bureau estimates that there are approximately 1.2 million housekeepers and home-based child care workers nationwide. Ninety-five percent of domestic workers in New York are people of color, ninety-three percent are women, and seventeen percent lack the legal Department of Labor identifies “maids and housekeeping cleaners” as one of the 30 occupations with the largest employment growth. Id.

63. One of the central requirements of domestic work is that the worker executes her duties in an invisible manner in order to create this illusion. By performing the job well, domestic workers reinforce their invisible status on and off the job. Teresa Castillo, The Best of Care: Latinas as Transnational Mothers and Caregivers, in TECHNOFUTUROS 191, 193 (Nancy Raquel Mirabal & Agustin Lao-Montes eds., 2007).

64. The United States experienced a loss of over one million jobs in 2008 alone. Rebuilding a Good Jobs Economy, supra note 52, at 2. One woman searching for temporary domestic work reported having been in the United States for eleven years without finding a “stable, steady job” or even a temporary job that paid minimum wage. Invisible to Most, supra note 1.

65. U.S. DEP’T OF LABOR, OCCUPATIONAL EMPLOYMENT AND WAGES SUMMARY 8 at tbl. 1 (2009), available at http://www.bls.gov/news.release/pdf/ocwage.pdf. While these numbers represent the relevant workforces as a whole, not solely day laborers, the number of maids and housekeeping cleaners in 2008 was 917,120, and the number of construction laborers was 1,020,290. Id. The median wages for maids and housekeeping cleaners was $9.13, while the median wages for construction laborers was $13.71. Id.


67. See, e.g., Undocumented Migrants Join Men, supra note 6 (describing the challenges of immigrant women day laborers in Los Angeles).

authorization to work in the U.S. This is a population often subjected to discrimination on the job, within the larger community, and—historically—by organized labor and other potential allies. Indeed, domestic workers who report mistreatment by employers identify immigration status, race and language as significant factors contributing to the abuse.

The domestic work industry thrives by maintaining a vulnerable workforce and perpetuating a characterization of domestic work as unregulated and informal. While male day laborers frequently work as part of a crew, female day laborers often work alone in the homes of their employers, placing them at greater risk of discrimination, coercion, and physical abuse. The employers of domestic day laborers are typically homeowners with minimal or nonexistent safety and health resources.

Sixty-three percent of domestic workers recently surveyed in California considered their jobs hazardous, citing concentrated exposure to toxic cleaning chemicals and human contagions, risk of injury from cleaning high or difficult-to-reach places, and heavy lifting. Seventy-five percent of the surveyed workers report not receiving protective gear such as face masks or gloves to prevent workplace injuries, and eighty-six percent do not receive any training in job safety or workplace injury prevention. Nearly one-third have suffered an injury or illness requiring medical attention in the past year, yet two-thirds of those injured did not receive medical attention, due primarily to an inability to pay for treatment and the absence of employer-provided health care.

69. DOMESTIC WORKERS UNITED & DATACENTER, supra note 18, at 7. See also Undocumented Migrants Join Men, supra note 6 (citing a 2006 report by the Pew Hispanic Center). The National Day Labor Survey found that up to one quarter (25%) of all day laborers had either legal residency or an adjustment to their immigration status). Immigrant Day Laborers, supra note 8, at 26. As Teresa Castillo observes, undocumented status is often the root of the exploitable nature of Latina domestic service workers, since these workers lack the leverage they need to defend their rights and improve their compensation, hours, working conditions, and standards. Castillo, supra note 63, at 192.

70. DOMESTIC WORKERS UNITED & DATACENTER, supra note 18, at 7.

71. Id. at 22. ("Of the workers who reported mistreatment, one-third (33%) felt that immigration status was a factor in their employer's actions, one-third (32%) felt race was a factor, and 18% felt language played a role").

72. Evelyn Nieves, Domestic Workers Sue, Lobby, Organize For Workplace Rights, USA TODAY, June 4, 2008. Pierrette Hondagneu-Sotelo, a sociologist at the University of Southern California explains how the socio-economic and political context within which migrant domestic workers find employment contributes to the abuse: "The employers may take away her passport . . . [a]nd she may not know anyone else in this country. She is not familiar with labor laws here, and even her employer may not be familiar with them. So it creates a very ripe situation for abuse." Id.

73. NEITZEL & SEIXAS, supra note 43, at 2.


75. Id.

76. Id.
Two thirds of all domestic workers earn close to or below the poverty line. Despite higher levels of education, low-wage immigrant women earn less than their male counterparts. Female day laborers, like other low-wage workers, encounter significant barriers to asserting their workplace rights, including a lack of knowledge about existing employment and labor laws and insufficient information regarding where to report violations. Isolated within the workplace of a private home, they also fear retaliation and physical and sexual violence. For domestic day laborers who lack legal authorization to work in the U.S., the fear of being deported and separated from their families makes them particularly vulnerable to workplace abuse, discrimination, and exploitation.

D. The Unique Vulnerability of Female Day Laborers

Another factor contributing to the invisibility of female day laborers is that the domestic work industries like housekeeping and childcare are often neither socially nor legally recognized as "real work." Domestic work is performed inside private homes, outside the public sphere normally associated with employment, and the tasks performed by domestic workers are those often associated with the voluntary caring roles of family members. As documented in the child care field, the association of domestic work with unpaid "women's work" has tangible economic consequences. Moreover, legislatures have excluded domestic workers

77. Id. at 4.
80. Id. See, e.g., Rivera v. NIBCO, 364 F.3d 1057, 1064 (9th Cir. 2004) (agreeing that “most undocumented workers are reluctant to report abusive or discriminatory employment practices” because they fear criminal prosecution and deportation), cert. denied, 544 U.S. 905 (2005). This article uses the term "unauthorized" workers to describe immigrant workers who do not have the legal authorization to work under U.S. laws, rather than “undocumented” workers, which are a subset of the immigrant population that is unauthorized to work. Three-quarters of the day labor workforce are unauthorized workers. REBECCA SMITH, NAT’L EMPLOYMENT LAW PROJECT, GLOBALIZATION AND MIGRATION FOR WORK: HUMAN RIGHTS QUESTIONS n. 1 (2009), available at http://nelp.3cdn.net/4264418c3fa43f8b26_ccm6bnc1z.pdf. See also, Where the Women Wait, supra note 1 (“[A] lot of [the domestic day laborers] are illegal immigrants . . . . Being a domestic day laborer is one of their few safe options for making a little money.”), and Working across Borders, supra note 58 at 50.
81. Domestic Workers United & Datacenter, supra note 18, at 15. See also, PIERRETTE HONDAGNEU-SOTELO, DOMÉSTICA: IMMIGRANT WORKERS CLEANING AND CARING IN THE SHADOWS OF AFFLUENCE 9-12 (2d ed. 2007).
82. DOMESTICA, supra note 81, at 9.
83. Smith, supra note 20, at 591.
from many of the major federal and state laws designed to protect employees, thus reinforcing the notion that the domestic work industry is a second-tier sector unworthy of first-tier protection.

Six pieces of federal labor and employment legislation exclude female day laborers who perform domestic work. First, the National Labor Relations Act (NLRA) guarantees employees the right to organize a union and bargain collectively with their employers, but specifically excludes domestic workers from its definition of “employee.” Unions such as UNITE HERE (hotel, restaurant, and textile workers) and the Service Employees International Union (SEIU) have made significant gains in organizing low-income immigrant women from the same communities that include female day laborers, working in similar, less contingent areas of the service-sector. But the NLRA exclusion of domestic workers leaves domestic day laborers un-unionized, at the periphery of the labor movement.  

Second, until 1974 the Fair Labor Standards Act (FLSA), which sets federal minimum wage rates, maximum hours, and overtime compensation for employees in certain occupations, completely excluded domestic workers. Today the FLSA still excludes from coverage “casual” employees such as “babysitters” and “companions” for the sick or elderly.

Third, regulations promulgated under the Occupational Safety and Health Act (OSHA) explicitly exclude domestic workers from the Act’s protections “[a]s a matter of policy.” This exclusion leaves domestic workers vulnerable to exposure to toxic chemicals, unsanitary conditions, and other workplace hazards. Fourth, Title VII of the Civil Rights Act

85. Across the country, unions have used innovative approaches to overcome obstacles to organizing child care workers. In addition to the recent Illinois and New York victories, supra text accompanying note 19, AFSCME, SEIU, the United Auto Workers and The Association of Community Organization for Reform Now (ACORN) have successfully organized low-wage child care providers in New York, Massachusetts, Seattle, Pennsylvania, and Los Angeles. Brooks, supra note 19. For a detailed history of the historical exclusion of women from mainstream labor unions, see, e.g., Dorothy Sue Cobble, The Other Women's Movement: Workplace Justice and Social Rights in Modern America (2005).
86. 29 U.S.C. § 213(a)(15) (2006). Furthermore, live-in domestic workers, unlike most other employees in the U.S., cannot get overtime under FLSA. 29 U.S.C. § 213(b)(21). Under New York state law, while domestic workers who do not live in their employer’s home are entitled to overtime at a rate of one and a half times their regular rate after 40 hours of work in a week, live-in domestic workers are only entitled to overtime at a rate of one and a half times the minimum wage and then only after forty-four hours of work in a week. N.Y. COMP. CODES R. & REGS, tit. 12, § 142-2.2 (2010); see also DOMESTIC WORKERS UNITED & DATACENTER, supra note 18, at 4.
87. 29 C.F.R. § 1975.6 (2009).
88. DOMESTIC WORKERS UNITED & DATACENTER, supra note 18, at 19, 23. “Not only are new immigrants less likely to complain about job hazards, but they also tend to return to work quickly despite potentially serious job-related injuries and illnesses.” AFL-CIO, IMMIGRANT WORKERS AT RISK: THE URGENT NEED FOR IMPROVED WORKPLACE SAFETY AND HEALTH POLICIES AND PROGRAMS
prohibits discrimination on the basis of “race, color, religion, sex, or national origin,” but applies only to employers with fifteen or more employees. Because most female day laborers are employed as solitary domestic workers in the private homes of individuals, virtually every female day laborer in the U.S. is de facto excluded from Title VII’s anti-discrimination protections.

Fifth, the Americans with Disabilities Act (ADA) prohibits discrimination on the basis of disability, but also applies only to employers with fifteen or more employees. And lastly, the Age Discrimination in Employment Act (ADEA) protects individuals forty years or age or older from age-based employment discrimination, but only covers employers with twenty or more employees.

In addition to these specific exclusions, female day laborers are vulnerable to misclassification as “independent contractors,” which can further strip them of protections otherwise guaranteed by minimum wage standards, workers’ and unemployment compensation laws, Social Security and disability benefits. Finally, under the laws of most states, domestic

---


92. Domestic workers are considered household employees regardless of whether they are paid on an hourly, daily or weekly basis, or by the job, or whether they are hired through an agency, so long as the employer can control how the work is done. DEP’T OF TREAS., I.R.S. PUBLICATION 926, HOUSEHOLD EMPLOYER’S TAX GUIDE (2009), available at http://www.irs.gov/publications/p26/ar02.html. Self-employed independent contractors generally supply their own cleaning equipment and materials; if they are provided by the employer, the domestic worker is more likely to be an employee, not an independent contractor. Id.. The misclassification of employees as independent contractors is a nationwide problem. See, e.g., SIGURD R. NILSEN, U.S. GOVT ACCOUNTABILITY OFFICE, EMPLOYEE MISCLASSIFICATION: IMPROVED OUTREACH COULD HELP ENSURE PROPER WORKER CLASSIFICATION 1 (2007), available at http://www.gao.gov/new.items/d07859t.pdf.

Misclassifying employees as independent contractors results in a loss to the federal government of income, Social Security and unemployment tax revenue. Id. Recently, the Obama administration has signaled a willingness to more aggressively pursue companies that misclassify employees as independent contractors, as part of a deficit reduction strategy. Steven Greenhouse, U.S. Cracks Down on Contractors as a Tax Dodge, N.Y. TIMES, Feb. 17, 2010. A recent decision at the federal appellate level, wherein delivery drivers were denied the right to join the Teamsters Union because they were determined to be independent contractors, not employees, illustrates the ambiguities inherent in the various definitions of employee. FedEx Home Delivery v. NLRB, 563 F.3d 492 (D.C. Cir. 2009). Although the National Labor Relations Board had found that FedEx, the putative employer of the home delivery drivers "exercised substantial control" over the performance of the driver’s functions (including dress codes and vehicle requirements), the United States Circuit Court of Appeals for the District of Columbia found that the drivers had “entrepreneurial potential,” because they could operate multiple routes as well as hire helpers, and that therefore they should be considered independent contractors. Id. at 509-10.

93. For a comprehensive discussion of employee status in the changing workplace, see Katherine V. W. Stone, Legal Protections for Atypical Employees: Employment Law for Workers without
workers have no right to overtime, sick time, vacation, health care or workers’ compensation.\textsuperscript{94}

Moreover, through judicial action and interpretation, domestic workers have been further excluded from the labor and employment law protections available to other workers, making female day laborers even more vulnerable than their socio-economic and immigration status might alone indicate.\textsuperscript{95} The resultant devaluation of domestic work creates a perceived “informal” environment in which employers have greater opportunities to violate their (however few) formal legal responsibilities.\textsuperscript{96} Workers with valid complaints have little recourse when the rights they are entitled to are violated.\textsuperscript{97}

\textit{Workplaces and Employees without Employers}, 27 BERKELEY J. EMP. & LAB. L. 254 (2006). In 1992, the Supreme Court held in \textit{National Mutual Insurance Co. v. Darden} that the common-law agency doctrine rather than the broader economic realities test should govern the determination of employee status for purposes of the Employee Retirement and Income Security Act (ERISA). 503 U.S. 318, 322-23 (1992). The Court stated, “In determining whether a hired party is an employee under the general common law of agency, we consider the hiring party’s right to control the manner and means by which the product is accomplished.” \textit{Id.} at 323. Soon after the decision, the Occupational Safety and Health Review Commission (OSHRC) indicated that it will follow \textit{Darden} for purposes of determining who is an “employee” under OSHA. \textit{Loomis Cabinet Co.}, 15 OSHC (BNA) 1635, 1992 OSHD (CCH) § 29,775 (No. 88-2012, 1992), \textit{cited in 27 BERKELEY J. EMP. & LAB. L. 254 at 261}. Hence OSHA does not apply the expansive definition of “employee” found in the FLSA.” 27 BERKELEY J. EMP. & LAB. L. 254 at 261. The FMLA has strict eligibility requirements that exclude many temporary workers. \textit{Id} at 263. To be eligible, an employer has to employ fifty or more employees during a twenty-week period. \textit{Id}. In addition, the employee must have worked for the employer for at least twelve months and for at least 1,250 hours during the preceding twelve months. \textit{Id}. Temporary workers often cannot satisfy the eligibility requirement and hence often are not eligible for coverage under the Act. \textit{Id}. However, if a joint employer relationship is found, the temporary worker's user firm, as the secondary employer, may have an obligation to comply with FMLA. \textit{Id}. (citing Harbert v. Healthcare Servs. Group, Inc., 391 F.3d 1140, 1148 (10th Cir. 2004)).

\textsuperscript{94} Nieves, supra note 72.

\textsuperscript{95} In addition to exclusions at the federal and state court levels from employment rights and remedies for workers who lack proper authorization to work (referred to more commonly, but less precisely, as “undocumented workers”), the Supreme Court’s decision in \textit{Hoffman Plastics Compounds, Inc. v. National Labor Relations Board} further limited unauthorized workers’ right to an effective remedy for violation of their freedom of association under the National Labor Relations Act. 535 U.S. 137 (2002). \textit{See also} National Labor Relations Act, 29 U.S.C. § 157 (2006). In \textit{Hoffman}, the Supreme Court held that an unauthorized worker, fired in retaliation for participating in a union organizing campaign, was not entitled to compensation for lost wages under the NLRA due to his immigration status. 535 U.S. at 151-52. Post-\textit{Hoffman}, employers have tried to expand the back pay limitation to other workplace protections, such as wage and antidiscrimination laws, with limited success. Keith Cunningham-Parmeter, \textit{Redefining the Rights of Undocumented Workers}, 58 AM. U. L. REV. 1361, 1363-1364 (2009).


\textsuperscript{97} DOMESTIC WORKERS UNITED \& DATACENTER, supra note 18, at 19, 21-22. As one housekeeper recounted, “My employer . . . did not allow us to sit down or talk to other people. During lunchtime, we were not allowed to use their utensils. We were supposed to use disposable plates, spoons, forks and cups. After using them, we were supposed to put them in the dishwasher and use them again. She yelled for no reason. She insisted on scrubbing the carpet on my knees. Every time she came into the room, I was supposed to stand. When she would pass by, I’d have to stand aside and not look at her. She always made me feel stupid.” \textit{Id}. 
The vulnerability of women in the day labor market begins long before they actually enter into an employment relationship. Women’s reluctance to search for work in the same public places as male day laborers stems from the risks of violence faced by all day laborers in such spaces. Day laborers are regularly exposed to harassment, intimidation, and violence. Nearly a quarter of surveyed day laborers reported being physically assaulted while looking for work or at the work site, which included being pushed, hit or beaten. This rate of aggravated assault was over 100 times the rate for the comparable regional population at large. Over eight percent (fifty-eight times the regional rate) reported being robbed while looking for work or returning from work. Female day laborers report being sexually assaulted or threatened with assault by male employers. These women can sometimes rely on each other in order to steer clear of known violent employers, but such informal protective mechanisms are insufficient in safeguarding women’s safety and health on the job.

In addition to abuse from potential or actual employers, women who solicit work on street corners and other public spaces frequently encounter insults and attacks from passers-by. Simply showing up in search of work means facing down the threat of aggressive attacks on their dignity, workplace rights, physical safety and economic well-being.

III. LEGISLATIVE AND PUBLIC POLICY APPROACHES: TO PUNISH OR PROTECT?

In developing day labor policy, local governments often encounter community attitudes rooted in anti-immigration sentiment.
Municipalities have traditionally responded to day labor markets, if at all, using one of two approaches: punitive or protective. How local governments choose to develop and implement regulations and public policy regarding day labor markets, especially in the face of such animus, has immediate and contrary social and economic consequences for day laborers.

A. Punitive Policies

When confronted by organized anti-immigrant animus, governments frequently react by diagnosing day laborers themselves as the problem. Punitive policies include targeting day laborers for police surveillance and arrests, issuing tickets to laborers and contractors, jailing day laborers for loitering, reporting contractors to the Internal Revenue Service, reporting day laborers to U.S. Immigration and Customs Enforcement, and using town or village housing codes to evict immigrant tenants from their homes. Interviews with day laborers illustrate the multitude of sanctions.

106. Id. at 15-23. Communities adopt either a strategy of “exclusion” for example by enacting loitering and traffic ordinances designed to eliminate the presence of day laborers, or one of “shelter” by opening worker centers designed to provide employment services. Day Labor Markets and Public Space, supra note 60 at 139-40.

107. See GUERETTE, supra note 7, at 16 (“Strategies that focus exclusively on arresting day laborers or enforcing immigration laws are unlikely to be effective in the long term.”). See also MANEY ET AL., supra note 9, at 8 (“[A]ny legislation that attempts to remove day laborers from communities or penalizes those who help to organize these workers will deepen human rights abuses and worsen community relations. Conversely, any legislation that facilitates legal immigration and encourages official hiring sites will protect human rights and improve community relations.”). See also Smith, supra note 80, at 5. The May 2008 Immigration and Customs Enforcement (ICE) raid at the Postville, Iowa Agriprocessors plant makes clear that punitive approaches that criminalize low-wage immigrant workers, rather than the employers who violate employment and labor laws, is not limited to state and local governments, but also includes action at the federal level. In that case, of the almost 600 workers arrested, 306 were prosecuted for Social Security fraud and identity theft, even though the ICE agency was aware that Agriprocessors was then under investigation by at least three state and federal labor agencies for employment and labor law violations. Id.

108. Several ordinances banning solicitation of day labor work have been ruled unconstitutional on First Amendment grounds. In Comite De Jornaleros De Rendondo Beach v. Redondo Beach, 475 F. Supp. 2d 952 (C.D. Cal. 2006), a federal District Court in Los Angeles overturned fines imposed on day laborers by the City of Redondo Beach, California. The court found that though the city’s anti-solicitation ordinance was content-neutral, it was not narrowly tailored to address city’s asserted interests, nor did it leave open ample alternative channels for speech. Id. at 970. A similar result was reached in suburban Washington DC. In Town of Herndon v. Thomas, MI-2007-644, 2007 Va. Cir. LEXIS 161 (Va. Cir. Ct. Aug. 29, 2007), a Virginia state court addressed the validity of a Herndon, Virginia ordinance that prohibited motorists and pedestrians from soliciting employment except at a temporary site. The court reasoned that, though the ordinance was content-neutral, nevertheless it violated the First Amendment because it did not provide for ample alternative channels of communication. Id. Some solicitation ordinances, however, have been upheld. For example, in Calderon v. City of Vista, No. 06cv1443-L(LSP), 2006 U.S. Dist. LEXIS 54736 (S.D. Cal. July 31, 2006), a San Diego area federal court denied an application for temporary restraining order based on First Amendment against enforcement of a city ordinance that required employers of day laborers to register with the city.
that these workers face in seeking work on any given day: "They told me to get off the spot where I was looking for work. When I was going home later, the police found me again and gave me a ticket." By prosecuting and penalizing day laborers and their potential employers, local governments aim to eliminate day labor markets entirely.

Punitive responses contribute to a documented breakdown of community relations, as well as an increase in violations of the human rights of day laborers and their families. One recent study of day laborers on Long Island, an area that has historically taken a punitive approach to regulating day labor markets, found that government repression in the form of threatening, fining, and arresting day laborers correlated with significant increases in physical assaults by contractors and the police. Day laborers subject to Long Island's punitive policies also endured a significant increase in threats from strangers and merchants, ethnic slurs from police officers, injuries on the job, wage theft by contractors, and other violations of workplace standards and basic human rights. Punitive responses do more than depress the working conditions for day laborers; they fuel community discord. Policies like those in effect on Long Island serve to break down, rather than build up, relationships between day laborers, their families, and the greater community.

B. Protective Policies

By contrast, other local governments have chosen not to focus on day laborers themselves as the problem, but rather on the lack of regulation and the imbalance of power between day laborers and contractors. These

109. MANEY ET AL., supra note 9, at 14. Nine percent of surveyed day laborers reported having been arrested when searching for work, eleven percent reported receiving police citations while at a hiring site, fifteen percent reported having had their immigration status checked and thirty-seven percent reported having been required by law enforcement officials to leave a hiring site. ON THE CORNER, supra note 2, at 14.

110. For a discussion of the constitutionality of Section 15-9 of the Gaithersburg (MD) City Code, see 39 Op. Att'y Gen. 31 (Md. 2008) See also Lopez v. Town of Cave Creek, 559 F. Supp. 2d 1030 (D. Ariz. 2008) (day laborers' motion for a preliminary injunction granted on First Amendment grounds; plaintiffs' complaint alleged that the Deputy Mayor of the Town of Cave Creek acknowledged that the anti-loitering and solicitation ordinance at issue in the case had been enacted as a response to community concerns about an alleged rise in illegal immigration).

111. In the report, the DOJ advises that strategies that focus exclusively on arresting day laborers or enforcing immigration laws are unlikely to be effective in the long term. Such limited responses include conducting immigration sweeps and prohibiting day labor outright. GUERETTE, supra note 7, at 15.

112. MANEY ET AL., supra note 9, at 16.

113. Id. at 2.

114. Id. See also Editorial, In a Day-Labor Corner, N.Y. TIMES, Dec. 18, 2009, at A22 (criticizing an Oyster Bay, Long Island, anti-solicitation ordinance, which was adopted to eliminate the public presence of day laborers).

115. Strategies that seek to reduce the harms caused by day laborer sites—rather than those that seek to eliminate day laboring altogether—have been found to be more effective. GUERETTE, supra
cities (and, in some cases, the state governments that provide supplemental funding and other support) have implemented policies designed to increase the enforcement of existing labor and employment laws, as well as bridge the gap between existing laws and the realities of the day labor market. Such responses include the creation of formal, regulated day labor worker centers and legislative changes to extend employment and labor law protections to day laborers and other contingent workers. Once a city has created day labor centers, it may then seek to attract community volunteers and establish supplemental education and training programs for day laborers.

Municipalities nationwide, often in partnership with community and faith-based organizations or labor unions, have developed day labor worker centers that function in part as official hiring sites. Such centers are typically located near informal hiring sites, in order to create a viable alternative for workers and contractors. Most day labor worker centers provide fairly basic accommodations to workers and employers, and typically include restrooms, drinking water, telephones and parking facilities. Workers are better positioned to negotiate wages, the type and duration of work, and transportation to the worksite through a formal, comprehensive manual that profiled "creative solutions" implemented by several communities nationwide in response to issues related to the presence of day labor markets. In addition to strategies for developing successful community-based day labor centers, the manual emphasizes the importance of building community alliances, resolving conflict, mitigating racism and anti-immigrant sentiment and avoiding unconstitutional ordinances and laws.

As early as 2001, the County of Los Angeles Human Relations Commission prepared a comprehensive manual that profiled "creative solutions" implemented by several communities nationwide in response to issues related to the presence of day labor markets. In addition to strategies for developing successful community-based day labor centers, the manual emphasizes the importance of building community alliances, resolving conflict, mitigating racism and anti-immigrant sentiment and avoiding unconstitutional ordinances and laws.

While a small number of day labor worker centers are run by municipalities, cities like Los Angeles, Denver and Phoenix have provided public funds to centers run by community or faith-based organizations. Communities with stronger, more organized anti-immigrant organizations have fiercely opposed such governmental support, leaving the informal day labor economy unregulated and vulnerable to abuse.

On THE CORNER, supra note 2, at 6. The study found that 57% of these day labor worker centers are located along busy thoroughfares, 53% are located in predominantly residential areas and 18% are located near home improvement stores where day laborers often congregate.

Id.
Some day labor worker centers may also include classrooms that are used for worker education, language classes, community organizing and legal outreach. As such, day labor worker centers offer a marked improvement over informal hiring sites.

The creation of regulated day labor hiring sites accomplishes several goals. By establishing rules governing the search for work and the hiring of laborers, local governments bring a measure of regulation to an unregulated economy. Day labor centers typically select workers in order of arrival, and help to enforce minimum wage and other employment standards, placing a floor under conditions in the day labor market. Worker centers often require prospective employers to produce identification or record their license plates, making it easier for enforcement agencies to track down alleged violators of employment laws, while also discouraging potential abusers. This reduces the amount of wage theft by employers, whose anonymity in the informal hiring process would otherwise allow for easy evasion.

Day labor centers serve two other vital purposes. First, like worker centers in the formal economy, day labor centers can provide immigrant groups with education, training in a holistic set of skills, and information on legal rights and remedies. Second, the worker center model can serve as a hub of community and workplace organizing by day laborers themselves. In Washington, D.C., day laborers serve as the intake staff at a walk-in wage-theft workshop sponsored by the advocacy group Jobs with Justice. In Austin, Texas, a worker center affiliated with the AFL-CIO has generated a city-level Day Labor Advisory Committee to recommend policies for day laborers. Worker centers affiliated with labor unions allow immigrant and low-wage communities to take advantage of the union's access to policy-makers and legislators.

In addition to creating safe, regulated spaces, some state governments have endeavored to protect day laborers by expanding labor and

---

122. On the Corner, supra note 2, at 7.
123. Id. at 7-8. The National Day Labor Survey found that most worker centers required job seekers and employers to register with center staff; set minimum wage rates; and monitored labor standards, employer behavior and worker quality. Id.
124. Maney et al., supra note 9, at 21. Out of eight communities on Long Island, NY with official and unofficial day labor hiring sites, the three official hiring sites scored below average for levels of violence, intimidation and harassment. Id.
125. Id.
126. Id. at 19.
128. Immigrants Vulnerable as Bosses Shortchange Workers, supra note 49.
130. Id.
employment law protections to more fully cover contingent workers. The Illinois state legislature, after finding that existing labor and employment laws were inadequate to safeguard day laborers' rights, passed the Day and Temporary Labor Services Act in 2000. The Act covers over 350 temporary staffing agencies, and, among other things, requires day and temporary labor service agencies to keep records regarding the name of the laborer, the name and nature of the work to be performed, the wages offered, the name and address of the third party client for whom the day laborer will perform temporary work, the terms of the transportation, and whether meals or equipment are provided. Day and temporary labor service agencies are required to register with the State, and to provide the Department of Labor records access for the purposes of investigating complaints and enforcing the terms of the Act. Additionally, the Act provides day laborers with a private right of action to enforce the terms of the Act. Specifically carved out of the Act's requirements are "democratically run nonprofit day labor centers," which charge no fee for their services.

State lawmakers in Colorado and Minnesota have taken legislative steps to prevent independent contractor misclassification and abuse in the construction and day labor industries. Colorado mandates workers' compensation coverage for all on-site construction workers, while Minnesota has created a presumption of an employee-employer relationship in the construction industry, avoidable only through a certified exemption

131. 820 ILL. COMP. STAT. 175/5 (2009). The Act defines "day and temporary labor" as "work performed by a day or temporary laborers at a third party client, the duration of which may be specific or undefined, pursuant to a contract or understanding between the day and temporary labor service agency and the third party client." Id. It specifically excludes from the definition of day labor any labor or employment of a professional or clerical nature. Id.

132. Id. §§ 10 - 25. If a third party client leases or contracts with a day and temporary service agency for the services of a day or temporary laborer, the third party client shall share all legal responsibility and liability for the payment of wages under the Illinois Wage Payment and Collection Act and the Minimum Wage Law. Id. § 85(b).

133. Id. §§ 45 - 55.

134. Id. § 95. In December of 2009, a group of day laborers filed a class action lawsuit against SelectRemedy, a temporary staffing agency that had contracted with Wal-Mart to staff its warehouse operations. The complaint alleges that SelectRemedy violated the Act by underpaying the day laborers. Daarel Burnett II and Annie Sweeney, Temp Agency Shorted Workers' Wages, Lawsuit Says, CHI. TRIB., Dec. 10, 2009.

135. Id. § 2. The findings of the Illinois General Assembly were that while current law was inadequate to curb the abuses of day laborers who solicit work on street corners, "democratically run nonprofit day labor centers, which charge no fee for their services" (unlike for-profit temporary services and day labor agencies) had been established in Illinois and other states in order to "provide an alternative for day or temporary laborers to solicit work on street corners." Id. Therefore, since the Illinois General Assembly viewed such nonprofit centers as solutions to the problems addressed by the Act, such centers would not be subject to the regulations promulgated under the Act intended to curb abuses in the for-profit temporary and day services industry.

Similarly, Washington State established a legal presumption that workers providing labor or services for a fee are "employees," covered as such by all state labor and employment laws. Louisiana and New York have introduced similar legislation. Austin (TX), Kansas City (MO) and Denver (CO) have each passed local laws criminalizing the non-payment of wages, one of the most frequent complaints of day laborers that, under most existing state and federal law, are subject only to civil penalties for employer violation. These legislative measures have helped to curb some of the most egregious abuses of day laborers.

C. Legislative Approaches Should be Inclusive of Domestic Day Laborers

Whether punitive or protective, the foregoing approaches have focused principally if not exclusively on day labor markets for construction and landscaping, thereby effectively ignoring domestic day laborers. The day labor worker center model that emerged during the past decade has delivered pragmatic solutions to local concerns about day labor markets, and has helped curb some of the abuses rampant in construction and similar industries. However, most day labor worker centers (with the notable exceptions detailed in the next section) do not address the particular needs of domestic day laborers. For example, the National Day Labor Survey found that the success of day labor worker centers depends in part on having a visible and central location, near where day laborers search for jobs and employers look for workers. Very few day labor centers advertise domestic services. Furthermore, domestic work is largely referral-based, making the erection of a physical hiring hall inapposite. Even when day labor worker centers do include domestic day labor, the creation of a hiring

137. MINN. STAT. § 181.723 (2009).

138. See, e.g., WASH. REV. CODE § 51.08.180 (2009) (defining "worker" as " every person in this state who is engaged in the employment of an employer under this title, whether by way of manual labor or otherwise in the course of his or her employment; also every person in this state who is engaged in the employment of or who is working under an independent contract, the essence of which is his or her personal labor for an employer under this title, whether by way of manual labor or otherwise, in the course of his or her employment . . . ."). See also MASS. GEN. LAWS ANN. ch. 149, § 148B (2009). "For the purpose of this chapter and chapter 151, an individual performing any service, except as authorized under this chapter, shall be considered to be an employee under those chapters unless: (1) the individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and (2) the service is performed outside the usual course of the business of the employer; and, (3) the individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed." Id.


space alone fails to address the continued exclusion of domestic workers from local, state and federal labor and employment laws.

IV. SHIFTING THE BALANCE OF POWER

A. Empowering Female Day Laborers

As the demand for day labor grows, the need to make day labor worker centers inclusive of women becomes critical. Women face the same challenges in obtaining work on the corner as their male peers—harassment, violence, inclement weather, and exploitation. As one female day laborer explains, “[w]e suffer the changing weather throughout the year, the heat of the sun and cold in winter, because where we wait to be picked up is on the corner. Help us secure a space where we can be safer.” In addition to these physical amenities, the oversight provided by day labor centers can prevent a “race to the bottom” in wages and working conditions for female day laborers.

Day labor worker centers offer the dual benefits of government regulation and legal protection, while sending a very public message of community acceptance that can serve to discourage hostility and violence against female day laborers. The Hollywood Community Job Center, in California, advertises domestic day labor. Women assemble at the job center to study English, and to create and distribute fliers and business cards advertising dog-walking, baby-sitting, cleaning or helping with parties.

In order to identify female day laborers who might benefit from the services offered by the center, one of its organizers, a Guatemalan native, targets bus stops and shopping areas looking for women who resemble “[her] mom.”

Community groups, city agencies, faith-based organizations and other potential operators of day labor worker centers must concentrate on including female workers in the center’s labor pool. The conflict around setting up a domestic labor hiring site in a Williamsburg church, described in the Introduction, underscores the challenges inherent in establishing a neutral site that will both benefit workers and attract potential employers.

Female-inclusive day labor centers, like other worker centers, should retain

141. *See*, *e.g.*, *Poor Economy Forces More into Day Labor*, supra note 16.
142. *Invisible to Most*, supra note 1.
145. *Id*.
146. *Id*.
147. *Female Day Laborers*, supra note 1.
the functionality of a hiring site while creating a platform for worker education, organization and collective action.148

However, in order to truly shift the balance of power for female day laborers, worker centers must offer more than just shelter from the storm. Formal day labor hiring sites may provide physical and legal protection, and may be made female-inclusive or all-female, but they do not necessarily alter the structure and relationship of work in a way that genuinely changes these women’s lives. Female day laborers and their advocates have confronted this limitation by developing domestic worker collectives, a small but potentially transformative model that empowers workers directly. The Women’s Collective of the San Francisco Day Labor Program (SF-DLP) presents one example of a day labor worker center that actively addresses the particular needs and concerns of female domestic workers.149 The SF-DLP operates a day labor worker center through which employers directly hire domestic workers.150 The female workers receive a guaranteed hourly wage between $11 and $17 an hour, with a three-hour, $42 minimum.151

Because domestic work depends heavily on familial or community-based networking, female day laborers may draw on those connections in order to organize themselves in ways that improve their wages and make them less vulnerable to exploitation.152 The worker center model employed by the SF-DLP recognizes the particular realities of domestic work—that it is largely based on referrals, for example—and encourages members of the collective to establish relationships with employers that provide a modicum of stability to the day labor employment relationship.153 Members of the

148. See, e.g., JENNIFER GORDON, SUBURBAN SWEATSHOPS: THE FIGHT FOR IMMIGRANT RIGHTS (2005). Despite the shared interest of labor unions and day laborers and their advocates in improving working conditions for low-wage workers, only fourteen percent of worker centers surveyed were developed by unions or in connection with union organizing campaigns. See JANICE FINE, NEIGHBORHOOD FUNDERS GROUP, WORKER CENTERS: ORGANIZING COMMUNITIES AT THE EDGE OF THE DREAM 14-18 (2006), available at http://www.nfg.org/publications/worker_centers_with_cover.pdf. The 2006 formal partnership agreement between the AFL-CIO and NDLON may help to strengthen the relationship between these two groups of workers’ rights advocates. See id.

149. The SF-DLP is a project of La Raza Centro Legal, an organization that provides immigrant legal services and performs civil rights advocacy. See La Raza Centro Legal, About the Day Labor Program, http://techforpeople.net/~lrl/article.php/about_day_labor (last visited March 8, 2010). The Day Labor Program is affiliated with a network of immigrant rights groups in San Francisco Bay Area including Bay Area Immigrant Rights Coalition (BAIRC) and Deporten La Migra, which itself includes the San Francisco Living Wage Coalition and Mujeres Unidas Activas. Preeti Shekar, Day Labor Program Unites Politics and Services, 14 RACE, POVERTY & THE ENV'T 42 (2007), available at http://www.urbanhabitat.org/files/Shekar.14-2%20Education.pdf.

150. Shekar, supra note 149.

151. Id.

152. See Daza, supra note 66.

collective also have access to legal representation if their workplace rights are violated.

Yet the real strength of the Women’s Collective, and why it can be a more transformative presence within the community than most day labor hiring sites, is the fact that it functions as a center of community and worker organizing. About seventy-five women meet weekly to develop strategies for ensuring health and safety in the domestic work industry, promote access to environmentally safe jobs, distribute information on toxic chemicals in cleaning products, discuss workplace ergonomics, and participate in other workshops and trainings. English and computer classes are designed to provide the predominantly immigrant population with the skills and information they need to raise awareness and resist workplace exploitation and abuse. The Collective’s popular education strategy is designed to be peer-led and participatory, presenting another opportunity to build leadership and share information. The Collective also serves as a center of organizing around immigration issues, mobilizing workers and their advocates in response to recent waves of Immigration and Customs Enforcement raids against unauthorized workers.

There are similar domestic worker collectives in New York and Maryland, with plans to replicate them elsewhere. Worker centers can be part of a comprehensive legislative and community partnership that not only provides greater oversight and workplace protection, but also empowers women to organize collectively for more transformative change within the domestic work industries. By increasing support for housekeeping collectives and domestic day labor worker centers, local governments and community stakeholders can improve wages, reduce exploitation, and cultivate the social and political networks that strengthen immigrant communities.

B. Regulating Employers

The underfunding of labor and employment law enforcement agencies has perpetuated an informal domestic work economy with minimum consequences for employers who ignore the few workplace rights that domestic workers do possess. Employers violate laws governing work

---

155. Shekar, supra note 149, at 43.
156. Id.
157. Id.
159. THE GLOVES-OFF ECONOMY, supra note 96, at 13.
conditions, wages, and work hours at alarmingly high rates.\textsuperscript{160} Furthermore, the power of federal, state, and local governments to enforce most labor laws is discretionary.\textsuperscript{161} Low levels of enforcement coupled with insignificant penalties for violations have given rise to normative sweatshop standards in the domestic work industries.\textsuperscript{162} The National Employment Law Project (NELP) recommends that the Department of Labor consult regularly with community groups, worker centers, unions and other stakeholders to get their help in identifying high-violation industries and partner with them in efforts to protect underpaid workers.\textsuperscript{163} NELP further suggests that the DOL create a community liaison office for ongoing consultation with the immigrant worker community, similar to that established by New York State in 2007.\textsuperscript{164} The U.S. Department of Labor recently announced the addition of 250 Wage and Hour Division investigator positions, as well as the launching of a national “We Can Help” campaign designed to “help connect America’s most vulnerable and low-wage workers with the broad array of services offered by the Department of Labor.”\textsuperscript{165} In the face of continued exclusion from other federal workplace protections, such as the OSH Act and the NLRA, improving working conditions for domestic day laborers will require an expansion of investigative and enforcement capacities on the local and state levels.\textsuperscript{166}

\textsuperscript{160} The nonpayment and underpayment of wages by contractors is a national problem with a patchwork of incomplete enforcement solutions. Almost half of all day laborers surveyed on Long Island reported having worked for contractors who did not pay them, one form of the routine “wage theft” reported nationwide by day laborers and their advocates. \textit{Maney et al., supra} note 9, at 13.


\textsuperscript{164} \textit{Natl Employment Law Project, Rebuilding a Good Jobs Economy, supra} note 52, at 8 (referring to the New York Department of Labor Bureau of Immigrant Workers Rights).


\textsuperscript{166} \textit{See} Holding the Wage Floor, \textit{supra} note 79, at 8. From 1975-2004, the number of Wage and Hour investigators decreased by 14\% (from 921 to a 788 individuals nationwide) and compliance actions decreased by 36\%. \textit{Annette Bernhardt & Siobhan McGrath, Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004, Econ. Policy Brief 1-2} (2005), \textit{available at} http://www.nelp.org/page/-/EJP/TrendsInEnforcement2005.pdf. In contrast, the number of businesses increased from 7.8 million to 8.3 million. Holding the Wage Floor, \textit{supra} note 79, at 8. Recently, the U.S. Department of Labor announced the addition of 250 Wage and Hour Division investigator positions, as well as the development of a national “We Can Help” campaign designed to “help connect America’s most vulnerable and low-wage workers with the broad array of services offered by the Department of Labor.” \textit{U.S. Dep’t of Labor, Wage and Hour Div.}, \textit{news release}, Apr. 1,
C. Expanding Workplace Protections

In addition to developing and supporting domestic day labor worker centers, federal, state and local lawmakers must reexamine the gendered approach to day labor and enact legislative changes to bridge the gap between existing employment laws and the realities of the domestic day labor market. Advocates for day laborers and for domestic workers have each put forward a “Bill of Rights,” which, if passed at the federal or state level, would expand labor and employment protections for those respective groups of low-wage workers. With respect to female day laborers, legislative proposals relating to day labor and domestic work should be considered together, rather than as independent policies concerning separate groups of workers.

Attempts at the federal level to legislate greater protection for day laborers generally, and domestic day laborers particularly, have been unsuccessful to date. The Day Labor Fairness and Protection Act, drafted with the participation of the National Day Labor Organizing Network (NDLON) and originally introduced in the House of Representatives by Rep. Luis Gutierrez in 2003, would protect and expand the wage-and-hour rights of day laborers, impose greater record-keeping, notice and health and safety requirements on day labor employers, and establish joint liability for day labor broker and work-site employers. That legislation failed to

---

167. A recent case reflects the changing economy and the need to “bridge the gap” between existing employment law concepts and the changed reality of the nature of work. In Barfield v. New York City Health and Hosp. Corp., a nurse worked at Bellevue Hospital, not as an employee, but rather as a “temporary” worker deployed by several different temporary staffing agencies during each week period. 537 F.3d 132, 135 (2d Cir. 2008). The record indicated that the nurse, Anetha Barfield, had worked over forty hours during a single week on at least sixteen occasions, and sued the hospital for failure to pay overtime under the Fair Labor Standards Act (FLSA). Id. at 135-37. The hospital argued that because it was not Barfield’s “employer,” it was not responsible for payment of any overtime required by the FLSA. Id. The Second Circuit relied on its earlier holdings applying FLSA standards to determine that the hospital was Barfield’s joint employer as a matter of law. Id. at 144. Explaining its reasoning, the Court noted that during the period in question, Barfield was employed exclusively at Bellevue, used the hospital’s equipment to perform her duties, did work that was integral to its operation, and her responsibilities were the same regardless of which agency referred her for any given shift. Id. at 145. Bellevue also set Ms. Barfield’s working hours, and had the power to discontinue using her if there were any problems with her performance. Id. at 144-45.


emerge from committee.\textsuperscript{170} Attempts to amend the FLSA to clarify the exemption for domestic workers in the home health care industry from certain provisions of that Act have also met with failure.\textsuperscript{171}

Day laborers and their advocates have had greater success at the state level in amending existing labor and employment laws to include explicit definitions of "day laborer," "day labor site," and "day labor employer," among other terms.\textsuperscript{172} Domestic Workers United, an advocacy organization, is pushing forward a Domestic Workers' Bill of Rights in New York State, designed to address the longstanding exclusion of domestic workers from that state's labor protections.\textsuperscript{173} The Bill of Rights provides, among other things, for: (a) a minimum wage of $14.00/hour, or $16.00/hour if the employer does not provide health benefits; (c) overtime pay for work exceeding 40 hours per week; (d) family and medical leave and at least five annual sick days; (e) at least one day off per week, and five paid personal days each year; (d) written notice of termination 21 days before the final pay period, with severance requirements; (e) removal of language excluding domestic workers from state labor and human rights laws, and deletion of language that excludes domestic workers from the definition of "employee."\textsuperscript{174} While many of the provisions in the Domestic Workers' Bill of Rights are tailored to more permanent domestic employment situations, rather than those of female day laborers, bringing domestic workers into the fold of existing labor and employment protections represents an important first step in shifting the gross imbalance of power between female day laborers and their employers.\textsuperscript{175}

Given the marginalization and invisibility of so many female day laborers, they and their advocates need the ability to enforce workplace rights even when state and local governments lack either the capacity or the political will to do so. Along with adequate funding and staff for the

\begin{footnotes}
\item[171] Fair Home Health Care Act, H.R. 3582, 110th Cong. (2007). The bill was read twice and referred to the Subcommittee on Workforce Protections of the House Committee on Education and Labor.
\item[172] Legal Protections and Advocacy, supra note 169 ("To date, six states—Arizona, Florida, Georgia, Illinois, New Mexico and Texas—have adopted statewide legislation affecting the labor rights of day laborers. These laws generally provide for written disclosures of terms and conditions of employment to day laborers, regulate deductions from wages (including for meals, transportation, and check cashing), implement required registration of certain labor brokers, and impose record-keeping requirements on them.").
\item[173] Domestic Workers United & DataCenter, supra note 18, at 35.
\item[175] The National Domestic Worker Alliance is also campaigning for state and federal laws guaranteeing basic labor rights for domestic workers. For a description of current campaigns, see The National Domestic Workers Alliance website, available at http://www.nationaldomesticworkeralliance.org/campaigns (last visited March 31, 2010).
\end{footnotes}
agencies responsible for enforcing workplace standards, female day laborers would benefit from a private right of action. Legislation introduced in the construction worker context in New York includes a private right of action, including treble damages and attorney’s fees. The Illinois Day Labor and Temporary Labor Services Act permits “any party” to seek penalties under the act, giving workers and their advocates the tools necessary to enforce statutory rights. Illinois’ Minimum Wage Act also has private right of action, as do many other state and federal laws. Any expansion of existing labor and employment rights should necessarily recognize and include this vital enforcement mechanism.

Outside the legislative arena, female day laborers can and should engage with their natural allies in the advocacy world and in organized labor. Several national labor unions have expressed interest in organizing day laborers in the construction industry. In 2006, NDLO\textsuperscript{n} affiliated with the AFL-CIO to pursue a joint objective of improving wages and working conditions for day laborers.\textsuperscript{180} NDLO\textsuperscript{n} is the largest association of day laborers.

---

\textsuperscript{176} S4925, 2009 Leg., Reg. Sess. (N.Y. 2009); see also CATHERINE K. RUCKELSHAUS, NAT’L EMPLOYMENT LAW PROJECT, SUMMARY OF INDEPENDENT CONTRACTOR REFORMS 5 (2008).

\textsuperscript{177} 820 ILL. COMP. STAT. 175/95 (2010). For violation of any Illinois statute relating to wages, individual laborers can bring an action in Illinois circuit court on their own behalf or on behalf of a class and recover the amount of any lost salary, benefits, or other compensation plus an equal amount in liquidated damages. See ILL. ADMIN. CODE tit. 45, § 260.450 (2010). See also Arrez et al. v. Kelly Service, Inc. 552 F. Supp.2d 997 (N.D. Ill. 2007), (denying defendant’s motion to dismiss and holding that the IDTLSA incorporates the provisions of the IWPCA and IMWL and provides for liquidated damages).

\textsuperscript{178} 820 ILL. COMP. STAT. ANN. 105/12 (West 2010). Arizona’s minimum wage law, passed by ballot initiative, also contains private right of action provisions, as well as a representative cause of action, which is helpful for when workers are afraid to come forward to file their own claims. ARIZONA REV. STAT. tit. 23 Ch.2 Art 8 §364. Representatives may include unions or community advocacy groups, in addition to individuals. Id. Ohio’s Minimum Wage ballot initiative and San Francisco’s Living Wage Law also contain representative causes of action. See S.F., CAL., ADMIN. CODE ch. 12R (2010). OHIO REV. CODE tit. 41 Ch. 4111 § 14(H).

\textsuperscript{179} In addition to enhanced enforcement mechanisms, immigrant workers must have access to the courts to enforce their rights, without fear of collateral action against them with respect to their immigration status. See, e.g., NAT’L EMPLOYMENT LAW PROJECT, ICED OUT: HOW IMMIGRATION ENFORCEMENT HAS INTERFERED WITH WORKERS’ RIGHTS (2009), available at http://www.americanrightsatwork.org/dmdocuments/ARAWReports/icedout_report.pdf. In 2008, the King County (Washington) Superior Court adopted the following policy: “The King County Superior Court judges affirm the principle that our courts must remain open and accessible for all individuals and families to resolve disputes under the rule of law. It is the policy of the King County Superior Court that warrants for the arrest of individuals based on their immigration status shall not be executed within any of the King County Superior Court courtrooms unless directly ordered by the presiding judicial officer and shall be discouraged in the King County Superior Court courthouses unless the public’s safety is at immediate risk.” KING COUNTY SUPERIOR COURT JUDGES, COURT POLICY: NO COURTRoom ARRESTS BASED ON IMMIGRATION STATUS (2008), available at www.kingcounty.gov/courts/SuperiorCourt/~media/courts/SuperiorCourtDocs/ICENoArrest.ashx.

labor worker centers in the United States. Under the AFL-CIO partnership agreement, central labor councils and state labor federations agreed to cooperate with NDLON to promote workplace rights for day laborers, enact immigration reform, combat anti-immigrant worker legislation, support day labor worker centers, and develop educational programs for day laborers and union members on issues of occupational safety and health, wage and hour enforcement and other legal protections. The wholesale exclusion of domestic workers from the NLRA does make such collaborations between labor unions and domestic day laborers more difficult. But in other contexts, unions have collaborated with worker centers to advance shared interests broader than organizing and recruiting union members, and have recognized that such partnerships can operate as exchanges of resources, skills and/or services. Day labor centers, especially those that provide social services and opportunities for leadership development, could serve as a resource to labor unions’ immigrant members. In turn, domestic day labor worker centers could benefit from the relationships many unions have with state and local lawmakers, which could help female day laborers more effectively advocate for the kinds of legislative and policy changes necessary to shift the current imbalance of power between domestic day laborers and their employers.

V. CONCLUSION

Though often invisible, female day laborers are a real and growing segment of the unregulated, underpaid and increasingly contingent day labor workforce. Legislative and policy strategies for improving working conditions for such groups of workers have excluded female day laborers day laborer employers, would be a very difficult group with which to negotiate, the Laborers’ International Union intends to focus on negotiating with midsize contractors, the second-largest employer of day laborers. Under the Laborers’ plan, contractors and homeowners would be obligated to accept union terms when hiring workers from day laborer centers. Eventually the union could provide day laborers with benefits including health insurance and workers’ compensation.


182. Hall, supra note 180.


184. Id. See also, Catherine K. Ruckelshaus, Labor’s Wage War, 35 FORD. URB. L. J. 373 (2010), 398-399 (outlining the mutual benefits resulting from the AFL-CIO’s partnerships with NDLON and the Interfaith Worker Justice’s faith-based worker centers).
by focusing on day laborers and domestic workers separately. Female day laborers are, in most cases, both day laborers and domestic workers. Framing day labor concerns as solely related to the building and construction trades ignores the needs of day labor housekeepers and caregivers, thereby perpetuating the exclusion of domestic workers from existing and proposed labor and employment laws.

In recent months, federal and state lawmakers have acted swiftly to implement greater governmental oversight to the previously deregulated financial and credit markets. In doing so, Congress and the supporting state governments sought to correct the imbalance of power between Wall Street and Main Street, and to restore the nation’s confidence in those markets. These times of economic uncertainty present similar opportunities for lawmakers at every level to regulate the markets for day labor, extend fundamental organizing rights to domestic workers, and expand workplace protections for female day laborers as they struggle to move off their invisible corner, and onto the agenda.