

## FROM ANTI-IMMIGRANT TO PRO-WORKER: WHAT STATES AND CITIES CAN DO ABOUT IMMIGRATION AND WORKERS' RIGHTS

*Did an immigrant move your plant overseas? Did an immigrant take away your pension? Or cut your health care? Did an immigrant destroy American workers' right to organize? Or crash the financial system?*

---[Speech by AFL-CIO President Rich Trumka](#), Cleveland, OH, June 18, 2010

Despite [study after study](#) showing that immigrant workers contribute to our economy and society, some argue that immigrants are responsible for many of our country's ills, including contributing to the current economic crisis. In response, some states have enacted harmful policies, including those that criminalize day laborers' search for work, purport to punish employers who hire unauthorized workers, or deputize local police to hunt for and deport immigrants.

These policies are the wrong solution to the wrong problem.

- State-level laws that pretend to punish employers who hire unauthorized workers serve primarily to increase off-the-books employment and give unscrupulous bosses a tool to retaliate against workers who complain;
- Laws that force local law enforcement staff to go after unauthorized workers divert scarce resources away from serious crime, push immigrant victims of crime underground, and often require illegal racial profiling.
- These laws tear at our unity, threatening to create a disjointed federation of fifty separate states, rather than one nation with a single policy immigration policy.

**What's the real problem?** We have an underclass of hard-working men and women in our country who can't make ends meet, and an economy that makes all of us [vulnerable to wage abuse](#). Scofflaw employers, as well as those who sow racial hatred, profit when they can divide us.

**What's the real solution?** Comprehensive Immigration Reform at the federal level, coupled with real labor standards, coupled with [vigorous enforcement](#) of those rules – a revived “employer sanction” against low-road employers who abuse all workers. In a weak economy, leaving labor laws unenforced tempts even law-abiding employers to lower wages and violate laws, in order to take advantage of the glut of job-seekers, and to compete against their law-breaking counterparts.

**Here's what states and municipalities can do to ensure that all jobs in our economy are good jobs:**

**Raise Baseline Standards and Ensure Enforcement of Fair Wage laws:** Important jobs in our economy – retail, building services, construction, hospitality and home health care – routinely pay at or below the minimum wage. Robust enforcement of fair pay laws is key to treating workers fairly and sustaining economic growth in our communities.

- √ Pass state wage laws to increase minimum wages and close loopholes that have denied whole categories of workers (like household workers and farm workers) full wage protections dating back to the racial politics of the New Deal, as [Arizona](#) has done;
- √ Pass a local living wage law, like communities across the country have done;<sup>1</sup>
- √ Award treble damages for violations of minimum wage, a feature of [Ohio](#) and [eight other states'](#) laws;
- √ Create a presumption of nonpayment of wages if no work records are kept, like [Arizona](#) did in its minimum wage initiative;
- √ Pass sector-specific laws covering [day laborers](#), household workers (as in New York's historic [Domestic Worker Bill of Rights](#)) or other workers in industries with pervasive labor law violations;
- √ Protect all workers from retaliation by enacting [broad anti-retaliation provisions](#);
- √ Pass a strong state anti-trafficking law to insure that unscrupulous employers are punished and their victims protected. The [Freedom Network](#) has developed a model law. In Colorado, under C.R.C. 18-13-129, it is explicitly unlawful to withhold or threaten to destroy immigration documents or to threaten to notify immigration authorities that a person is present in the U.S. in violation of immigration laws.
- √ Require terms of employment to be accessible to limited English-speaking workers, as [Nebraska](#) has done.

**Crack down on Independent Contractor schemes:** Employers in construction, day labor, building services, agriculture and a wide variety of other sectors routinely misclassify employees as “independent contractors” or pay them off the books and evade labor and employment protections and taxes.

- √ Create a presumption that workers providing labor or services for a fee are “employees” covered by state labor and employment laws, as is done in at least ten state workers compensation statutes, ([Washington's](#) is a good model), and [Massachusetts'](#) wage act.

**Protect Health and Safety:** Employees in dangerous jobs have few health and safety protections, and most of the ones they do have are only enforceable by OSHA or its state analog, agencies that are under-funded and overly-reliant on worker complaints from workers who fear retaliation.

- √ Pass [federal legislation](#) to enhance OSHA's enforcement capacity, including increasing fines and criminal penalties for violations and increasing protection for whistleblowers;
- √ Make sure that all workers who are injured on the job have access to workers compensation protection.

**Case Study: Connecticut sanctions employers who abuse the workers' compensation system.**

In Connecticut in 2007, a bill was introduced that would have made it a criminal offense to hire undocumented workers. What started out as an anti-immigrant piece of legislation became a state law that goes after the real problem of employers who commit workers compensation premium fraud and cheat workers out of benefits and the state fund out of taxes by not carrying compensation at all. The law, [Pub. Act. No. 07-89](#), provides that employers who misrepresent the number or type of their employees for purposes of the workers compensation system can be issued a stop-work order and ordered to pay a fine of up to \$1,000. Employers worried about unfair competition supported the bill, and both legislative houses passed it unanimously.

**Enforce, Enforce, Enforce:** Give state and local agencies the tools to enforce labor standards laws, and hold them accountable by requiring collection of all allowable penalties and damages under state laws, permission for workers to file complaints anonymously or via a representative, and strategic implementation of investigations and audits of problem sectors or employers.

- ✓ Pass "Private Attorney General" Laws permitting workers and their representatives to enforce any labor and employment laws on the books, as [California](#) has done;
- ✓ Raise more money for state agencies to do their job by earmarking funds collected in workplace enforcement actions to hire more inspectors, as in [San Francisco's Minimum Wage Ordinance](#);
- ✓ Make sure laws and policies are "immigration status blind" so that immigration status remains irrelevant to an employer's responsibility, as [California](#), Washington and New York have done;
- ✓ Create inter-agency enforcement task forces, with state departments of labor, revenue and related agencies to share data, audit results and enforcement actions, as California, New York, Maryland, Oregon, Utah, Vermont and other states have done;
- ✓ Promote enforcement against multiple "joint employers" to combat employers' efforts to outsource or subcontract-out responsibilities for labor and employment protections.

**Case Study: King County Superior Court.** In order to ensure that all residents of the county have access to the courts to protect their Constitutional and legal rights, the Judges of the King County, Washington, Superior Court, have adopted the following policy:

**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. Each judicial officer remains responsible for enforcing this policy within his or her courtroom. This policy does not prohibit law enforcement from executing warrants when public safety is at immediate risk.

**Collect Taxes Owed:** Employers who cheat workers also cheat the state out of revenues, curtailing state enforcement efforts and requiring other employers to make up the difference.

- √ Mandate a state study commission to collect data and information on lost tax revenues due to independent contractor abuses. [Seventeen states](#) have done so through governmental or non-governmental commissions;
- √ Fix employer SUTA-dumping schemes that evade unemployment insurance premiums by subcontracting their tax obligations to professional employee organizations (PEO's), as Washington and at least 16 other states have done.

**Involve Communities:** Even in the best of times, local, state and federal agencies cannot, on their own, hope to gain the trust of diverse immigrant communities. Nor can they by themselves find out about all violations. But communities can be their eyes and ears.

- √ One highly successful community collaboration is between the US Department of Labor and [National Peoples' Action](#), performs outreach in immigrant communities, trainings in workers' center and churches, and negotiates wage payments;
- √ A number of community-based efforts, including the [Farm worker Health and Safety Institute](#), , rely on peer to peer education, popular education tactics and leadership development to help workers stand up for their own rights to a safe and healthy workplace.

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