

Engaging in Direct Action Campaigns without getting SLAPP'ed

Take Action Against Wage Theft!

Rebecca Smith
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FOREWARD

Renee Saucedo, La Raza Centro Legal, San Francisco.

Direct action is one of many strategies used by immigrant workers and oppressed communities to create institutional and social change. Direct action, in a nutshell, consists of events, protests, and activities that visibly challenge the institution or injustice that the workers are trying to change or do away with. Some examples of direct action include sit-ins, the public use of cultural symbols, employer pickets, and other public displays of protest. Typically, the main purpose of direct action is to expose the perpetrators of injustice through acts of "public humiliation." Direct action also serves to educate the general public, and to pressure elected officials to serve the needs of workers. The use of the media is an essential part of this strategy, and it typically results in public awareness of the injustice and of the desired outcome by the workers. Direct action has historically been practiced in this country non-violently, and does not necessarily mean civil disobedience, which involves the violation of some law.

The main reason that organizers implement direct action is because it works! Direct action is an effective strategy to publicly expose injustice, and this often results in the perpetrator of the injustice, or a decision-maker, being pressured to concede to the workers' demands. For example, day laborer pickets in front of exploitative employers' homes or places of business often result in payment of wages. Direct action has always been a valuable tool to achieve the goals of campaigns and organizing efforts, and is a strategy that empowers workers because they are the ones who decide the character of the direct action, and are the main participants.

Worker centers can both benefit from and suffer negative consequences for implementing direct action. For instance, visible displays of worker protest and power often lead to more visibility for the center, alliance-building with other groups and communities, and a general feeling of power and self-reliance by the workers. On the other hand, such acts of public humiliation may also cause retribution, particularly by angry politicians or powerful institutions. In one recent city-wide campaign, San Francisco changed its practice around the police targeting day laborers. But the city retaliated against the workers center by attempting to cut off its funding.

This Guide is intended to assist workers' centers that are implementing direct action strategies in their assessment of how, when and why to use direct action in wage claim campaigns, in order to address rampant wage theft, build leadership and increase their power, without getting "SLAPP'ed;" that is, subject to "strategic lawsuits against public participation" - lawsuits brought to simply interfere with exercise of civil and labor rights. We hope to give workers centers the tools that will avoid the resource drain that comes from unjustified lawsuits by disgruntled targets.

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About NELP

NELP stands with working families to ensure that America's changing economy delivers for today's workforce, including the millions of immigrant workers and people of color who labor in our nation's lowest-paying jobs. NELP promotes policies advancing opportunity, enforces hard-won workers' rights, and helps jobless workers reconnect to the promise of economic progress. NELP works to support and expand the network of local organizations who build leadership and transform ordinary workers' lives, as well as their communities, by transforming the industries that exploit them.

Acknowledgements:

This Guide was written by Rebecca Smith, coordinator of NELP's justice for low-wage and immigrant workers project, but it is really the work of workers' centers. NELP would like to acknowledge the many groups and individuals who contributed to this Guide, including law students Chris Benoit, Todd Daloz, Susan Kaplan, and Keith Seo, and activists and lawyers Ana Avendano (AFL-CIO), Laurie Burgess (Chicago), Carlos Canales (IDEPSCA, Los Angeles), Araceli Hernandez (CASA Latina, Seattle), Saru Jarayaman (Restaurant Opportunities Center, NY), JoAnn Lo (Garment Workers' Center and Enlace), Milo Mumgaard (AFL-CIO), Victor Narro (CHIRLA and UCLA Labor Center), Chris Newman (National Day Labor Organizing Network), Greg Pehrson (Fuerza Laboral, Rhode Island), Hillary Ronen, (La Raza Centro Legal, San Francisco), Jessica Salsbury (CASA de Maryland), Saket Soni and Javier Gallardo (New Orleans Worker Center for Racial Justice), and Emily Timm (Proyecto Defensa Laboral, Austin, Texas).

HOW TO USE THIS GUIDE

Wage theft is a serious problem in the United States, and low-wage workers are its frequent victims. Increasingly, workers' centers around the country are seeing part of their mission as helping members recover unpaid wages. Workers' centers are racking up huge successes—sometimes in the hundreds of thousands of dollars per year — in terms of wages collected. They are doing this through a combination of direct action and litigation techniques. Many centers have formal protocols for when and how to negotiate with employers, what letters to send to employers, and when to show up at an employer's place of business or home to make sure that wage laws are respected and that workers receive the pay that was promised to them. While direct action can take place in a variety of contexts, many workers' centers have focused their direct action on combating wage theft. Often direct action results in prompt payment of stolen wages and deterrence of other violations, all without the lengthy, tortuous court processes that can sap energy both of workers and organizers, and still result in uncollectable judgments.

At the same time, employers who scoff at wage and hour laws have developed a certain "respect" for other laws, and some workers' centers have seen themselves and their members sued for alleged "defamation," "interference with business," or even accused of being "debt collectors." The main purpose of these lawsuits is to tie up a workers center's resources for a sufficient length of time that centers are either silenced by fear of litigation or the diversion of resources makes them unable to aggressively pursue organizational goals. These lawsuits have largely failed on the merits. They can be hugely disruptive to the real work of workers centers—requiring staff members to seek outside counsel, answer burdensome written questions, show up in court to testify and make centers fearful of engaging in the highly effective techniques of direct action.

On the other hand, sometimes these lawsuits have backfired. Being the brunt of frivolous litigation by a large company has sometimes served organizing goals, especially when there are volunteer lawyers to help and other support in the community. This guide shares perspectives on litigation and circumstances in which the existence of a lawsuit by a powerful entity against a small group of unpaid workers can be a boon to organizing.

This guide recognizes that different workers' centers may make different choices, based on strategy, resources, the political climate in which they operate, and the inclinations of their members and boards, regarding approaches to direct action. It is meant as a compilation of good practices learned from the workers' centers around the country experienced in direct action. It gives model letters and flyers illustrating more cautious as well as more aggressive approaches, and a resource list for further support.

PART ONE – IMPLEMENTING A WAGE CLAIM PROJECT AND NEGOTIATING DIRECTLY WITH EMPLOYERS

Dozens of worker centers around the country have implemented wage claim projects. Since no one strategy, including direct action, is a silver bullet against wage theft, these groups have developed, with their members, criteria for deciding whether, when and how to use direct action in their wage claim campaigns. Intake forms and scripts for negotiating with employers are available from a variety of workers centers, including Proyecto Defensa Laboral in Austin, Texas. reprinted below.

Resumen del Caso (Case Summary)

Nombre del Trabajador/a _____

Nombre del Patrón/a _____

Escriba una breve descripción de lo que pasó en su caso
(Write below a brief description of what happened in your case).

Fechas trabajadas	Hora de entrar	Tiempo para comida	Hora de salir	Horas trabajadas total	Salario prometido (que deberían haber pagado)	Salario pagado y la fecha	Salario total que le debe.

Yo, nombre del trabajador, doy fe que esta información es cierta
Firma del trabajador/a _____ Fecha _____

For help determining how to count hours worked and deductions from wages, see NELP's [Protecting Your Right to get Paid: How to Keep Good Wage and Hour Records](#). This fact sheet for workers shares record keeping strategies for successful enforcement of unpaid wage claims.

Proyecto Defensa Laboral has also developed a script for initial negotiation with employers who owe workers wages. It is reprinted here:



INITIAL PHONE CALL TO NEGOTIATE A WAGE CLAIM

(1) **General approach:** Call the employer to “see how we can get this resolved”. “Get their side of the story”, “check in” or “touch base”.

- a. **Define before-hand the worker's desired outcome and priorities:** *get wages? Educate employer? Hold employer accountable regardless of whether wages are recovered?(what does this mean?)*
- b. **Strategic tips for tone:** *non-confrontational, up-beat, friendly, calling to see about payment, this is my understanding of what happened, how can we resolve this, trying to understand the entire picture.*
- c. **Anticipate the worst but treat employer as if he/she is good person,** responsible; do not insult or threaten or lecture; give benefit of the doubt that they really meant to pay.
- d. **Try to ask employer rather than tell employer.**
- e. **Get employer to talk and give you information.** Find out what part of the claim and the facts they acknowledge. Narrow the disputed issues. Ascertain the employers' attitude and credibility. Discover facts about the employer's business. Determine whether the employer has a possibly valid defense. Discover relevant facts your client may not have told you or may not know.

(2) Initial Call scripts:

“Hello (good afternoon/evening) is Mr. / Ms. ___[Employer]___ available?”.

Not there/no answer...

If employer is not there or no answer, use best judgment whether to leave a message or not.

Option 1: “Checking in”

My name is _____, I am calling from *identify organization and role*. **We** are calling on behalf of *worker* to check in with you regarding the payment of wages for work that *worker* indicates he performed for you. *Worker* has been unable to get in touch with you, and so we just wanted to see what would be the best way to arrange payment of these wages.”

Option 2: "Getting your side of the story"

My name is _____, I am calling from *identify organization and role*. I am calling on behalf of *worker* who, as I understand it, worked for you during *months/year*. According to *worker* he/she is still owed \$____ in wages for this work. I am calling to discuss this matter with you, *see if that is your understanding of what he/she is owed, and see how we can best resolve the situation...*

Option 3: "Patrón known to be repeat offender or threatened worker"

My name is _____, I am calling from *identify organization and role*. **We** are calling on behalf of *worker* who worked for you during *months/year*. According to *worker* he/she is owed \$____ in wages for this work. **We** are calling to discuss this matter with you to *see how we can get this resolved*.

(3) Common Employer Response - and your response:

Scenario A: Employer agrees to owing money, not resistant.

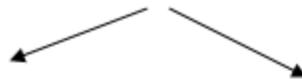
Define desired outcome: to get the money? ...as quick as possible?

Potential strategy: Work with employer, not against employer. Example:

- Shall we go ahead and set a time for you to come by the office to drop off a payment or would you like *organization* mailing address to mail a check or money order? Or we can meet you somewhere convenient?
- "When would be a good time for you to arrange payment or meet in person to discuss a payment plan?"
- "We understand you may not be able to pay immediately, we would like to work with you on this, when can we meet in person to discuss a payment plan, we could discuss paying in installments?"

Tip: Employers hate to be told what to do, put the control in their court, set them up to do the right thing.

Scenario B: Employer denies responsibility, makes excuses, or refuses to pay.



Excuse 1: Financial hardships-

"I don't have the money right now."

EMPLOYER CONTINUES TO DENY, HANGS UP, OR TURNS AGGRESSIVE:

Proceed with collective/legal action.

- "Yeah, we understand the difficult situation you must be in, but I bet we can work together to figure this whole thing out."
- "Yeah, I know how tough this business can be sometimes, it's unfortunate, but you know, in this situation, you have to pay your workers...it's just what the law says, we're just going to have to work out a solution, what do you say we meet in person to discuss a solution that works for everyone."
- "We much prefer to resolve this through friendly negotiation...we are confident we can do so...but the law says that you have to pay, and so the worker is prepared to take part in public campaigns or legal action if necessary. But we much prefer to figure this whole thing out through negotiation...what do you say?"

Excuse 2: "Well I never got paid, so why should I have to pay these guys?"

"My contractor never paid me" "I am still waiting on my payment before I can pay"

- "Yeah, I know how tough this business can be sometimes, its unfortunate, but you know, in this situation, you are still responsible under the state and federal wage laws to pay your workers...regardless of whether you got paid or not...its just what the law says, its one of those tough deals. We're just gonna have to work out a solution, what do you say we meet in person to discuss a solution that works for everyone."
- "Yeah, but in this situation, you are the employer, and the law says that you are required to pay your workers for their hours, regardless of what happens with your contractor. But, you know, we are willing to work with you on this to figure out a solution."

Excuse 3: Patrón disagrees on the amount owed. Says it is less.

"Well, Mr./Ms "worker" has provided a detailed written record of the days and hours worked and work agreement, and so we would be more than happy to compare those with your written records from the time that the work was done. Why don't we meet in person to compare records? or if you prefer, you could fax or send over your records and we can figure all of this out."



(Employer does not have records or refuses to share records)

"Yeah, it is kind of a tough situation because the state and federal law says that the employer, which is you, is required to keep written time and pay records. So in order to dispute Mr./Ms "worker's" records, you are going to have to provide your own records from that time. But why don't you come by the office and we can meet in person to figure out a solution to this mess. We are really confident we can do so"

Excuse 4: Worker did a poor job.

"Yeah, it is kind of a tough situation because the state and federal law says that the employer is required to pay the worker at least the minimum wage for all hours worked, regardless of how they performed the job. Now, if you are not pleased with their performance, you can discuss this with them or seek a new employee, but you still have to pay them for all of the hours worked. It's just what the law says. But we are willing to work with you on this...why don't we set a time to meet to discuss this in person and figure out a solution that works for everyone.

Excuse 5: Worker broke something/made the employer lose money.

"Yeah, it is kind of a tough situation because the [state law if applicable] says that the employer cannot deduct wages for **any** reason without written consent from the worker or without a court order. So we are just going to have to figure out a solution, because you cannot deduct these wages. Now, if you are not pleased with their performance, you can discuss this with them or seek a new employee, but you still have to pay them for all of the hours worked. It's just what the law says. But we are willing to work with you on this...why don't we set a time to meet to discuss this in person and figure out a solution that works for everyone.

Excuse 6: Contract labor/Independent contractor/subcontractor - "I hired him as contract labor, I don't have to pay the minimum wage" "He was an independent contractor and he didn't do the job right."

"Well, do you think we could plan a time to discuss this in person, because Mr./Ms. worker may have been an "employee" of yours under the law and not an "independent contractor". But we can figure this all out, when would be a convenient time to come by the office?"

Excuse 7: Immigration Status -"This guy is undocumented" "He gave me a false SS#" "I don't have to pay him because he is illegal" "I will contact immigration authorities if he tries anything".

"I don't even know Mr.worker's immigration status, and actually it is irrelevant in this situation because you already hired him, he already did the work, he has a right under state and federal law to be paid for this labor...that is the only thing that matters. Work was performed and it has to be paid for."

"You should also know that it is illegal under the federal wage and hour laws to retaliate in any way. Mr.[worker's immigration status is irrelevant, but if you contact immigration authorities or retaliate in any way because worker is claiming back wages, that is illegal."

fills out an application form, an I-9 form, and a W-4 form." "I am willing to pay what we owe, but I have to have a social security number to pay him."

"Well, I understand your point, however, in this situation you already hired him, he already did the work, and he has a right under the state law [if applicable] and the federal Fair Labor Standards Act to be paid for this labor...that is the only thing that matters. Work was performed and it has to be paid for, regardless of whether you have an application on file for this employee. In the future, you could avoid this type of confusion by having the employee fill out the paperwork at the time of hiring, which is really what the federal law requires you to do as an employer."

****NOTE****there are other verbal and written responses that we have developed specifically for this scenario which we will discuss more during trainings.

(4) Exiting Gracefully from the Phone Call.

Know when it is time to get off the call. If you find that:

- (1) The conversation is going in circles;
- (2) You are not getting any new information or making any progress;
- (3) The employer is getting very defensive or aggressive,

It is probably time to say something like:

"I appreciate your time on the phone. We hope you will consider working with us to resolve this matter; we will be communicating with you in the near future. Have a good day."

HANG UP

A number of organizations have also produced protocols for determining which cases should be handled through direct action and which should be referred to lawyers for litigation. Many workers' centers limit their direct action cases to certain criteria, taking into consideration the workers' membership in the organization, number of workers affected, whether the employer is a repeat offender, whether violence was involved in the nonpayment of wages, and other criteria. Here is a sample protocol developed by the New Orleans Worker Center for Racial Justice.

Criteria for the Wage Claim Campaign

Based on different meetings and conference calls with the members of the wage claim committee, organizers, volunteers, legal students, and lawyers; the wage claim committee developed the following criteria for the wage claims campaign in the City of New Orleans and the surrounding areas.

Cases that workers are owed from \$0 up to \$2,000

Process:

People responsible: Volunteers and organizers.

Use the intake form to get as much information we can about the worker and the employer.

Use the script to contact the employer.

If we don't recover the money owed, the committee decides whether we take this case to small claims court and/or we do direct action (Picketing, protests, media, etc.)

Cases that workers are owed from +\$2,000 up to \$6,000.

First phase of the Process:

People responsible: Volunteers (Law students)

a) Use the intake form to get as much information we can about the worker and the employer.

b) Use the script to contact the employer.

Second phase of the process:

People responsible: Legal Students/Lawyers and Organizers

If we don't recover the money owed, and based on the information we have about the employer, we take this case to the legal students/ lawyers or Department of Labor.

The committee decided that it's better to fight cases when we have groups of workers.

Third phase of the process

People responsible: Organizers and workers.

If a group of workers is ready and the committee decides, we do direct actions.

(Picketing, protests, media, etc.)

This is a great opportunity to build people's power!!

IDEPSCA, a workers' center in Los Angeles, uses similar guidelines for when to employ direct action:

- 1.- The quantity of money owed must be significant.
- 2.- The nonpayment of wages must affect three people or more.
- 3.- Information about the claim must be complete.
- 4.- Other options must have been explored and found not to be useful or effective.

Some workers' centers restrict direct action activities to members only, to members who have volunteered for the center, or to large groups of workers. Because visiting an employer's home or place of business involves logistical issues such as scheduling and transportation, and because the center may want to be sure that the employer is on site, centers generally carefully choose the timing, location and actions involved. These are questions to think through before engaging in direct action. Here is a recent story about direct action from Fuerza Laboral in Rhode Island:

RESULTS OF THE DIRECT ACTION AT MANNEY'S JEWELRY

In our last newsletter, we wrote about a direct action we did at Manney's Jewelry in East Providence to recuperate \$5,000 in unpaid wages. At the time of the last writing, Manney had given \$1,000 to the workers (the day of the protest) and made a payment plan to pay the rest.

Manney did comply with his responsibility and paid all of the \$5,000 in less time than it would have taken the RI Dept. of Labor to begin an investigation into the matter. But besides the payment of wages, much more was won:

1. Leadership—the workers who were affected participated in every step of the planning process and execution of the action and negotiation. They have overcome their fear to speak up and are now providing leadership in the organization, speaking at community meetings, participating in marches, knocking on doors, and acting in solidarity with other members.



Rosalba and Rosa with their wages!

2. Ripple Effects— Press coverage caused another local employer who was withholding wages to pay up. A worker came by our office after the article was published and said that her husband's employer made reference to the article, saying, "I don't



Manney signs our Code of Conduct!

want that group to show up here!" The worker signed up immediately to become a member.

3. Code of Conduct—The owner, Manney Monteiro, signed our first Code of Conduct with an employer, in which he promises to make whole any other worker he has aggrieved in the past, follow the state and federal labor laws, and not to retaliate against workers who make complaints about conditions.

These are some of the reasons why we do direct action—the results are measured not just in dollars but in real change!



PART TWO – INITIATING A DIRECT ACTION CAMPAIGN

In most cases, one of the first steps in attempting to recover stolen wages is to write a letter to the employer, explaining the legal and practical consequences of its failure to pay wages. Here is a sample letter that can be adapted to fit your own organization and its role.

Date
Employer Name
Address

Re: Demand for unpaid contract/wages.

Dear *Mr./Ms. Patrón*:

Your organization is a non-profit organization that advocates for low-income workers. We provide referrals to our members to pro bono attorneys who assist them in recuperating wages, and we assist workers in engaging in direct action to recover wages. We are writing you on behalf of *worker(s)*, who worked for you in *(months) of (year)*.

Mr./Ms. worker(s) claims that *he/she* is owed \$*amount* for *type of work* performed for you at *location*. *Mr./Ms. worker(s)* has presented to us a detailed calculation of the dates worked, the wages promised and owed, and a detailed description of the work he performed. Based on the information provided to us, you are in breach of contract, and could be in violation of the Fair Labor Standards Act, 29 U.S.C. §§201-209 ("FLSA"), *cite to state law violations, if relevant*.

It is always our policy to attempt to settle this type of dispute through friendly negotiation. Please contact me immediately to discuss this matter or if you have any questions: *telephone and fax*. To resolve this matter immediately, please send a check or money order for \$*amount* made payable to *Mr./Ms. worker* at *address*. Upon receipt of this payment, we can provide a signed form releasing you of any wages owed to *worker* for the work.

If the \$*amount* owed to *Mr./Ms. worker(s)*' work is not paid in full before *(count ten days from the date you are sending the letter)* we may take further action through public campaigns. In addition, *Mr./Ms. worker(s)* has the right to pursue legal action under the Fair Labor Standards Act, *[and state law if relevant]* which provides for liquidated damages in an amount equal to an individual's unpaid minimum and overtime wages, costs of suit, and reasonable attorney's fees. We will make the referral to our volunteer attorneys.

Please be advised that it is illegal under the Fair Labor Standards Act to retaliate or take any adverse action with respect to *Mr./Ms. worker(s)*.

Thank you for your attention to this matter and I hope to hear from you soon.

Respectfully,
Your name/Your organization

Here are some tips to consider when crafting your own letter. Keep in mind that if an employer against whom an employee (or a center) made a certain statement is determined to bring a lawsuit, no statement—however carefully crafted—could for all practical purposes avoid it.

TIPS ON LETTER WRITING and TALKING WITH EMPLOYERS:

- √ Clearly identify the center's role. Include an estimated amount of the wages owed and the name of the worker.
- √ Never use threatening or foul language or an abusive tone.
- √ Always make sure that correspondence refers the employer to pay the worker and not the center.
- √ Emphasize that volunteers are only involved insofar as they provide referral to pro bono attorneys and help to organize workers to take action together.
- √ Never make a threat of legal action that isn't contemplated or possible.
- √ If you are a lawyer representing a client, identify yourself that way. If you are not, don't.

The letter on the next page was developed at La Raza Centro Legal in San Francisco, in order to explain to customers of a cleaning company who had not paid a worker that the group was investigating the worker's claim. Because La Raza is a worker center with lawyers on staff, the writer identifies herself as a lawyer.

LA RAZA CENTRO LEGAL, Inc.

474 Valencia Street, Suite 205, San Francisco, CA 94103
(415) 575 3500

July 18, 2006

Re: Janitorial Services for Jefferson Street
Non-payment of wages to Bernarda Sanchez

Dear Jefferson Street Resident,

My name is Hillary Ronen. I am an attorney at a non-profit community legal services organization called La Raza Centro Legal. Last week Cristina Sanchez came to our unpaid wages legal clinic to seek help getting paid for the last month and a half that she has been cleaning your apartments. We are in the process of investigating the claim. At this point, we believe that Mr. John Johnson of the company, Janitorial Services for Jefferson Street, charges your credit cards each month in exchange for the cleaning services that Ms. Sanchez provides you. Please confirm if this is in fact the case. According to Ms. Sanchez, Mr. Johnson had been previously paying her an hourly wage for her services. However about a month and a half ago, Mr. Johnson stopped paying Ms. Sanchez and stopped accepting her phone calls. As the result of a phone call I left demanding Ms. Sanchez' wages, Mr. Johnson paid her less than half the wages he owes her. He then told her he would pay her the remaining amount last Friday. Ms. Sanchez waited hours for Mr. Johnson to show up to pay her but he never came to the agreed upon meeting spot and once again is not accepting her phone calls.

Ms. Sanchez has continued to clean your homes without payment because she values her job cleaning your homes and did not want to disappoint you. She would like to continue to provide this service to you but cannot continue to work for free. If you would like to discuss the situation with her, feel free to contact her directly at ____-____-____.

In addition, we fear that Mr. Johnson has committed numerous labor violations throughout his employment of Ms. Sanchez. We would greatly appreciate any information you can provide us about the contract you had with Mr. Johnson and/or any other pertinent information. You can reach me at *e-mail* and *telephone*.

I would greatly appreciate any help you can provide making sure that Mr. Johnson respects the employment rights of Ms. Sanchez.

Sincerely,
Hillary Ronen, Esq.
La Raza Centro Legal

PART THREE – FLYERS AND PICKET SIGNS

The First Amendment to the United States Constitution generally protects the right to speak your mind on all subjects, no matter how controversial they are. Workers' centers have a right to let communities know that an employer is treating workers unfairly and to ask for their help.

Note to Union Organizers, Business Agents, Representatives and Members:

This guide is not intended to provide guidance to labor unions, organizers, or other union agents or representatives operating in a union organizing campaign, contract campaign, or other activity that may be covered by the National Labor Relations Act. Union organizers and others in those situations should seek guidance from their union.

On the following pages, you will find some examples that have been used around the country in successful campaigns.

BE CAREFUL!!!
JOHN SMITH
DOESN'T PAY
WORKER WAGES HE OWES*

John Smith
U-Build it Construction
Anytown, USA
Telephone:

•John Smith hired Jose Garcia to perform tree trimming services from Oct. 4th to Oct. 29th 2003. Mr. Smith promised to pay \$9 per hour. Mr. Garcia worked 136 hours plus 2 days at \$100 a day. Mr. Garcia is still owed \$1,124.00 for this work.

* On Feb. 19th, Small Claims Court ruled against Mr. Smith and ordered \$1124.00 in unpaid wages. Mr. Smith ignored the court's demand and ignored at

Amount that he owes:
Jose Garcia = \$1,124.

Public service announcement brought to you by organization name.

The following flyer was used in a California campaign on behalf of a housekeeper who had a claim pending before the California State Labor Commission, to explain to neighbors why the group was picketing in their neighborhood.

Why Are We Picketing in Your Neighborhood?

Because we believe The Lozanos of Lozano's Housecleaning Services, which operates out of 555 Mirabel Avenue, are violating even the most basic employment laws of their employees. We are acting to protect domestic workers from the illegal and unjust behavior of the employers in your neighborhood and to inform the public when and where we believe abuse is taking place.

Former employee of Lozano's Housecleaning Services, Yesenia Loya, has filed a complaint with the State Labor Commission, seeking tens of thousands of dollars in unpaid wages and penalties. Mrs. Loya worked over ten years for Maria and Juan Lozano of Lozano's Housecleaning services and states that she suffered a variety of abuses including working without payment, working without meal or rest breaks, being transported from one client's home to another in dangerous vehicles, being forced to clean homes on her knees and use pure bleach without any safety equipment, and suffering regular verbal harassment and humiliation by the Lozanos. As Mrs. Loya continues the struggle to recover her unpaid wages and penalties, she worries that the current employees of Lozano's Housecleaning Services are suffering from similar abuses.

*Note we have spoken to additional former employees of Lozano's Housecleaning Services. The employees confirm that they suffered from the same treatment that Yesenia Loya denounces.

If you have any questions or concerns, feel free to contact the Women's Collective of the San Francisco Day Labor Program at ____-____-____.

Perspectives: Hilary Ronen, La Raza Centro Legal: The Loya case and the combination of direct action and litigation:

Direct Action combined with legal claims can provide the worker center the opportunity to win rights above and beyond the law. In the Loya case (we used a pseudonym) above. Mrs. Loya came to us after she left the cleaning company because she was concerned that her former co-workers continued to suffer the abuses she had endured for 10 years. She wanted to change conditions in the workplace even though she no longer worked at the company and none of the current employees wanted to come forward. When we realized she had a significant wage claim, we filed suit on her behalf in the Labor Commission – Ms Loya wanted to settle the suit only if the settlement included protection for the current employees in the company. Ms. Loya refused to settle the claim in front of the Labor Commission unless the company paid the workers center to come and give four worker's rights presentations to the current employees over the period of two years. A member of women's collective was trained to go to the company along with her lawyer, and give the presentations.

In 2001, the Garment Workers Center of Los Angeles initiated a campaign on behalf of 19 garment workers who claimed they were being exploited by their employers, who failed to pay minimum wage and overtime, denied them meal and rest breaks and required them to work in facilities that were poorly lit and ventilated, filled with fabric dust, infested with rats and vermin and lacked fire escapes. The manufacturers who employed them produced clothes that were sold by the label "Forever 21."

After attempts to get Fashion 21, the company purchasing the garments, to take responsibility for its workers failed, the following flyer was distributed at Forever 21 stores, with the campaign support of the Coalition for the Humane Rights of Immigrants (CHIRLA):

BOYCOTT Forever 21/Fashion 21!!

We are 19 garment workers who sewed Forever 21 clothes in factories in downtown Los Angeles without the guarantee of overtime or minimum wage. We worked 10-12 hours a day, in dirty, unsafe factories. We are owed hundreds of thousands of dollars! We asked Forever 21 to take responsibility - pay us and ensure all the factories it uses follow the laws and treat the workers with respect. So far they have refused! Yet Forever 21 will make \$400 million in sales!

During this holiday season help us tell Forever 21 to pay us...

Call Forever 21 at ____ - ____ - ____ tell them to take responsibility! And join us here at the Highland Park store every Saturday at 3pm until Christmas. For more information, call the Garment Worker Center at ____ - ____ - ____ - ____

Forever 21/Fashion 21 sued the garment workers and the garment workers' center in a SLAPP suit, claiming that it had been "defamed" by the flyer. Forever 21 said that the flyer accused it of being the direct employer of the workers, and that in reality, it was just a "buyer" of clothes made by others. The Court said a) that the flyer did not claim that Forever 21 was the employer of the workers; and b) that under the law, Forever 21 had the obligation to make sure wages were paid to the workers.

PERSPECTIVES: Joann Lo, formerly of the Garment Workers' Center

In our Boycott Forever 21 Campaign, direct action was at the core of our strategy to get this young women's retailer to take responsibility for the abusive, exploitative conditions suffered by the garment workers who sew its clothes. Direct action is more empowering for the workers because they are the ones leading the campaign and making the decisions, and it is a more effective and quicker way to win owed wages and to win positive change than just litigation. During the campaign Forever 21 actually sued the workers and me personally as well as our organization and allies, claiming slander and libel. But we turned that act around in our favor to show how yet again this big corporation was trying to intimidate and abuse these workers, and we used it to continue our momentum--we knew we were having an impact on the company, that it couldn't ignore us. In the end, when their libel suit was not going well and we were not giving up on our campaign, Forever 21 came to the table to negotiate, and the workers won a very satisfactory settlement.

As the “Forever 21” campaign shows, a lawsuit for “defamation” is one of the most common ways in which employers retaliate for direct action campaigns. Generally a person has been “defamed” when a publication has been distributed to others, it was untrue, it was made either negligently or maliciously, it harmful to that person’s reputation, and that person suffered a loss of money. In order to get the fullest protection of the law, here are some tips for flyers:

Tips for flyers:

- √ Emphasize the public importance of the workers’ claims; ie., “Wage Theft is a Serious Problem in our Community” or “Stand Up for Justice.” Focusing activities on larger employers will help make the case that you are speaking about a subject of public import.
- √ It is always okay to state an opinion. Flyers often say a person or company is “unfair,” “abusive,” or “ripping off” another. Use of strong language is okay, but you should document your reasons. **MORE AGGRESSIVE:** Some courts have said use of words like “thief” and “liar” is not defamatory.
- √ Document all factual assertions (to prove truth), and document all efforts taken to verify factual assertions (to prove lack of negligence/malice)
- √ **MORE CAUTIOUS:** If you find out that you have accidentally made a false statement, consider whether a retraction would be consistent with your campaign goals. Connecticut, Louisiana, Maine, Massachusetts, Michigan, Nebraska, Texas and West Virginia have helpful, broad retraction statutes.

PART FOUR – PICKETING AND VISITS TO EMPLOYERS

Once a worker center has developed an effective leaflet or picket sign, the next question is, “where can we engage in free speech actions?”

Public forums (sidewalks and streets) Generally, all types of expression are constitutionally protected in traditional “public forums” such as public sidewalks and parks. All forms of communication including music, theater, film and dance are also protected. Public streets can be used for marches subject to reasonable permit conditions.

Pedestrians on public sidewalks may be approached with leaflets, newspapers, petitions and solicitations for donations. Tables may also be set up on sidewalks for these purposes if sufficient room is left for pedestrians to pass. Picketing must be done in an orderly, non-disruptive fashion so that pedestrians can pass by and entrances to buildings are not blocked. Contrary to the belief of some law enforcement officials, picketers are not required to keep moving, but may remain in one place as long as they leave room on the sidewalk for others to pass.

However, certain types of events require permits. Generally, these events include: (1) a march or parade that does not stay on the sidewalk and other events that require blocking traffic or street closures; (2) a large rally requiring the use of sound amplifying devices; or (3) a rally at certain designated parks or plazas, such as federal property managed by the General Services Administration. Many permit procedures require that the application be filed several weeks in advance of the event. However, the First Amendment prohibits such advance notice requirements from being used to prevent rallies or demonstrations that are rapid responses to unforeseeable and recent events.

Tips for picketing:

- ✓ Call your city office to find out what the restrictions are.
- ✓ Consider whether or not to meet with police prior to engaging in picketing, in order to enlist their support and educate them about your rights.

Private places – Homes and businesses. The general rule is that free speech activity cannot take place on private property without the consent of the property owner. Workers who are owed wages or have another dispute with their employer are entitled to go to his or her home and knock on the door to talk with them, but may not enter the home without being invited in.

Trespass laws vary from state to state. They generally include a broad definition to the effect that person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises.” N.Y. Penal Law § 140.05. In some states, a person is guilty of trespass unless s/he has been invited onto property. In others, a person is guilty of trespass only if s/he refuses to leave when asked to leave, or if the property is posted “No Trespassing.” In practice, if workers are asked to leave and refuse to do so, they risk arrest.

Tips for picketing at a private business or home:

- √ Never go to an employer's house without at least one of the workers claiming lost wages. Consider posting supporters on the public sidewalk and sending just the workers who are owed wages to the door.
- √ Defer to the worker to start and continue negotiations. Speak with the employer only to help with translation and/or explain the center's role in the disputed wage.
- √ If the employer is not home, do not engage extensively with other members of the household.
- √ If you interfere with passersby attempts to enter the home or business, you may be subject to arrest.
- √ Consider whether you want to affirmatively notify the police about your activities - a friendly police officer can be helpful to wage recovery.
- √ If you are told to leave private property and do not, you may be arrested.

PART FIVE – DEALING WITH THE POLICE

What if center volunteers are lawfully on the sidewalk by an employer's business, and the employer nonetheless calls the police? If you do not already know whether the police will be friendly or unfriendly to you, now is when you will find out. Ask to explain your position. Point out that you are not disrupting anyone else's activity and that your actions are protected by the First Amendment. If you do not obey an officer, you might be arrested and taken from the scene. You should not be convicted if a court concludes that your First Amendment rights have been violated, but arrest could have other consequences, especially for immigrant workers.

- ✓ When dealing with the police, it's a good idea to keep your hands in view and to avoid making sudden movements.
- ✓ Avoid walking behind the police.
- ✓ Never touch the police or their equipment (vehicles, flashlights, animals, etc.)

Detention: Police can detain you only if they have *reasonable suspicion* that you are involved in a crime. (A "reasonable suspicion" occurs when an officer can point to specific facts that provide some objective manifestation that the person detained may be involved in criminal activity.) Detention means that, though you aren't arrested, you can't leave. Detention is supposed to last a short time and they aren't supposed to move you.

During detention, the police can pat you down and may be able to look into your bag to make sure you don't have any weapons. They aren't supposed to go into your pockets unless they first feel a weapon through your clothing.

If the police are asking questions, ask if you are being detained. If not, leave and say nothing else to them. If you are being detained, you may want to ask why.

Then you should say: "*I am going to remain silent. I want a lawyer,*" and nothing else. If your members do not speak English, a card with these words written on it can be helpful. These are available for download at: www.nelp.org.

A detention can easily turn into arrest. If the police are detaining you and they get information that you are involved in a crime, they will arrest you, even if it has nothing to do with your detention. The purpose of many detentions is to try to obtain enough information to arrest you.

Arrest: Police can arrest you only if they have *probable cause* that you are involved in a crime. ("Probable cause" exists when the police are aware of facts that would lead an ordinary person to suspect that the person arrested has committed a crime.) When you are arrested, the cops can search you and go through any belongings.

Questioning: Do not communicate with the police anything other than your right to remain silent. If you are arrested, you may want to give identifying information, such as name, address, and driver's license, which will help secure your release by citation or be necessary to be released on bail.

It is a serious crime to make a false statement to a police officer. By talking, you could get in trouble because of two inconsistent statements spoken out of fear or forgetfulness. It is also very dangerous to try and outsmart the police. They are trained on how to extract information and trip people up who are lying to them or even telling the truth. They have learned how to get people to talk by making them feel scared, guilty or impolite. Stay strong and stay silent!

Searches: Never consent to a search! If the police try to search your house, car, backpack, pockets, or other private property, say "*I do not consent to this search.*" This may not stop them from forcing their way in and searching anyway, but if they search you illegally, they probably won't be able to use the evidence against you in court. You have nothing to lose from refusing to consent to a search and lots to gain. Do not physically resist police when they are trying to search because you could get hurt and charged with resisting arrest or other serious crimes.

Taking Notes: Whenever you interact with or observe the police, always write down what is said and who said it. Write down the names and badge numbers of the police and the names and contact information of any witnesses. Record everything that happens. If you are expecting a lot of police contact, get in the habit of carrying a small tape recorder and a camera with you. Be careful – police don't like people taking notes, especially if they are planning on doing something illegal. Observing them and documenting their actions may have very different results; for example, it may cause them to respond aggressively, or it may prevent them from abusing you or your friends.

Additional resources:

Dealing with the Police: General Guidelines for Activists, National Lawyers' Guild, available at www.nlg-la.org/Dealing_with_Police.pdf.

Immigrants' Rights to Protest, by the New York Chapter of the National Lawyers' Guild, available at <http://www.nlgnyc.org/MDC/kyr.htm>.

Your Right to Protest, ACLU of Maryland, available at www.aclu-md.org/Index%20content/Right_to_Protest.pdf.

PART SIX – SLAPP SUITS

Workers centers and their allies engage in direct actions by the dozens every month, and they are rarely sued for it. Nonetheless, employers and their allies are becoming increasingly brazen in filing “Strategic Lawsuits Against Public Participation,” or SLAPP suits, against workers’ centers and other groups who have done nothing more than to speak up about wage and hour abuses.

Briefly, SLAPP suits are lawsuits filed to retaliate against communications to government agencies or attempts to influence governmental action. SLAPP suits typically involve claims like defamation, malicious prosecution, interference with contract, business relationship or economic advantage or restraint of trade, etc. The business’ goal is not necessarily to win in court, but to intimidate citizen groups, unions, rank and file workers and their supporters from exercising their constitutional rights.

Because of the danger to citizen participation in public processes posed by SLAPP suits, twenty-four (24) state legislatures have enacted anti-SLAPP legislation. These are Arkansas, California, Delaware, Florida, Georgia, Indiana, Hawaii, Louisiana, Maryland, Massachusetts, Maine, Minnesota, Missouri, Nevada, Nebraska, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah and Washington. In addition, Colorado and West Virginia have some case law protecting First Amendment rights.

The statutes vary greatly—some, like California’s, protect all kinds of public activity, including labor actions. Maryland’s anti-SLAPP statute protects communications to a government body or to the public at large if the communication was without malice. Others, like Washington’s, only cover activities directly involved with petitioning the government (such as testimony in a labor hearing, as opposed to picketing a private employer). To see your state statute and case law, go to the website of the SLAPP resource center: <http://www.slapps.org/stateLaws.htm>.

The advantage of the state anti-SLAPP laws is that they give a way for workers’ centers and others to quickly deal with frivolous litigation, without going through a long process. For instance, California law allows the complaint to be stricken unless the person suing the center can show a probability that it will win the case. Cal. Code of Civ. Proc. §425.16(b)(1). New York law is less protective, but still allows a quick hearing in court if the workers’ center asks the judge to dismiss the case. N.Y. CPLR 3211.

As another deterrent to frivolous lawsuits, costs and attorneys fees are often awarded to a defendant who prevails on the accelerated motion. Cal. Code Civ. Proc. §425.16; N.Y. Civil Rights Law §70-a(1).

History of a SLAPP Suit:

The Restaurant Opportunities Center of New York has engaged in a series of successful campaigns on behalf of restaurant workers in the City, frequently using a combination of organizing and wage and hour, discrimination, and other litigation to improve working conditions for its members. As a result of its successful efforts, it has been the subject of several SLAPP suits. Among these, three restaurants filed a charge with the National Labor Relations Board claiming that ROC-NY's activities made it a labor organization subject to the National Labor Relations Act. If ROC-NY were subject to the Act, it would also be subject to a series of requirements including reporting under the Labor Management Reporting and Disclosure Act, and potentially jeopardize its tax exempt status. The restaurants said that ROC-NY's filing of litigation, and seeking settlements that provided for improvements in working conditions beyond the bare requirements to comply with the U.S.' minimal labor standards, such as promotion policies or language access policies, made ROC a labor union.

In 2006, the NLRB General Counsel dismissed the charge. In March of 2007, the NLRB General Counsel denied the employers' appeal, saying that "the evidence disclosed that ROC-NY engages in social advocacy by acting as a catalyst to enforce relevant labor laws and improve working conditions for restaurant workers and that it does this by targeting a restaurant and pressuring it to sign an agreement embodying its adherence to various labor laws and to improve working conditions. Though it appears that while engaging in this mission, ROC-NY may negotiate terms of employment beyond what is required to remedy labor law violations, the evidence is insufficient to demonstrate that ROC-NY contemplates an on-going relationship in which it will engage in a pattern and practice of dealing with any particular employer over terms and conditions of employment...further proceedings in this matter are unwarranted."

In order to further protect the organization, ROC-NY's flyers contain a clear disclaimer, noted below.



RESTAURANT OPPORTUNITIES CENTER OF NEW YORK
 99 HUDSON STREET, 3RD FLOOR
 NEW YORK, N.Y. 10013
 TEL: (212) 343-1771
 FAX: (212) 343-7217

WORKERS FROM SHELLY'S NEW YORK ARE SUING THE RESTAURANT FOR TIPS AND WAGES!

Workers from this restaurant – Shelly's New York - are suing the company in Federal Court for misappropriated tips and minimum wage violations. More than 50 workers have already filed a lawsuit in federal court against the restaurant company for misappropriated tips, unpaid overtime wages, minimum wage violations, and sexual harassment, and have filed charges for racial discrimination and retaliation for speaking up for their rights.

SUPPORT THE WORKERS IN THEIR STRUGGLE FOR DECENT WORKING CONDITIONS!

FOR MORE INFORMATION, PLEASE CALL THE RESTAURANT OPPORTUNITIES CENTER OF NEW YORK (ROC-NY) AT 212-343-1771

The Restaurant Opportunities Center of New York (ROC-NY) is a non-profit organization that seeks improved working conditions for restaurant workers citywide. ROC-NY assists restaurant workers seeking legal redress against employers who violate their employment rights. ROC-NY seeks to provide customers and the public with information about the litigation in this restaurant through these flyers and signs, and does not seek to picket or to interfere with deliveries. ROC-NY is not a labor organization and does not seek to represent the workers or be recognized as a collective bargaining agent of the workers at this restaurant.

APPENDIX OF RESOURCES

The National Employment Law Project is happy to work directly with community groups who are embarking on direct action campaigns. Contact:

Omar Semidey, osemidey@nelp.org, 212 285 3025, ext. 302

Cathy Ruckelshaus, cruckelshaus@nelp.org, 212 285 3025 ext. 306

Laura Moskowitz, lmoskowitz@nelp.org, 510 663 5705

Rebecca Smith, rsmith@nelp.org, 360 534 9160

The AFL-CIO has been an active voice in the union-workers center dialogue. AFL attorneys may be a resource in your area. Contact:

Ana Avendano, aavendano@aflcio.org, 202-637-3949

The American Civil Liberties Union has long been a staunch defender of First Amendment rights. Your local chapter may have resources for you. Find it at www.aclu.org

The National Lawyers Guild has likewise played a historic role in defense of workers' rights and free speech rights. Your local chapter may also have resources for you. Go to www.nlg.org.



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