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Companies Are Responsible For Workers They Recruit To Perform Clean-Up And Rebuilding

Immigrant laborers are being recruited from states such as Florida, Maryland, North Carolina and Texas to do clean-up and rebuilding work in the Gulf area with false promises made by FEMA-funded sub-contractors. The promises included housing, food and wages of \$11-\$12 per hour plus overtime.

In fact, housing was not provided, and many workers were forced to sleep in shelters set up for people displaced by the hurricane. They face eviction from these shelters because they have come from out of town, even though they have no where else to go. Many workers have not been paid at all or paid well below what they were promised. This has caused tension and a straining of resources at the local level.

States have an interest in ensuring that unscrupulous corporations that have received FEMA funding are not able to lure vulnerable workers from other states and then leave them without money or a place to live. Some contractors are not withholding taxes from workers' pay, depriving the workers of benefits and the states of payroll tax revenues. Not only is this exploitation and abuse of the workers, it leaves the destination states and towns with the additional burden of assisting the workers who have no money and no home and dealing with local tensions that arise from their presence.

States Should Shift The Burden Back To Corporations With Disclosure Requirements

States can shift the burden back to the corporations by requiring that anyone who recruits workers from another state must provide the workers with accurate disclosure of the terms of employment: the hours of work; the hourly wage rate; whether transportation, food and housing will be provided – and if so, at what cost; before the workers travel a long distance to perform the work.

Moreover, the entities that recruit such workers must be held to the terms of the disclosure, and not be permitted to change them or fail to deliver on them once the worker arrives at the place of employment.

States such as Alabama, Louisiana and Mississippi, where clean-up and rebuilding efforts are underway, can look to examples of recruiter disclosure requirements from other states, such as Nebraska and Iowa as well as in the Federal Migrant and Seasonal Agricultural Worker Protection Act. See, Appendix: Model State And Federal Recruitment Disclosure

Companies Cannot Force Workers To Bear The Cost Of Transportation Or Recruitment Fees

The Fair Labor Standards Act protects workers' right to be paid a minimum wage of \$5.15 an hour and an overtime rate of 1 ½ times the regular hourly rate for any hours over 40 a week that they work. See, NELP Factsheet: [Day Labor: Workers' Right To Be Paid.](#) In most cases, employers cannot make deductions from workers' pay that reduces their take-home pay below the minimum wage. Workers who are recruited to a different state to work might find that after reimbursing a company for transportation and possibly for "recruitment fees," he or she is left stranded and with no money. Not only is this unfair, it is illegal. A Federal Court of Appeals has ruled that requiring employees to pay for travel, visa and recruitment fees when they are recruited to a state to perform work violates the Fair Labor Standards Act. See, [Arriaga v. Florida Pacific Farms](#), 305 F.3d 1228 (11th Cir. 2002). See, also, NELP Factsheet: [Strategies For Enforcing The Right To Be Paid In Alabama, Louisiana And Mississippi.](#)

Companies Cannot Avoid Legal Responsibility By Misclassifying Workers As "Independent Contractors"

Businesses that try to shield themselves from the responsibility that comes with employing workers by subcontracting cannot escape liability for workplace violations if they legally "employ" the workers. Calling them independent contractors or making them sign an agreement that they are "independent contractors," doesn't change their status as covered "employees" under labor and employment laws. Neither does inserting a temp agency in between the worksite employer and the worker, and having the temp agency cut the payroll checks and withhold taxes. See NELP Factsheets: [Subcontracted Workers](#) and [1099'd.](#)

States Should Ensure that Companies Are Withholding Payroll Taxes on All Relief Workers

Companies that hire workers in this climate of federal rollback of Davis Bacon, affirmative action, and work authorization requirements are likely to be emboldened into thinking that "anything goes" with respect to other labor and employment-related responsibilities. One particularly serious set of requirements imposed on employers are the various state and federal payroll reporting requirements, including reporting and withholding FICA and FUTA taxes, and state unemployment insurance and income taxes. State auditors should take steps to make sure that companies profiting from relief work are paying their fair share of these payroll taxes.

Appendix: Model State And Federal Recruitment Disclosure Requirements

Nebraska Code § 48-2209, *et seq.* Recruitment of non-English-speaking persons; employer; duties

§ 48-2210 Written statement required; when; contents; employer provide transportation; when

Application: employer or representative of employer who

- actively recruits any non-English-speaking persons in the state and
- Whose work force is more than 10% non-English-speaking employees who speak the same non-English language

Required disclosure: must have a statement signed by employer and employee(s) on file with commissioner providing relevant information regarding the position, including:

1. minimum hours an employee can expect to work weekly
2. hourly wages of position, including starting hourly wage
3. description of responsibilities and tasks of employment
4. description of transportation and housing to be provided, if any, including:
 - a. costs to be charged for housing or transportation
 - b. Length of time housing is to be provided
 - c. Whether or not housing is in compliance with all applicable state and local housing standards
5. any occupational physical demands and hazards of the position of employment which are known to the employer

Statement must be written in English and the language of the employee – statement to be explained in detail to employee before employee signs

Transportation: employer shall provide transportation at no cost to the location from which the employee was recruited if the employee resigns from employment within 4 weeks after initial date of employment and employee requests transportation no more than 3 days after last day of employment

Penalties:

1. employer who violates § 48-2209 or 48-2210 is guilty of a Class IV misdemeanor
2. person aggrieved by a violation of § 48-2209 or 48-2210 may file suit. Court may award damages up to and including original damages and injunctive relief.

Iowa Code § 91E.1, *et seq.* Non English Speaking Employees

§ 91E.3 Employer Recruiting Practices

Coverage: Applies to employer or representative Applies to employer who employs for hourly wages 100 or more persons (there is an exception for agriculture) and who actively recruits non-English speaking residents of other states more than 500 miles from place of employment

Required disclosure: Must have a statement, signed by employer and employee, on file that includes:

1. minimum hours an employee can expect to work weekly
2. hourly wages of position, including starting hourly wage
3. description of responsibilities and tasks of employment
4. health risks known to employer, to the employee involved in the position of employment
5. that possession of forged documentation authorizing the person to stay or be employed in the US is a class "D" felony

Transportation: employer shall provide transportation at no cost to the location from which the employee was recruited if the employee resigns from employment within 4 weeks after initial date of employment and employee requests transportation no more than 3 days after last day of employment

§ 91E.4 Penalties for violation of recruitment practice requirements

1. civil penalty of up to \$1000
2. corporate officer of employer, who through repeated violation of 91E.3 demonstrates a pattern of abusive recruitment practices commits a serious misdemeanor
3. employer who through repeated violation of 91E.3 demonstrates a pattern of abusive recruitment practices may be ordered to pay punitive damages

U.S. Migrant and Seasonal Agricultural Worker Protection Act (AWPA)

29 USC § 1821 Information and recordkeeping requirements (Migrant Workers)

29 USC § 1831 Information and recordkeeping requirements (Seasonal workers)

Application: each farm labor contractor, agricultural employer and agricultural association which recruits any migrant or seasonal agricultural worker

Disclosure requirement: must disclose in writing to each recruited worker at the time of recruitment:

1. place of employment
2. wage rates to be paid
3. crops and kinds of activities on which the worker may be employed
4. period of employment
5. transportation, housing and any other employee benefit to be provided and the costs to be charged for each of them
6. existence of any strike or other concerted work stoppage, slowdown or interruption of operations by employees at the place of employment
7. existence of any arrangement with any owner or agent of any establishment in the area of employment under which the employer, contractor or association is to receive a commission or other benefit resulting from any sales by the establishment to the workers
8. whether state workers compensation insurance is provided and if so
 - a. the name of the insurance carrier, policyholder,
 - b. name and telephone number of each person who must be notified of an injury or death and
 - c. the time period within which such notification must be made

Disclosure is to be provided in English and as necessary and reasonable in Spanish or other language to migrant agricultural workers who are not fluent or literate in English