

Setting Standards Is Not Enough: Labor Standards Boards Must Facilitate Worker Organizing and Robust Enforcement

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While the goal of labor standards boards is to raise the bar on wages and working conditions in low wage, high exploitation sectors, for these rights to be real, they must incorporate powerful mechanisms that facilitate both organizing and enforcement. Setting standards without built-in tools for backing up those new standards through enforcement and increased worker power simply recreates the status quo. After all, we have had minimum wage, prevailing wage, and health and safety policies in place for decades, but many workers nevertheless continue to experience wage theft and health and safety violations

Existing models of complaint-based enforcement are inadequate because many workers don't know their rights, and even when they do, many rightfully fear retaliation by their employers. Labor standards set by boards will be no different unless the legislation empowers worker justice organizations to communicate directly with workers in communities and on worksites. Talking with workers about their rights can be the beginning of an organizing conversation that empowers workers to participate in enforcing the standards and the beginnings of collective action.

The board must begin with the staffing and resources it needs to enforce its standards

Too often we put off conversations about enforcement just to get basic laws on the books: we say, "we'll come back and figure that out later." But if labor standards boards are going to improve workplace standards beyond the status quo, there are a set of "must-haves" that need to be included up front.

- The board in coordination with the state or local labor enforcement agency¹ must have broad authority to conduct research and investigate market and workplace conditions in relevant sectors

¹ We would not recommend setting up two enforcement bodies that will likely be in competition for resources. We have tried instead to provide a framework for how the board and the agency would work together. Where necessary, we would suggest creating infrastructure to connect the board and the existing enforcement agency that could involve one or more full-time staff that works to bridge the board and the agency, and/or additional agency funding for investigators within the agency that focus on that sector and act on referrals from the board and relevant co-enforcement partners. (See NYC's paid care division as an example.)

- The board together with the state or local labor enforcement agency must have the authority to establish a strategic enforcement industry team composed of representatives of the board, agency and co-enforcement organizations and to create a triage process to prioritize the most impactful complaints.
- The board, in coordination with the state or local labor enforcement agency must have broad authority to proactively investigate compliance by individual employers, including access to workers, employer records, and government data. The state or local enforcement agency together with the board must have funding necessary to support [co-enforcement](#), including requiring businesses in relevant sectors where violation rates are very high to contribute to an enforcement fund according to an established formula. The legislation creating the board must include strong penalties to deter violations and ensure that affected workers are made whole.
- The legislation creating the board must include retaliation protections for participating in board activities. The board must have a clear definition of [retaliation](#) for participating [in board activities or asserting rights under established standards](#), “rebuttable presumption” as well as increased penalties for retaliation. The law should allow a private right of action over violations.

Enforcement cannot be left up to government alone

State and local departments of labor simply do not have the resources to be a real presence in exploitative sectors. They also don't have the trust of workers who need them the most. Many immigrant workers fear government, which means they are unlikely to come forward and alert agencies about problem businesses, *unless* they are doing so through trusted organizations. Thus, co-enforcement, or enforcement that actively partners with worker justice organizations, is not a nice “extra.” It is essential.

- The state or local labor enforcement agency in partnership with the board must prioritize funding [for co-enforcement](#) by worker, community, and legal assistance organizations (clearly excluding employer organizations) to undertake proactive training, compliance monitoring, and investigative support.
- The statute that establishes the board must provide the board or the board's designated representatives (including participating organizations) access to workers on company time at worksites, off-site, and on-line, to engage workers in the board's standards-setting process, conduct know your rights trainings, and introduce workers to organizations with whom they can pursue their rights. Employers must be barred from attending these trainings.
- The employer shall not interfere or hinder organizations from requesting the names and contact information from employees who attend Know Your Rights trainings.

Where politically and legally feasible, the law should provide for provision of contact information from the employer of those who attend trainings so that worker organizations are able to follow up regarding compliance as well as provide additional resources. Alternatively, employers can be required to report quarterly up to date worker contact information to the department.

- The law should include membership and payroll deduction mechanisms that facilitate workers joining organizations.

Board processes should facilitate worker organizing

This work should be done not just *for* workers, but *by* workers in relevant sectors, which should include those not covered by the Fair Labor Standards or National Labor Relations Act including domestic workers and agricultural workers. Organizations can use the establishment of the board and its standards-setting and enforcement process to educate the public about problems and organize a deeper base of workers [within the sector](#). However, organizations must have a base of workers in the sector before the board is established in order to successfully pass strong enabling legislation and secure the appointment of strong worker leaders, high-road employers, community and governmental stakeholders. Organizations must NEVER agree to refrain from organizing in exchange for worksite access. All of the following steps in the process provide opportunities to build a powerful base of workers to improve conditions in their workplaces.

- Passing enabling legislation and requiring worker leaders to serve on the board with a stipend provided for their participation along with adequate interpretation and translation provided
- Triggering the establishment of a labor standards board in a sector, through either a worker petition or a formal study that identifies high wage and hour violation rates or worker health and safety violation rates
- Board certification of worker organizations to conduct outreach to workers in the sector so that they understand the opportunity and can have a real say in what standards they want to see
- Robust, worker-accessible public hearings and comment processes by the board as it investigates workplace conditions in the sector to determine what standards are required
- Board would provide guidance on the training curriculum and implementation of ongoing, regular know your rights trainings by certified worker organizations
- Follow-up training on compliance using worker lists from the employers
- Regular review of established standards and workplace conditions in the sector

The board must be set up to succeed

It is important to recognize that some cities and states will face far more limits than others and that the scope of any board is going to be limited by the power of the governmental body creating it and state preemption laws. Thus, we must begin by understanding what standards that governmental body is allowed to establish, in what sectors, and what levers it has at its disposal to compel compliance. When possible, boards should push to go beyond wages alone to overtime protections, scheduling and staffing ratios, health and safety, job classifications, consumer and client rights, health benefits, etc. We also have tools, like settlement agreements, to go beyond statutory authority and require additional actions be taken by employers who violate the standards the board is empowered to set, allowing us to think more broadly and creatively about the powers of the board.

- In cases when existing law requires a board to be “advisory” to the governmental body that established it, enabling legislation must establish processes that limit how and when the government body can act on board recommendations, including limiting or prohibiting changes to recommendations and a timeline for acting on them
- The bill should establish a process for local enforcement agencies or state Departments of Labor to accept assignments of violations of standards issued by the board, in accordance with the agency triage processes and protocols. When existing law preempts a governmental body from directly setting standards, the activities of the board must be designed to bring public and worker pressure to bear on the level of government that can set the needed standards, including even more robust public process, reports, and a commitment by the preempted government to lobby those who can enact the standards.
- The board must include employers to avoid marginalization of the process, particularly high-road employers who can legitimize the employer perspective on the board while sharing the commitment to raising standards on their low-road competitors.
- The nomination and appointment process should stipulate specific criteria for nominators and qualifications for participants that ensures strong representation of low wage workers, worker justice organizations and high road employers and prevents capture by hostile interests. The board should include equal parts workers and employers plus community and/or governmental stakeholders not exceeding one-third of the total board and no single group (workers, employers, other stakeholders) should have veto power over board decisions.
- The board must not have the ability to roll back standards, whether those set through other law or previously established by the board.