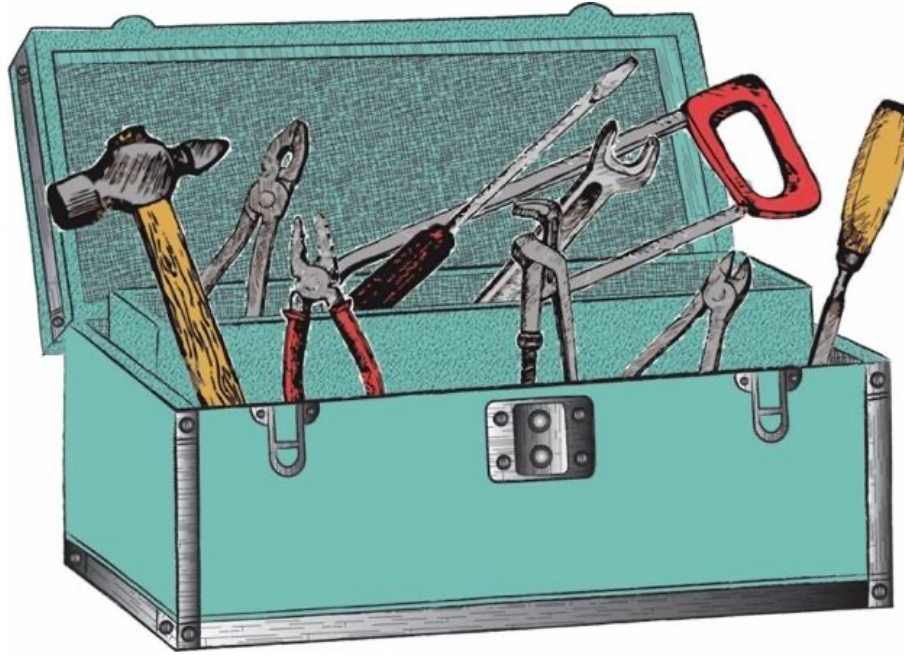


THE LABOR STANDARDS ENFORCEMENT TOOLBOX



Tool 12: Introduction to Co- Enforcement

by Jenn Round, Janice Fine, and
Michael Felsen

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RUTGERS

School of Management
and Labor Relations

workplace
justice lab@RU

CO-ENFORCEMENT: PARTNERING FOR BETTER OUTCOMES

Research has demonstrated that low-wage workers in many high violation sectors do not file complaints anywhere near proportionate to their actual experiences of wage theft.ⁱ This is particularly true of foreign-born, Latinx, Black workers and women.ⁱⁱ There are various reasons for the discrepancy between violations and worker complaints. Most notably, asymmetries of power between low-wage workers and their employers, as well as the very real threat of retaliation, keep individual workers from stepping forward much of the time.ⁱⁱⁱ Additionally, workers may be unaware of their rights or how to navigate the complaint process, they may face language barriers, or they may be wary of engaging with government officials.

Despite these obstacles, it's vital for labor enforcement agencies to reach and gain the cooperation of workers if they are to truly fulfill their mandates.^{iv} The worst offenders may destroy or falsify payroll records and misrepresent facts to hide their violations, and they may instruct their workers to remain silent or to lie when questioned by investigators. Even well-meaning employers may unknowingly fail to maintain accurate records, or otherwise unintentionally fail to comply with the standards required of them. Workers' evidence is imperative for understanding whether payroll records are reliable and for getting to the truth about basic elements of a case; for example, hours worked, amounts paid, and dates of employment. Similar issues arise, of course, in safety and health enforcement as well. Worker cooperation and testimony is critical in determining what conditions existed in the workplace, for how long, and to what extent the employer was aware of them – all questions relevant to the existence and severity of the violation. Also, in more complicated cases, such as those involving joint employment liability, workers possess crucial information that can help establish liability, including who—directly or indirectly—supervised their work and controlled their schedules and other employment conditions. Without worker participation, agencies' investigations will be incomplete and one-sided.

Co-enforcement refers to formal and sustained joint enforcement efforts in which labor standards enforcement agencies partner with worker centers, legal advocacy organizations, unions, and other community-based organizations (referred to collectively in this brief as “worker organizations”) that are embedded in low-wage worker communities and high violation sectors.

Co-enforcement with trusted worker organizations can help agencies identify and connect with low-wage workers in high violation industries. This is because it is often only when an organization that has relationships with workers has vouched for a government agency that workers are willing to come forward and participate in the enforcement process. By building on existing trust between workers and partner organizations, investigators can gain access to the knowledge and information workers possess about violations.^v Worker organizations may also have in-depth knowledge of how industries and the firms within them function. Much of this knowledge is acquired through organizational relationships with front-line workers who are observing and experiencing firsthand the specific ways employers are committing wage and hour and health and safety violations. This makes the organizations powerful sources of expertise for investigators, who seldom specialize in a specific sector.^{vi} Thus, by partnering with worker organizations at every stage of the case, agencies can:

- Gain more insight into industry norms and practices;
- Develop better industry-specific enforcement strategies
- Conduct more effective outreach and education;
- Identify high impact cases and increase compliance across low-wage sectors;
- Level the playing field for employers who are doing the right thing; and
- More effectively recover unpaid wages and ensure ongoing wages, hours, and safety and health compliance.

Co-Enforcement in California: Partnering to Strengthen Enforcement Outcomes in Low-Wage Industries

Since 2016, California's Division of Labor Standards Enforcement (DLSE) has been partnering with worker organizations to target and clean up eight exploitative, low-wage industries: agriculture, carwash, construction, garment, janitorial, residential home care, restaurants, and warehousing. Together, DLSE investigators and the organizations work together to develop industry-specific enforcement strategies and determine which cases to initiate, with the goal of identifying high impact cases that will propel greater compliance throughout the industry.^{vii}

California's partnerships are the most developed co-enforcement model in the U.S. to date, and their successes are measurable and significant. In its most [recent legislative report](#), DLSE reported that the assessed wages per investigation continued to increase steadily and dramatically. Specifically, in 2020-2021, the total back wages assessed per investigation was \$93,434, up from \$1,402 in back wages per investigation in 2010.^{viii}

DLSE credits its partnerships for these gains: “Partnerships have resulted in better leads to uncover wage theft and strengthen the Division’s ability to interview workers in a safe environment in order to uncover and understand the nature of violations in the workplace.”^{ix} DLSE further indicated that “through [our] partnerships, the Bureau has been able to take on cases of far greater magnitude and consequently increase its impact in [priority] industries.”^x

Co-Enforcement at Every Stage of the Case: The Role of Worker Organizations



BASIC ELEMENTS OF CO-ENFORCEMENT

Collaboration: Co-enforcement requires an enforcement agency that is willing and able to engage collaboratively with worker organizations whose constituency includes significant numbers of workers in high violation industries. Agency leaders must embrace the model and empower enforcement staff to implement it. And investigators in particular, must feel comfortable with the partnerships, recognize that the full potential for enforcement cannot be achieved without including workers and worker organizations, and that doing so does not compromise their role but rather enhances it. On the other hand, worker organizations need to understand the pressures and constraints under which agencies operate.

To foster strong collaboration, partners must build a foundation of understanding. By working together to build this foundation, agencies and worker organizations will begin to establish trust and create pathways for accountability while gaining the understanding needed to modulate the demands they make of each other, consistent with each party's limitations.

To build a foundation of understanding:

1. Begin by sharing about each party's mission and the constraints under which each party operates.
Dedicate time to relationship-building.
2. Explore strengths and weaknesses regarding each party's expertise, capacity, and resources.
3. Be open and honest about institutional, structural, or legal limitations.
4. Be straightforward about information that may not be openly shared with the other party and why you cannot share it.
5. Acknowledge that your interests may not perfectly align.
6. Address old wounds.
7. Set and maintain ground rules for collaborating.
8. Try new things! Take risks! Be willing to push yourself and be pushed.

Similarly, when co-enforcement partners recognize the needs of each party, they are better able to understand each other's motivations and goals, allowing for more effective and synergetic partnerships.

Recognizing the needs of each party, which include:

Agency: Needs Worker Organization to:

- Bring good leads and well-prepared cases;
- Preserve confidentiality;
- Respect agency procedures and process;
- Recognize the complex politics in which agency operates;
- Not publicly criticize or shame agency before effort to work it out privately; and
- Respect investigators' knowledge and experience.

Worker Organization: Needs Agency to:

- Preserve trust of workers (even at expense of cases);
- Share information to preserve credibility;
- Recognize that enforcement work is one component of a broader mission;
- Support financially sustainable partnerships/resources to enhance enforcement work; and
- Be open to rethinking policies and procedures.

Routine information-sharing: Another crucial component of co-enforcement is routine information-sharing between the agency and worker organizations. (For an in-depth look at this topic, see [Tool 7: Sharing Information with Community Organizations](#).) Worker organizations, for example, need to know what the agency is capable of doing and how it functions. Agencies should provide guidance to partners on their policies and enforcement procedures while inviting feedback from worker organizations. Agencies should also regularly update partners on any new policies or procedures. Additionally, worker organizations need to be kept abreast of how cases are proceeding. When organizations facilitate complaints but receive no information on how the case is proceeding, they lose credibility with the workers they have encouraged to step forward, a disservice to the worker, organization, and agency. When this happens repeatedly, organizations begin to view filing complaints with the agency as a last resort.^{xi}

Tools that can facilitate information sharing include:

- A form that allows workers to name a representative in the investigation, like the one [LA's Office of Wage Standards](#) provides on its website (which is also available in [Spanish](#));
- A Common Interest Agreement (CIA), which is a written agreement between parties that have a common legal interest. CIAs are primarily tools to defend

against employers' attempts to use discovery to obtain communications between parties with a common legal interest. Notably, common interest privilege only applies where each party has its own attorney as it is an extension of other legal privileges, e.g., attorney-client privilege. For more information, see [Tool 7: Sharing Information with Community Organizations](#).

Understanding what each partner brings to the table: Enforcement agencies and worker organizations bring different capabilities to the table. Due to relationships of trust and power, enforcement agencies, workers, worker organizations, and employers each have unique attributes that are not interchangeable. By harnessing the attributes of all parties, co-enforcement helps agencies and worker organizations to hold employers liable in the face of shifting and decentralized employment structures while achieving better enforcement outcomes for low-wage workers.^{xii}

Examples of Unique Capabilities

Agencies:

- Weight of the government;
- The power to:
 - Investigate workplaces;
 - Compel payroll and injury/illness records and other information;
 - Remedy violations by ordering back pay, damages, reinstatement, correction of safety violations, etc.;
 - Punish violators using fines, denial of licenses, and stop-work orders;
 - Issue subpoenas;
 - Obtain court orders;
 - Seek criminal prosecution;
- Knowledge of complexities of the laws and investigative procedures; and
- Access to and analysis of enforcement-related data.

Worker Organizations:

- Access to expertise that the agency often lacks (e.g. industry expertise, cultural and language capacity);
- Trust of workers;
- Access to information that would otherwise remain hidden;
- Organizing capacity to empower workers to complain;
- Ability to sustain worker engagement and participation throughout the life of the case;
- Capacity to provide services and support to workers beyond enforcement;
- Neutral or safe space to meet and interview workers; and
- Political support to defend robust enforcement efforts and pass stronger laws.

Formalization and resources: The benefits of collaboration are often maximized and best sustained by formalizing the partnership. The strongest co-enforcement partnerships are formalized using the following strategies:

1. **Memorialize the organizations' roles:** Memorandums of understanding, common interest agreements, and/or contracts between agencies and worker organization help ensure agencies routinely involve the organizations and can preserve partnerships, even in the face of political or agency leadership change.
2. **Designate a facilitator:** A staff person whose job is to bring partners together, set and maintain ground rules, foster trust, ensure regular dialogue, identify training needs and resources, and document and spread learnings is a crucial component to the long-term success of partnerships.^{xiii}
3. **Fund worker organizations:** The flow of financial resources from the state to worker organizations strengthens organizations' ability to engage in—and sustain—more extensive co-enforcement efforts.

The vast majority of public co-enforcement funding comes from municipalities. The most notable examples of funding include:^{xiv}

- **Seattle Office of Labor Standards** provides \$1.5 million per year to community partners as part of its [Community Outreach and Education Fund](#). Additionally, SOLS [Domestic Worker Community Organizing Fund](#) granted an additional \$170,000 over 15 months to support community organizing projects.
- **Santa Clara County Office of Labor Standards Enforcement** allocates \$1.4 million per year to its partner organizations.
- **San Francisco Office of Labor Standards Enforcement's** annual funding for contracts with worker organizations is \$848,000.
- **Minneapolis Labor Standards Enforcement Division** provides \$369,000 annually to the worker organizations with which it partners.
- **Philadelphia Office of Worker Protections** provides \$250,000 in annual funding as part of its Community Education and Outreach Fund.
- **L.A.'s Office of Wage Standards** provides fluctuating levels of funding to partners ranging from roughly \$100,000 to \$500,000 per year.
- **Chicago Office of Labor Standards** grants \$100,000 annually to a single partner organization to support co-enforcement.

CONCLUSION

A systemic approach to enforcement analyzes each violation as possible symptom that springs from an underlying cause and a potential signal of a broader pattern of labor market violation. Under this view of regulation, labor standards enforcement is a mechanism to redress the underlying structural problems in the labor market. Agencies reject the notion that certain sectors will always be low wage/high exploitation and see permanently raising compliance and thus improving job quality as a central part of the mission.

Co-enforcement is a key strategy for effective enforcement in low-wage, high violation industries. By forging long-term partnerships with worker organizations, agencies can access information on labor standards compliance that would be difficult, if not impossible, to obtain on their own. Co-enforcement combines the strengths of government and organizations embedded in low-wage worker communities and high violation sectors, resulting in better enforcement outcomes for workers who are too often overlooked by traditional enforcement methods.

ⁱ David Weil and Amanda Pyles, "Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace," *Comparative Labor Law and Policy Journal* 27 (1) (2005): 59, <https://hctar.seas.harvard.edu/files/hctar/files/hr08.pdf>. See also Daniel J. Galvin, Jenn Round, and Janice Fine. "A Roadmap for Strategic Enforcement: Complaints and Compliance with San Francisco's Minimum Wage," (2020), available at https://smlr.rutgers.edu/sites/default/files/Documents/Centers/CIWO/20_0828_sanfrancisco_study.pdf; Daniel J. Galvin, Janice Fine, and Jenn Round, "Minimum Wage Violations in New Jersey: Toward Strategic Enforcement," (2022) available at: https://smlr.rutgers.edu/sites/default/files/Documents/Centers/WJL/wjlMWstudy_rev06-22.pdf; Jacob Barnes, Janice Fine, Daniel J. Galvin, Jenn Round, "A Road Map for Strategic Enforcement Targeting: Complaints and Compliance with Los Angeles County's Minimum Wage," (2021) available at: <https://smlr.rutgers.edu/sites/default/files/Documents/Centers/WJL/MemoLACty.pdf>.

ⁱⁱ Janice Fine, Daniel Galvin, Jenn Round and Hana Shepherd, "Maintaining Effective U.S. Labor Standards Enforcement through the Coronavirus Recession," Washington Center for Economic Growth, (2020) available at: https://smlr.rutgers.edu/sites/default/files/Documents/Centers/WJL/LaborEnforcementRpt_090320.pdf.

ⁱⁱⁱ Janice Fine, “Solving the Problem from Hell: Tripartism as a Strategy for Addressing Labour Standards Non-Compliance in the United States,” *Osgoode Hall Law Journal* 50 (4) (2013): 815, available at <https://digitalcommons.osgoode.yorku.ca/ohlj/vol50/iss4/3>.

^{iv} This is not to say that agencies are not receiving high numbers of complaints. Virtually every agency has more complaints than resources. That is why it is critical for agencies to create a [triage process](#) for complaints so they can proactively prioritize limited resources where problems are the greatest.

^v Janice Fine, “Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Success Where the State Alone Has Failed?” *Politics and Society* 45 (3) (2017): 364, available at <https://www.doi.org/10.1177/0032329217702603>.

^{vi} Fine, 2013 at 820–21.

^{vii} For more information on the Partnership, see Janice Fine and Jenn Round, “Federal, State and Local Models of Strategic Enforcement and Co-enforcement Across the U.S.,” 2021, available at <https://workercenterlibrary.org/product/federal-state-and-local-models-of-strategic-enforcement-and-co-enforcement-across-the-u-s/>.

^{viii} California Labor Commissioner’s Office, Department of Industrial Relations, “2020-2021 Bureau of Field Enforcement Fiscal Year Report,” at 10, available at https://www.dir.ca.gov/dlse/BOFE_LegReport2021.pdf.

^{ix} *Id.* at 3.

^x *Id.* at 9.

^{xi} Fine, 2017.

^{xii} Fine, 2017.

^{xiii} Fine and Round, 2021.

^{xiv} The information herein reflects annual funding amounts at the time of this writing. It was reported by agencies as part of a survey of local jurisdictions conducted by WJL@RU.