

Enforcing Labor Rights
Fall 2016
37:575:481:01 and 38:578:513:01
Thursdays 7:15-10:05 pm
Labor Education Center 130/131
Professor Janice Fine
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Office Hours: Thursdays 4:30-6:30 pm, Wednesdays 2-4 pm or by appointment

Already struggling to get by on salaries that are barely enough for basic subsistence, in a development that gives new definition to the phrase “adding insult to injury,” many low wage workers in the United States today cannot even count on employers to accurately report the hours they have worked, pay the wages they are owed or follow safety and health laws. Non-compliance is at historic levels:

- 26% of low wage workers in the nation’s three largest cities suffered minimum wage violations in the week prior to a 2009 national survey by Bernhardt, DeFilippis, Milkman and Theodore
- 76% of low wage workers who labored more than 40 hours in the prior week were not paid according to overtime laws according to the same survey
- Regional non-compliance levels were over 50% in nursing homes, poultry-processing, daycare, restaurants and healthcare according to USDOL’s own surveys
- The number of fatal and nonfatal injuries in 2007 was estimated to be more than 5,600 and almost 8,559,000, respectively
- 4,628 workers were killed on the job in 2012 [[BLS revised 2012 workplace fatality data*](#)] (3.4 per 100,000 full-time equivalent workers) – on average, 89 a week or more than 12 deaths every day.
- 748 Hispanic or Latino workers were killed from work-related injuries in 2012– on average, more than 14 deaths a week or two Latino workers killed every single day of the year, all year long.
- Fatal work injuries involving contractors accounted for 15 percent of all fatal work injuries in 2012.

This class will analyze the root causes of these twin crises of wage theft and worksite injury and strategies for strengthening enforcement of wage and hour and health and safety laws. I have been exploring these questions in my research for several years and have spent the past few years conducting case studies that we will use as lenses through which to explore “co-production”--enforcement strategies that involve government working with organizations of civil society like unions and worker centers to improve compliance levels.

Questions we will explore include:

- What is the nature and extent of labor standards and health and safety violations taking place in the US today? Where are they concentrated?
- Why is there so much non-compliance?
- Why do firms choose to comply or choose not to comply with regulation?
- How should we think about how government should carry out labor standards enforcement?
- How did the drafters of the Fair Labor Standards Act envision enforcement working? How have “logics of enforcement” evolved over time?
- How was enforcement of the Occupational Safety and Health Act envisioned?
- How do the two acts differ in terms of their enforcement regimes and the role given to workers, unions, worker centers, community organizations or other institutions of civil society?
- What role might these institutions play in enforcement?
- What kind of experimentation is going on at the federal, state and local levels to strengthen enforcement through co-production?
- What is the relationship between enforcement of existing minimum standards and raising them? Relatedly, what is the relationship between enforcement and organizing?

This course addressed the following SMLR LEARNING OBJECTIVES:

IV. Theoretical Perspectives - Demonstrate an understanding of relevant theories and apply them given the background context of a particular work situation. Survey foundational theories of enforcement and apply them to contemporary enforcement gaps.

V. Understanding Context - Evaluate the context of workplace issues, public policies, and management decisions Enforcement issues are a critical context for new public policies, union initiatives to raise labor standards, and management decisions.

Grading

(1) Weekly one-two page reaction papers referencing the homework reading (30%)

(2) Mid-term Exam (30%)

(3) Final Exam (30%)

(4) Class Participation (10%)

(Please note that *all* unexcused absences will lower your grade. Unexcused absences in excess of 3 classes will result in a failing grade.)

Course Materials: Course reading materials are found in the Sakai Announcements section. The Instructor reserves the right to supplement, substitute, and/or modify the listed reading selections.

Academic Integrity: The conduct of all students is governed by the Rutgers University Academic Integrity Policy:
http://academicintegrity.rutgers.edu/files/documents/AI_Policy_9_01_2011.pdf

Class Schedule and Readings

Class 1 September 8th

Introduction: the Problem from Hell

Handouts:

US DOL: A Handy Reference Guide to the Fair Labor Standards Act
The Fair Labor Standards Act of 1938 As Amended, US DOL WHD, WH Publication 1318, Revised May 2011, pp. 10-20, 25-26, 46-48, 52-59.
US DOL Wage and Hour Division (WHD) Frequently Asked Questions
US DOL WHD Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)
US DOL WHD: Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act
US DOL WHD: Fact Sheet #48: Application of US Labor Laws to Immigrant Workers...
US DOL WHD: Third Party Complainant
US DOL WHD: Fact Sheet #44: Visits to Employers
Document that begins: "What would you do if your company received a letter from the US DOL stating that an investigator would be at the door in the next few days to talk to the company's employees and examine its wage and hour records? Worse, what if an investigator showed up unannounced...?"
Epstein, Becker, Green: Wage and Hour Investigation Checklist
Greenhouse, Steve, "More Workers Are Claiming Wage Theft" *New York Times*, p. A1, September 1, 2014

Readings for Class Two:

Skim: Bernhardt, Milkman and Theodore, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment) 2009
http://nelp.3cdn.net/1797b93dd1ccdf9e7d_sdm6bc50n.pdf

Read:

Bobo, Kim *Wage Theft in America*, Chapters One and Two

Weil, David, Chapter One pp. 7-27 “The Fissured Workplace and Its Consequences” in *The Fissured Workplace: Why Work Became So Bad for So Many and What Can Be Done to Improve It*, Harvard University Press, 2014.

Class 2 September 15th

Roots and Dimensions of the Wage Theft Problem

Invited Guests: Marien Casillas-Pabillon and Lou Kimmel, New Labor

Readings for Class Three:

Skim: National Council for Occupational Safety and Health, 2014 Preventable

Deaths: *The Tragedy of Workplace Fatalities*

http://www.coshnetwork.org/sites/default/files/uploads/Preventable_Deaths-2014.pdf

Also skim: BLS Census of Fatal Occupational Injuries Summary, 2011 and

BLS Census of Non-Fatal Occupational Injuries and Illnesses Requiring Days Away From Work, 2011 (www.bls.gov/news.release/osh2nr0.htm)

Read:

Restaurant Opportunities Centers United, *Serving While Sick: High Risks & Low Benefits for the Nation's Restaurant Workforce, and Their Impact on the Consumer*

http://rocunited.org/wp-content/uploads/2013/04/reports_serving-while-sick_full.pdf

Kelman, Steven, “Occupational Safety and Health Administration” pp. 236-266 in *The Politics of Regulation*, James Q. Wilson, ed., Basic Books: New York, 1980.

Barstow, David and Lowell Bergman: “Dangerous Business”: Three Part Series *New York Times*, January 8, 9 and 10, 2003

Barstow, David “California Leads in Making Employer Pay for Job Deaths” *New York Times*, December 23, 2003.

Class 3 September 22nd

Health and Safety in Crisis

Invited Guests:

Carmen Martino and Michelle Ochsner, Rutgers and New Labor

Readings for Class Four:

Eisenberg, Deborah Thompson. “The Feudal Lord in the Kingdom of Big Chicken: Contracting and Worker Exploitation by the Poultry Industry.” A report by Public Justice Center, 1-27.

<http://nelp.org/docUploads/eisenberg%2Epdf>

Milkman, Ruth “Putting Wages Back into Competition: Deunionization and Degradation in Place-Bound Industries” pp. 65-89 in *The Gloves Off Economy: Workplace Standards at the Bottom of America's Labor Market*, LERA Series 2008.

On Joint employer:

<http://www.latimes.com/business/hiltzik/la-fi-hiltzik-20150823-column.html>

On Labor: Fast Food News – NLRB Names McDonald’s as a ‘Joint Employer’
Posted on December 19, 2014 by Dylan Rubin

On Independent Contracting:

Mark Heller “Dancers and Drivers: Congress May Step Into Employee-Contractor Tax Confusion” Bureau of National Affairs Daily Labor Report for 2 July 2015:

Additional Reading:

Zatz, Noah D. “Working Beyond the Reach or Grasp of Employment Law” pp. 31-64 in *The Gloves Off Economy: Workplace Standards at the Bottom of America’s Labor Market*, LERA Series 2008.

Class 4 September 29th

Roots and Dimensions of the Crisis: Sectoral strategies, Subcontracting, Joint Employer Union Decline

Invited Guests: Jason Rowe, Unity Square
Christina Montorio, Teamsters
Kevin Brown, SEIU 32BJ

Readings for Class Five

O’Brien, Ruth “A Sweat Shop of the Whole Nation: The Fair Labor Standards Act and the Failure of Regulatory Unionism,” *Studies in American Political Development* 15, no. 1 (2001).

Perkins, Frances “Wages and Hours” in *The Roosevelt I Knew* pp. 246-266

Farhang, Sean and Ira Katznelson “Congress and Labor in the New Deal and Fair Deal,” *Studies in American Political Development* 19, no. 1 (2005).

Linder, Marc “Class Struggle at the Door: The Origins of the Portal-to-Portal Act of 1947” 39 *Buffalo Law Review*, 53, 1991. Pp. 167-175

Class 5 October 6th

What’s Politics Got to Do With It?

Readings for Class Six:

Robert Baldwin, Martin Cave, Martin Lodge “Regulatory Strategies” pp 106-136 and “Enforcing Regulation” pp. 227-258 in *Understanding Regulation: Theory, Strategy and Practice*

Kagan, Robert A., Neil Gunningham and Dorothy Thornton “Fear, duty and regulatory compliance: lessons from three research projects” in *Explaining Compliance: Business Responses to Regulation*, Edward Elgar Publishing, 2011.

Eugene Bardach and Robert A. Kagan, “Unreasonableness” pp. 58-92 in *Going By the Book: The Problem of Regulatory Unreasonableness*, New York: Transaction Publishers, 2002.

Lipsky, Michael Chapter Two “Street Level Bureaucrats as Policy Makers” in *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* pp. 13-16 on discretion

Class 6 October 13th

Theories of Enforcement I.

Readings for Class Seven

Ayres, Ian and John Braithwaite Chapter Two, “The Benign Big Gun” in *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, 1992.

Weil, David and Amanda Pyles, “Why Complain? Complaints, Compliance, and the Problem of Enforcement in the US Workplace” *Comparative Labor Law & Policy Journal*, Volume 27, Number 1, Fall 2005.

Weil, David, “A Strategic Approach to Labor Inspection” *Working Paper*, May, 2008.

Additional Reading

Weil, David “Leveraging Time: Regulating Labor Standards in the Age of Lean Retailing” April 2001.

Class 7 October 20th

Theories of Enforcement II.

Distribution of Midterm

Readings for Class Eight

Ayres, Ian and John Braithwaite Chapter Three, “Tripartism” in *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, 1992.

Fine, Janice and Jennifer Gordon, “Strengthening Labor Standards Enforcement through Partnerships with Workers Organizations” December 2010, 38 (4) *Politics and Society*.

Fine, Janice “Solving the Problem from Hell: Tripartism as a Strategy for Addressing Labor Standards Non-Compliance in the United States” *Osgoode Hall Law Journal*, volume 50:4, 2013.

Take home mid-term due by noon, October 26th. NOTE: DO NOT SKIP CLASS ON OCTOBER 26th!

Class 8 October 27th

Introducing Co-Production of Enforcement

Readings for Class 9

Skim for background about the guestworker system: *Close to Slavery: Guestworker Program in the United States*, Southern Poverty Law Center. Find at:

<http://www.splcenter.org/pdf/static/SPLCguestworker.pdf>

[And for background on the interaction between US labor and immigration law:](#)

Gordon, Jennifer, “Holding the Line on Workplace Standards: What Works for

Immigrant Workers (and What Doesn't)" in *What Works for Workers? Public Policy and Innovative Strategies for Low-Wage Workers*, Stephanie Luce, Jennifer Luff, Joseph A. McCartin and Ruth Milkman, editors, New York: Russell Sage Foundation, 2014. ISBN 978-0-87154-571-8

Read:

(note: these are all very short)

Brief Excerpts from the OSHA Field Operations Manual and Regulations on Representation of Employees

March 7, 2003 OSHA interpretation of 1903.8

February 21, 2013 OSHA interpretation of 1903.8, 11: 1952.10 and 1903.20

Brief Congressional History of the Walk-Around "Inspections and Investigations"

National Guestworkers Alliance, August 17, 2011 Notice of Health and Safety Hazards by Exel North American Logistics Inc. SHS Onsite Solutions, and Cultural Exchange Travel USA (CETUSA)

US DOL OSHA Citation and Notification of Penalty to Exel, Incorporated and its successors, February 21, 2012

USDOL OSHA Citation and Notification of Penalty, February 21, 2012

OSHA News Release, February 13, 2012 "US Labor Department's OSHA cites 2 companies, proposes \$288,000 in fines for workplace safety and health violations involving foreign students"

Settlement Agreement, Stipulation and Compliance Agreement, Hilda Solis, Secretary of Labor, US DOL, Complainant v. Exel Inc and its successors, Respondent

Class 9 November 3rd

Case #1: National Guestworkers Alliance, OSHA and the Hershey Case...and Co-production!

Invited Guests: JJ Rosenbaum, National Guestworkers Alliance

Readings for Class Ten

(note: these are also short)

Greenhouse, Steve "The Workers Defense Project: A Union in Spirit" *New York Times*, August 10, 2013

Building Austin, Building Injustice: Working Conditions in Austin's Construction Industry Workers Defense Project, 2009

[http://www.workersdefense.org/wp-content/uploads/2013/04/Building- Austn_Report-2.pdf](http://www.workersdefense.org/wp-content/uploads/2013/04/Building-Austn_Report-2.pdf)

Construction Emergency: The Hidden Costs of Workplace Injuries, Workers Defense Project, 2011

http://www.workersdefense.org/wpcontent/uploads/2013/04/%E2%80%9CTexas_Construction_EmergencyV2%E2%80%9D.pdf

Build a Better Texas: Construction Working Conditions in the Lone Star State, January 2013 Amy Price et al and Workers Defense Project

http://www.workersdefense.org/Build%20a%20Better%20Texas_FINAL.pdf

“Agreement Renewing an Alliance Between Austin Area Office of OSHA and Workers Defense Project”

“Memorandum of Understanding between Workers Defense Project and the Department of Labor Wage and Hour Division”

OSHA Austin Area Office, Citation and Notification of Penalty to Wolff Construction LP
Texas Penal Code: Section 31.04 Theft of Service

Michael E. Conroy, “Branded! The Unexpected Consequences of Successful Global Branding” in *Branded! How the Certification Revolution is Transforming Global Corporations* New Society Publishers 2007.

Class 10 November 10th

Case #2: Co-production in Austin, Texas: OSHA, Wage and Hour and the Workers Defense Project

Readings for Class 11:

“Job Quality and Black Workers: An Examination of the San Francisco Bay Area, Los Angeles, Chicago and New York” Steven C. Pitts, Center for Labor Research and Education, UC Berkeley, August 2007.

Thomas J. Sugrue, Affirmative Action from Below: Civil Rights, the Building Trades, and the Politics of Racial Equality in the Urban North, 1945-1969, *Journal of American History*, June 2004

Roger Waldinger and Thomas Bailey, “The Continuing Significance of Race: Racial Conflict and Racial Discrimination in Construction” *Politics&Society* 1991.

Uyen Le and Lauren D. Appelbaum “Project Labor Agreements in Los Angeles: The Example of the LA Unified School District” UCLA Institute for Research on Labor and Employment, Number 11, 2011

Los Angeles Metropolitan Transit Authority and Los Angeles/Orange County Building and Construction Trades Council Project Labor Agreement

Wei Wang, Prawit Thainiyom and Liz Kofman, “Guidelines on Community Compliance Monitoring Toolkit: A Collaborative Research Project by the Los Angeles Black Worker Center and University of Southern California” May 15, 2014.

LA Black Worker Center Research and Policy Brief: “Increasing Labor Standards and Diversity in Los Angeles through Co-production of Enforcement”.

LABWC, Community Compliance and Monitoring Report, August 2014

Class 11 November 17th

Case #3: Co-enforcement in Los Angeles, California: the LA Black Worker Center and Construction Hiring

Readings for Class 12

“Check Please! Health and Working Conditions in San Francisco Chinatown Restaurants” *A Report by the Chinese Progressive Association*, September 2010

Chapter Eight “Enforcement of Labor Standards” by Miranda Dietz, Donna Levitt and Ellen Love in *When Mandates Work: Raising Labor Standards at the Local Level*, Michael Reich, Ken Jacobs and Miranda Dietz, editors, University of California Press, 2014

Janice Fine, SF case write-up

San Francisco Administrative Code Chapter 12R: Minimum Wage and FAQ’s

“Minimum Wage Ordinance Annual Report FY 2012-2013”, Office of Labor Standards Enforcement, *General Services Agency, City and County of San Francisco*

“Improving Capacity to Monitor Workers’ Rights & Health, SF Department of Health

“SF’s Minimum Wage, Highest in the Nation, Eludes Thousands as Enforcement Efforts Face Obstacles” Aaron Tilley and Michael Stoll, *San Francisco Public Press*

Stephanie Luce, *Fighting for a Living Wage* (New York: Cornell University Press, 2004).

Class 12 November 16th

Case #4: Co-production in San Francisco: the San Francisco Office of Labor Standards Enforcement and the Chinese Progressive Association, Filipino Community Center, La Raza Centro Legal and Young Workers United

Readings for Class 13:

“Cleaning Up the Carwash Industry: Empowering Workers and Protecting Communities: A Report by the Carwash Workers Organizing Committee of the United Steelworkers” March 27, 2008

“Regulating the Carwash Industry: An Analysis of California’s Car Wash Worker Law” Kevin Barry, Marcy Koukhab and Chloe Osmer, UCLA School of Public Affairs, April 2009

“The Clean Carwash Campaign”, Special Report, December 2013,

www.CleanCarwashLA.org

Clean Carwash Campaign Cal/OSHA Timeline

“The Carwash Worker Law”, Clean Carwash Campaign

“Voluntary Recognition Agreement”, Clean Carwash Campaign

Colin Gordon, “The Lost City of Solidarity: Metropolitan Unionism in Historical Perspective,” *Politics and Society* 27, no. 4 (1999): 561-85.

Class 13 December 1st

Case #5: Co-production at the Carwash: Labor and the California Division of Labor Standards Enforcement

Readings for Class 14

Bowe, John. April 21 & 28, 2003. “Nobodies: Does slavery exist?” *New Yorker*, 79(9), 106-110 and 121-133.

Barndt, Deborah, “Mexican Migrant Workers Take on the Fast Food Giants” York University, June 9, 2009

Eric Schlosser, “Penny Foolish” November 29, 2007

Fair Food Code of Conduct fairfoodstandards.org/code.html
Fair Food Standards Council “Fair Food Program Report, 2011-2013, 2014, and 2015 Annual Reports
fairfoodstandards.org/code.html
Estabrook, Barry “Building a Better Tomato” in *Gastronomica*, Fall 2011
Asbed, Greg and Sean Sellers, “The Fair Food Program: Comprehensive, Verifiable and Sustainable Change for Farmworkers” *University of Pennsylvania Journal of Law and Social Change* Issue 1, Volume 16 (2013)
Asbed, Greg and Sean Sellers “Worker-led Enforcement”
Sandy Brown and Christy Getz, “[Privatizing farm worker justice: Regulating labor through voluntary certification and labeling](#)” *Geoforum* Volume 39, Issue 3, 1184-1196.
Greenhouse, Steve, “In Florida Tomato Fields a Penny Buys Progress” *New York Times*, April 14, 2014
Skim:
Fair Food Standards Council, Expedited Preliminary Audit Findings, Tomato Grower, January 2013, Fair Food Program Corrective Action Plan
Eugene Bardach and Robert Kagan, “Private Regulation” in *Going By the Book: The Problem of Regulatory Unreasonableness*, 217-242.

Additional Reading

Richard M. Locke, “Compliments or Substitutes? Private Power, Public Regulation, and the Enforcements of Labor Standards in Global Supply Chains,” in *The Promise and Limits of Private Power: Promoting Labor Standards in a Global Economy* (Massachusetts: Cambridge University Press, 2013).

Class 14 December 8th

Case #6: The Coalition of Immokalee Workers and the Fair Food Standards Council

Thinking About Certification Programs in US Low Wage Sectors

Class Evaluation

Distribution of Final Take-home Exam, Due by 12 noon December 23rd