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Document Title: Understanding What Works in the Identification, Investigation, and Prosecution of Labor Trafficking Cases in the United States: Improving Collaboration Between Law Enforcement Agencies and Departments of Labor Key Findings and Recommendations

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Improving Collaboration Between Law Enforcement Agencies and Departments of Labor

Key Findings and Recommendations



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Introduction

Labor trafficking—a crime in which individuals are compelled to engage in work under conditions of force, fraud, or coercion—has been identified in every U.S. state. Occurring in industries as varied as construction and childcare, labor trafficking involves both citizen and foreign-born victims and causes harm to individuals, families, communities, and economies.

A study aimed at understanding what works in five U.S. regions that have demonstrated innovation in identifying and responding to labor trafficking cases identified the critical role that federal, state, and municipal departments of labor (DOLs) and other labor regulatory agencies can have on improving the local and state response to labor trafficking.

Study participants included law enforcement personnel, prosecutors, local labor regulatory staff, immigration attorneys, community organizers, and victim service providers. Participants provided insight about the current state of collaboration between law enforcement agencies and DOLs as well as perspectives on the unique ways that DOLs can support anti-labor trafficking efforts, including addressing accountability for exploitive employers and providing justice for victims. Participants also provided feedback about the benefits of DOL involvement in labor trafficking cases and some of the current barriers to their involvement. This brief provides an overview of these findings and concludes with recommendations for improving the working relationships between local law enforcement agencies and DOLs.

STUDY OBJECTIVES

This study was designed to identify promising practices in labor trafficking identification and response in five U.S. regions that have demonstrated innovation and commitment to addressing the problem of labor trafficking. Innovative strategies included dedicated labor trafficking investigators, specialized units within district attorneys' offices, and a statewide multidisciplinary team approach that incorporates efforts to identify and respond to labor trafficking. This study sought to understand how labor trafficking came to be prioritized in these jurisdictions and how labor trafficking response is situated in the unique policy, legal, and cultural settings of each participating county. This project also explored how the identification and response to labor trafficking is understood and operationalized as distinct from sex trafficking identification and response and identified the challenges with which these jurisdictions continue to struggle despite their prioritization of labor trafficking.

STUDY DESIGN

Using a multi-method strategy, including stakeholder interviews and case file reviews, we sought to address three primary research questions. We purposively selected five communities that had demonstrated a commitment to prioritizing labor trafficking and represented geographic and sociodemographic diversity. Innovative strategies included dedicated labor trafficking investigators, specialized units within district attorneys' offices, and a statewide multidisciplinary team approach that incorporates efforts to identify and respond to labor trafficking. The information in this brief is based on 63 interviews with 73 anti-trafficking professionals from across the five sites.

Overarching Study Research Questions

1. Are there patterns in the characteristics of labor trafficking cases identified by law enforcement at the state and local level?
2. How does the identification and investigation of labor trafficking cases differ from that of sex trafficking in terms of case characteristics, collaboration within and among agencies, case resolutions, and case outcomes?
3. What are the features of successful labor trafficking investigations?

KEY FINDINGS

State of Anti-Labor Trafficking Professionals' Collaboration with DOLs

Most respondents described inconsistent and delicate relationships with local and federal departments of labor. Many anti-labor trafficking professionals have existing relationships with individuals from their local and federal DOLs. Several respondents described regularly attending task force meetings or other convenings where DOLs are represented. A few respondents also describe having positive working relationships with individuals from federal, state, and municipal DOLs. In addition to working relationships, some respondents described regular and frequent opportunities to educate DOL representatives about labor trafficking.

*"We received a report a few years ago from the Department of Labor...who went out to a farm and identified a potential labor trafficking scenario. Their first phone call was to us and law enforcement."
(Northeast, LE, 1)*

In addition to calling upon partners for assistance with or referring labor trafficking cases to DOLs, anti-labor trafficking professionals also referred cases of workplace exploitation that did not meet the criminal definition of labor trafficking to their DOL colleagues for potential civil investigation. Sometimes advocates and victim service providers referred cases to DOLs so victims of labor trafficking could fulfill the T visa application requirement of reporting their victimization to an investigative authority. Similarly, a few respondents described receiving case referrals from their local DOLs.

KEY FINDINGS

The Role of DOLs in Holding Exploitative Employers Accountable

DOLs and other regulatory agencies can hold exploitative employers accountable. Although law enforcement can investigate only labor and workplace abuses that have or may have risen to the level of a crime, DOLs can investigate other civil labor laws, such as wage and hour violations, and hold employers accountable via fines and other mechanisms. When DOLs investigate workplace abuses, they can refer cases that have elements of labor trafficking or other criminal violations, which may not be immediately obvious, to local law enforcement. On the other hand, when law enforcement, prosecutors, advocates, or victim service providers identify workplace violations or abuse that do not rise to the level of a criminal offense, they can refer these cases to DOL for civil investigation and potential employer penalties.

Because survivors of labor trafficking often find it difficult to report their victimization to law enforcement, they may desire case resolution in other ways. Referrals from law enforcement to DOLs can help victims secure back wages and other forms of justice if law enforcement and DOL have functional relationships that involve regular case referrals. DOLs can enforce civil labor laws and addressing issues such as wage theft and minimum wage violations, which can be an important tool in responding to labor trafficking and holding perpetrators accountable. The ability to respond to these civil infractions is unique to DOLs. Because other anti-labor trafficking stakeholders do not have this authority, DOL representatives are key to addressing the spectrum of labor exploitation and abuse in workplaces.

"If we're developing cases and we're receiving tips and let's just say it's labor exploitation, but it's not labor trafficking, one of the concerns that I have is that...the investigatory team is like [to the victim], "Hey, we're here to help you. Please feel free to come forward." Then I'm like, "Oh wait, this isn't labor trafficking." I walk out the door. You know what I mean? That's the wrong message to send whereas we can say, "Okay, well, this is not rising to the level of a criminal investigation, but there's most certainly the civil investigation so let us help you facilitate that relationship with DOL." So the person that we're interviewing is just not left without any type of recourse so that there is some type of outcome for them or success for them with them coming forward to us."
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The Role of DOLs in Providing Justice for Survivors

One of the most frequently cited ways that DOLs can support victim restoration is by helping survivors recoup wages from employers. According to respondents, this is among the most important forms of case resolution to survivors, and local DOLs were best equipped to secure this form of survivor support. Some respondents relied on their local DOLs to calculate the amount of restitution owed to labor trafficking survivors in criminal cases. These calculations are often beyond the scope of what law enforcement can construct with limited understanding or interpretation of written and verbal employment agreements, state minimum wages, and any industry-specific wage differentiators, overtime rules, and exemptions.

Another important role that DOLs play in providing justice for survivors is by certifying applications for T and U visas. This was especially noted by victim service providers and legal services immigration attorneys who supported noncitizen clients. These clients often feared reporting to law enforcement but still desired the ability to work legally and seek long-term economic, legal, and social stability that was possible with a T or U visa.

Benefits to DOL Involvement in Labor Trafficking Cases

One of the overarching findings of this study is that interagency collaboration to address labor trafficking demonstrates to the public, government leaders, and relevant agency leadership that labor trafficking is a priority in the community. Because no one system (such as the criminal legal system, immigration, or labor regulation) can respond to labor trafficking alone, it is essential that these systems work together.

DOLs have different resources that can help prevent, respond to, and resolve labor trafficking cases. Law enforcement respondents described the benefits of DOL investigators' specialized expertise, which can even benefit law enforcement investigations because most detectives do not have much expertise calculating lost wages or understanding specific workplace regulations or industry standards. Some DOL staff also have specialized training on identifying labor trafficking in workplaces, which they use when inspecting or visiting worksites. DOL staff have unique access to worksite locations that are generally inaccessible or unobservable to law enforcement. Finally, some DOLs and regulatory agencies conduct outreach and provide education directly to workers, which is an important opportunity to raise awareness about labor trafficking, labor exploitation, and workers' rights.

*"I think partnering or really working alongside with Department of Labor and, whether citywide or statewide, really working alongside with them and being able to tap into their resources. Because I feel like they have resources that community members don't know about or that they don't know they can reach out because they're like, "Well, I don't know what they do." Because they're not the police."
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KEY FINDINGS

Barriers to DOL Involvement in Labor Trafficking Cases

Study respondents described important barriers to meaningful DOL involvement in local labor trafficking cases.

Relationships with local DOL representatives as **lacking rapport, trust, or consistency.**

Respondents noted a lack of regular meetings, meeting follow-up, regular communication, or development of ongoing professional relationships.

Several respondents described encountering so much **red tape and bureaucracy (e.g., lengthy delays, complicated information-sharing procedures)** trying to collaborate with DOLs on cases that ultimately they were unable to work together and share the information necessary to build a case or support survivor restoration.

In one site, collaborating on a case was challenging even though the local law enforcement agency had an active memorandum of understanding with their local DOL. When respondents did collaborate with DOL representatives, the collaboration was often described as irregular and ad hoc.

Turnover was also a challenge; respondents described establishing rapport with someone from the DOL only to have that person reassigned. It can be difficult to reestablish that rapport with a new contact.

Challenges in collaboration ultimately results in a **bi-directional lack of referrals** between law enforcement agencies and DOLs.

Despite law enforcement and DOLs having different but complimentary knowledge about workplace abuses and violations and different resources available to prevent and respond to these offenses, most of the time these partners were not working in easy collaboration.

KEY FINDINGS

Barriers to DOL Involvement in Labor Trafficking Cases (Cont.)

Study respondents were also frustrated that DOLs **do not effectively enforce labor laws** in ways that prevent further harm to workers.

Respondents described DOL approaches such as collecting complaints or sending employer letters requesting that they comply with certain laws or policies. Although these responses to workplace violations may be common practices for DOL regulators, some anti-labor trafficking stakeholders felt that these actions do not adequately prevent employers from continuing to exploit workers.

DOLs and regulatory agencies also sometimes have **restrictive eligibility criteria for cases** they can investigate or prioritize (e.g., a minimum number of workers per case, a threshold for unpaid wages claimed by survivors).

These policies can be hard for advocates or law enforcement to reconcile when they are trying to assist a survivor and feel that DOL-facilitated case resolution is the best or most appropriate option but are not able to make the case referral.

Respondents also noted that **not all DOLs certify U and T visa applications** despite having the authority to do so.

One respondent noted that in their region, this was because the DOL had only one person with certification authority assigned to a large jurisdiction. This respondent thought broadening this responsibility to more DOL representatives could increase responses to certification requests.

Some respondents believed that their DOL's **process for assisting survivors with recouping wages takes too long and presents great difficulty** for labor trafficking survivors who have urgent needs for income.

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RECOMMENDATIONS FOR DEPARTMENTS OF LABOR AND OTHER CIVIL LABOR REGULATORY AGENCIES

1

Establish a point of contact for labor trafficking case referrals.

The individual serving as point of contact should be trained on DOL labor trafficking identification and investigation, be familiar with state and federal labor trafficking statutes, and understand the ways that the agency can provide support to both criminal labor trafficking investigations and services for survivors. To support relationship building with the anti-labor trafficking community, this person should also attend meetings of regional task forces or other anti-trafficking coalitions.

2

Establish memoranda of understanding between DOLs and local law enforcement and other organizations that may encounter labor trafficking.

That way, when cases emerge, there are no administrative barriers to information sharing.

3

Clearly communicate how your agency can support anti-labor trafficking initiatives.

It is important that both agency staff and external partners understand the ways that your agency can support anti-labor trafficking initiatives. This will also help the anti-labor trafficking community understand what your agency can and cannot do and help eliminate frustration.

4

Plan for sustainability.

Staff turnover, promotion, and reassignments are normal and expected within state and local governmental agencies. However, trust and relationship building with external collaborators is vital to labor trafficking response. Ensure that there is a plan for knowledge transfer among DOL staff specializing in labor trafficking identification, response, or prevention. Consider training multiple staff and investing in their integration with the community's anti-trafficking community.

5

Develop your agency's policy and process to response to T and U visa certification requests.

All civil DOLs have the authority to certify T and U visa applications. If your agency already certifies T and U visas, ensure your policy and practices are codified and agency staff are trained on this process. If your agency does not certify T and U visas or has only an informal ad hoc process for doing so, develop a policy by which your agency will respond to certification requests in a timely and trauma-informed manner.

6

Publicize how your agency can support workers who experience abuse, exploitation, or labor trafficking at work.

DOLs are uniquely able to conduct community awareness and outreach activities, particularly to vulnerable worker populations and directly in workplace settings. Ensure these materials are translated into the languages spoken by workers in your community.

RECOMMENDATIONS FOR FOR NON-DOL MEMBERS OF THE ANTI-TRAFFICKING COMMUNITY

1

Follow up with local DOL representatives after a case has been resolved.

Whether or not the optimal collaboration between your agency and the DOL was achieved in a given case, take the time to better understand why. What worked and what did not? Establish a strategy to continually improve collaboration, including reaching common objectives for case resolution.

2

Welcome representatives from DOLs to regular anti-trafficking task forces and convenings.

Many local DOL representatives do not yet understand the important role they play in local anti-trafficking response.

3

Compose outreach and education materials focused on labor trafficking identification, prevention, and workers' rights that can be distributed or adapted by local DOLs or other civil labor regulatory agencies.

If possible, tailor these materials to local industries and include information about local policy, laws, and resources.

This resource offers key findings and recommendations based on the findings from RTI International's "Understanding What Works in the Identification, Investigation, and Prosecution of Labor Trafficking Cases in the United States" study.

**Click here to read
the full report.**

