



Fractures in the Foundation:

The Latino Worker's Experience in an Era of Declining Job Quality

NCLR
NATIONAL COUNCIL OF LA RAZA

The National Council of La Raza (NCLR)—the largest national Hispanic civil rights and advocacy organization in the United States—works to improve opportunities for Hispanic Americans. Through its network of nearly 300 affiliated community-based organizations (CBOs), NCLR reaches millions of Hispanics each year in 41 states, Puerto Rico, and the District of Columbia. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas—assets/investments, civil rights/immigration, education, employment and economic status, and health. In addition, it provides capacity-building assistance to its Affiliates who work at the state and local level to advance opportunities for individuals and families.

Founded in 1968, NCLR is a private, nonprofit, nonpartisan, tax-exempt organization headquartered in Washington, DC. NCLR serves all Hispanic subgroups in all regions of the country and has operations in Atlanta, Chicago, Long Beach, Los Angeles, New York, Phoenix, Sacramento, San Antonio, and San Juan, Puerto Rico.

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Fractures in the Foundation: The Latino Worker's Experience in an Era of Declining Job Quality

By Catherine Singley

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Foreword

This Labor Day, we find ourselves in the midst of the worst recession since the Great Depression. More than 6.7 million workers have lost their jobs, and countless others have also lost their health insurance, their retirement savings, and even their homes. Suddenly, millions of Americans are scrambling to find a job—any job—that will keep their families afloat.

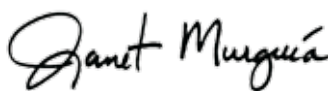
In this environment, many workers will enter the low-wage labor market for the first time ever. There they will encounter daily threats to health and safety: pressure to do repetitive work at speeds that cripple limbs, exposure to toxic chemicals, use of dangerous machinery without proper training, sweltering conditions with no breaks, and the constant fear of getting fired and blacklisted if they dare to stand up for their rights.

For some Americans, these unthinkable conditions will be something to be endured temporarily until the economy recovers. But for millions of workers, they are a permanent reality. In too many industries, workers are paying the price for the neglect and sometimes official disregard of basic labor protections that most of us take for granted. The foundation that we built as a nation to ensure that workers are safe on the job and paid fairly for their work is badly fractured.

Numerous reports have focused on the economic causes and consequences of our nation's growing low-wage labor market. By contrast, this report focuses on the conditions workers in those jobs face on a daily basis, and their human cost. Hispanic Americans have the highest rate of occupational death of any demographic group. Latino workers' determination to provide for their families in their pursuit of the American Dream—too often under dangerous conditions—motivates us to find ways to restore basic standards to the workplace.

This is an issue of fundamental concern for everyone. On a moral level, no one in this country should be forced to risk life and limb unnecessarily, just to make a life for their family. On an economic level, our society pays huge, if often hidden, costs for labor law violations and workers' deaths, in the form of skewed competition, lost productivity, and rising health care bills. And on a practical level, in a tough job market, an increasing number of workers will experience the effects of the decades-long deterioration of job quality that millions of workers have endured for too long.

We hope this report serves as a starting point for a dialogue that will help to rebuild a strong foundation of job quality for all workers. It is a challenge that we, as a country, cannot afford to ignore.



Janet Murguía
President and CEO
National Council of La Raza
Labor Day 2009

Executive Summary

As we struggle with the task of rebuilding our economy, it is important to do as any architect would: we must examine not only the structural flaws, but also the condition of the foundation. Recognizing early on that the strength of the economy depends on the strength of its workers, ordinary Americans and public leaders constructed a foundation of laws and standards to ensure that workers are protected from harm and can reap the fruits of their labor. In the last century, policymakers set a minimum wage, capped the number of hours an individual could be compelled to work, restricted the employment of children, granted workers the right to organize, and established workplace health and safety standards.

Workers, employers, and the government all play a role in maintaining these standards, especially through the turbulence of a changing economy and a dynamic workforce. In recent decades, however, employers and government have not upheld their end of the bargain—and workers are paying the price. The most alarming indicator of this fact is that thousands of workers die on the job every year from preventable incidents. That Hispanic Americans consistently have the highest rates of fatal occupational injuries of any group compelled the National Council of La Raza (NCLR) to take a closer look at the state of workplace standards. This report provides an in-depth analysis of those standards, and it exposes serious weaknesses in the foundation of job quality.

NCLR has found that death is only one indicator of neglect for basic worker protections. Cases of workers who are never paid, who are denied basic benefits because their employer misclassified them as independent contractors, who are never compensated for a disabling workplace injury, or who are never trained on how to avoid job site hazards are a daily reality in nearly every American industry. The majority of these violations occur in low-wage jobs. Therefore, while millions of Latinos are solidly in the middle class, the focus of this report is on essential

workers in less-skilled industries, such as production, food preparation and service, construction, farming, and maintenance—where more than one in every five workers is Latino.

Public opinion polls consistently find that Latinos believe strongly that opportunity comes from personal effort. The issues raised in this report prevent responsible, hardworking people from achieving the American Dream, but they are all amenable to policy change. Better enforcement of the laws on the books, modernized protections for a modern workforce, and investment in community-based strategies are essential first steps to restoring dignity to the workplace. At this unique moment of economic turmoil and anticipation for what lies ahead, a decision must be made about whether to take on these policy challenges or continue to chip away at the foundation of job quality. Workers' lives hang in the balance.

Major findings of this report include the following:

The experience of Latino workers sounds the alarm for what is happening to the quality of American jobs.

- **Latino workers are more likely to die from an injury at work than White and Black workers.** In 2007, 937 Latinos, the majority of them immigrants, were killed by an injury at work. The occupational fatality rate for Latinos has remained the highest in the nation for 15 years. The Latino death toll lays bare the state of decay in American workplace health and safety standards; in all, 5,657 workers died on the job in 2007.
- **Two in five Latino workers do not earn sufficient wages to keep their families out of poverty.** In 2007, 41.8% of Latino workers earned poverty-level wages, which were about \$10.20 per hour, to sustain a family of four.

- **While millions of Americans worry about losing their health insurance and retirement benefits, a significant portion of working Latinos is already living those fears.** In 2007, just over half (52.3%) of employed Latinos had health insurance through their employers, compared to 72.6% of White and 67.1% of Black workers. An even smaller share of Latinos (34.6%) had access to a retirement plan through their employers.

Many employers evade their legal responsibility to pay their workers and keep their work sites safe.

- **For employers who break the law, the chances of getting caught are slim and the penalties are low.** Employers who allow dangerous conditions to persist even after a worker becomes injured or is killed have little chance of facing penalties against them. Consequently, many employers have come to treat compliance with labor laws as optional and fines for noncompliance as merely a cost of doing business.
- **Some employers legally sidestep accountability for their workers' well-being.** For instance, the IRS code provides a "safe harbor" from penalties for employers who misclassify workers as independent contractors as long as they can prove that the misclassification is a common practice in their industry, which is often the case in industries with high Latino representation. An estimated one-third of businesses misclassify workers, robbing them of the benefits, retirement security, and health and safety protections they deserve.
- **Employers who take advantage of vulnerable workers drive down standards for all workers.** The enactment of the Immigration Reform and Control Act of 1986 made the workplace the frontier of immigration enforcement and shifted the balance of power heavily in favor of employers. Unscrupulous employers who cut corners and threaten workers with deportation if they complain are granted an unfair advantage over employers who follow the law.

Ongoing divestment and government inaction undermine basic labor standards and devalue the contributions of workers.

- **The enforcement capacity of the Department of Labor is severely constrained.** A typical full-time Occupational Health and Safety Administration (OSHA) employee has four times the caseload that an OSHA employee had in 1975. Employers' active discouragement of worker complaints and other causes of underreporting often misdirect these limited resources away from high-risk workplaces.
- **Millions of workers are without legal protection.** Millions of workers are excluded from basic protections simply based on the kind of work they do. Antiquated labor laws that exclude agricultural workers and domestic workers from coverage are especially damaging to Latinos, who represent 45.1% and 37.5% of these occupations, respectively. Additionally, since the 1970s, the shifting U.S. economy has crowded less-skilled workers—including many Latinos—out of high-quality manufacturing jobs and into lower-quality service jobs. Federal labor policies have lagged behind these changes, leaving wide segments of the workforce to labor in largely unregulated work arrangements, often for low pay and no benefits.

NCLR recommends the following steps to restore basic worker protections:

Reassert the federal government's role as workplace watchdog.

- **Make the punishment fit the crime for employers who break the law.** The penalties for employers who fail to uphold basic wage and safety standards must be sufficient deterrents against the tendency of unscrupulous employers to cut corners, which harms their workers and their competitors. Long-overdue increases in fines and elevated legal consequences for repeat and egregious violations—especially those resulting in a worker's death—are essential first steps.

- **Restore funding for government outreach and enforcement efforts, with emphasis on high-risk and emerging industries.** In order to keep pace with an increasingly complex labor market, Congress must devote adequate federal funds to the Department of Labor's Wage and Hour Division and OSHA. Targeted programs that reach low-wage workers, subcontractors, workers on multiple job sites, and limited-English-proficient workers should be prioritized.
- **Support community-based organizing structures for nonunionized and nontraditional workers.** In addition to working to open union jobs to Latinos, who are currently underrepresented in unions, the Department of Labor should partner with community-based organizations to pilot models for disseminating culturally competent and linguistically appropriate training and "know your rights" information to immigrant and low-wage workers. Community-based organizations can also help identify high-risk workplaces that traditional enforcement entities may miss.
- **Uphold the rights of all workers through comprehensive immigration reform.** More than ten million American workers, 81% of whom are from Latin American countries, work without legal authorization because our immigration system does not offer sufficient legal channels for immigrants. The culture of fear that exists in many workplaces enables employers to escape punishment for actively subverting workers' complaints. As a result, job quality declines for all workers. The first step toward leveling the playing field in the labor market is to fix the nation's broken immigration system. Comprehensive immigration reform requires a plan to make immigration policy more responsive to labor market needs, unclog naturalization backlogs, and incorporate stronger workplace protections.

Empower workers to defend themselves against exploitation.

- **Correct historical inequities in wage and hour laws.** The rampant exploitation of farmworkers and domestic workers could be significantly reduced by eliminating outdated legal exclusions in laws that set a floor on wages and a ceiling on hours.
- **Strengthen policies to protect workers in nontraditional arrangements.** Congress should pass legislation to close tax loopholes and crack down on industry norms that allow employers to legally evade accountability for these workers.

Chapter 1

Today's Latino Workforce: Diverse and Growing



Photo by Paulina Hermosillo

Nearly 21.8 million Latinos* are at work in the United States, representing 14.2% of the labor force.¹ Between 2000 and 2007 alone, the U.S.-born Hispanic labor force grew by 34.2% and the foreign-born Hispanic labor force grew by 53.7%.² Despite the economic recession, 395,000 Latinos joined the workforce in 2008, accounting for over half (54%) of the new labor force entrants. As the Hispanic workforce continues to grow, their labor market contributions become increasingly important to the economy as a whole; by 2050, it is expected that one in three working Americans will be Latino.³

Several characteristics distinguish Latinos from the rest of the workforce:

- **Fast growth.** As in the population overall, Latinos are the fastest-growing segment of the American workforce.
- **Relative youth.** Latino workers, especially immigrants, are significantly younger than the workforce overall.
- **High rate of participation.** Hispanic men are more likely to be working or actively searching for a job than any other group in the labor force.
- **Large foreign-born population.** Many indicators of job quality look quite different for Latinos born in the U.S. and those born abroad. More than half of Latino workers are foreign-born.
- **Lower educational attainment and English proficiency.** These challenges are more profound for immigrant Latinos, although they also limit the job opportunities of many U.S.-born Latinos.

DEMOGRAPHIC CHARACTERISTICS

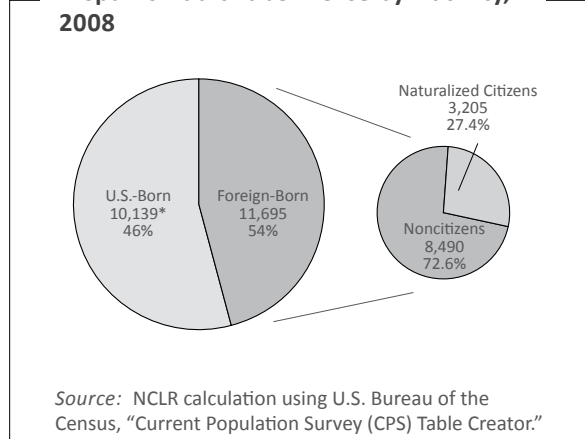
As a group, Latino workers tend to be younger and are more likely to be foreign-born than their peers. Yet much like the Hispanic population as a whole,

the Latino workforce itself is quite diverse. A Latino worker's experience in the labor market can depend on differences in a number of factors:

Age. Latino workers tend to be younger than Black and White workers. The average age among Hispanic adult civilian workers is 37, versus 40 for Blacks and 42 for Whites. Naturalized Latino workers tend to be older than Hispanic noncitizen workers. The average ages for these two subgroups are 44 and 36, respectively.⁴

Nativity. In 2008, more than 10.1 million Latino workers were U.S.-born, while more than 11.7 million were foreign-born, as seen in Figure 1.1.⁵ Immigrants and their children are projected to drive the growth of the Latino workforce in the coming decades.⁶

FIGURE 1.1
Hispanic Adult Labor Force by Nativity, 2008



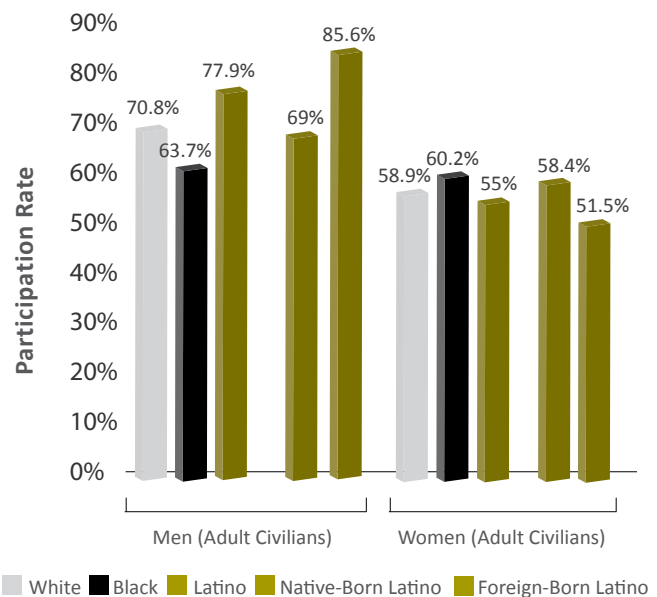
Source: NCLR calculation using U.S. Bureau of the Census, "Current Population Survey (CPS) Table Creator." Housing and Household Economics Statistics Division. Washington, DC, 2008, http://www.census.gov/hhes/www/cpssc/cps_table_creator.html (accessed June 2009).

*Numbers are in thousands.

* The terms "Hispanic" and "Latino" are used interchangeably by the U.S. Census Bureau and throughout this document to refer to persons of Mexican, Puerto Rican, Cuban, Central and South American, Dominican, Spanish, and other Hispanic descent; they may be of any race.

Gender. Hispanic men and women have the highest and lowest participation rates in the overall U.S. labor force, respectively (individuals who are actively searching for a job, as well as individuals who are currently employed, are counted as participants in the labor force). Only four in ten Hispanic workers are female. As seen in Figure 1.2, more than three-quarters (77.9%) of working-age Latino men are in the labor force versus 70.8% of non-Hispanic White men and 63.7% of non-Hispanic Black men. Foreign-born Latino men are even more active in the workforce, participating at a rate of 85.6%. By contrast, foreign-born Hispanic women are less likely to participate in the workforce than their native-born counterparts. Slightly more than half (51.5%) of immigrant Latinas are in the workforce, compared to 58.4% of native-born Latinas. Overall, 55% of Hispanic women of working age participate in the workforce, compared to 58.9% of White women and 60.2% of Black women.⁷

Immigration status. Of the 11.7 million adult Hispanic immigrant workers, 3.2 million are naturalized citizens while 8.5 million are not U.S. citizens. Noncitizens include legal permanent residents (LPRs), refugees and asylees, undocumented workers, and those who are in the process of naturalizing or adjusting their immigration status. During the past decade, a shift occurred in the composition of incoming immigrants from Mexico and Latin America, changing from a majority undocumented to a majority legal.⁸ Nevertheless, these areas were still the most common origins of the undocumented population in the U.S.; in 2008, an estimated seven million undocumented individuals residing in the U.S. were from Mexico, 1.35 million were from Central America, 775,000 were from South America, and 500,000 were from the Caribbean. In all, an estimated 8.3 million undocumented immigrants were in the U.S. labor force in 2008.⁹

FIGURE 1.2**Labor Force Participation Rate by Race/Ethnicity, Nativity, and Gender, 2008**

Source: NCLR calculation using U.S. Bureau of the Census, "Current Population Survey (CPS) Table Creator." Housing and Household Economics Statistics Division. Washington, DC, 2008, http://www.census.gov/hhes/www/cpstc/cps_table_creator.html (accessed June 2009).

HUMAN CAPITAL

In addition to demographic factors, human capital can shape the types of jobs available to Latinos in the labor market.¹⁰ Employment qualifications frequently differ between native-born, naturalized, and noncitizen workers. For instance, Latino immigrants are more likely to have difficulty speaking English as well as fewer years of formal education; when combined, these factors can substantially limit a worker's employment options.

Educational attainment. Education is indisputably tied to success in the job market. In addition to opening doors to higher-paying jobs, educational attainment also affects workers' upward employment mobility between and within generations. In general, Latino workers tend to have lower levels of education than Black and White workers. As Figure 1.3 shows, in 2008, only 67.1% of adult Latino workers

had completed high school or postsecondary education, compared to 92.5% of White workers and 88.2% of Black workers. Educational disparities narrow considerably when immigrants are excluded from the comparison; 83.7% of U.S.-born Latino adults have attained a high school education or higher.¹¹

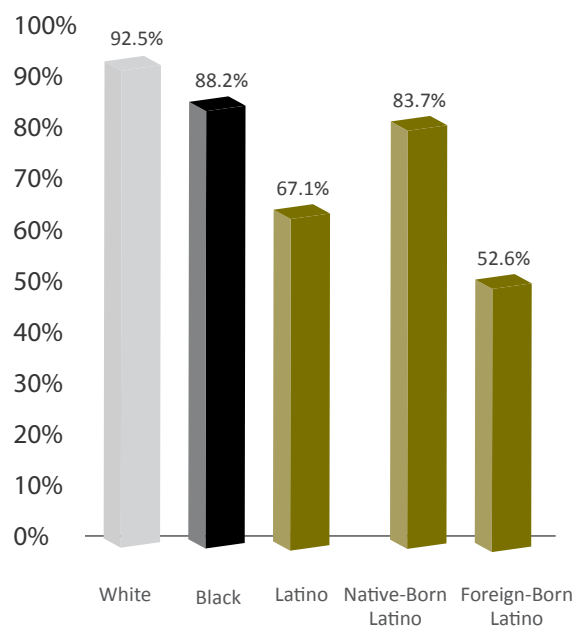
Among Latino workers, the share of immigrants who have completed high school or college has risen over the past five years, although immigrants still trail native-born workers in their educational attainment. In 2008, 72.9% of naturalized Latino immigrants had at least a high school education, compared to 63.5% in 2003.¹² The portion of noncitizen Latinos with a high school education has also grown, from 42.3% in 2003 to 45% in 2008. Although fewer in number, Hispanic women in the workforce have significantly higher levels

of education than their male counterparts; 74% of Latina workers have a high school degree or higher, compared to 62.3% of Hispanic men.

English language proficiency. Limited proficiency in English is a major impediment for a significant portion of Latino workers. Within the Hispanic adult population, limited-English-proficient (LEP) individuals are predominantly, though not exclusively, foreign-born; in 2006, 13.4% of native-born and 73% of foreign-born Hispanics of working age spoke English less than “very well.”¹³ LEP workers tend to also have low levels of education, which often bars access to higher-wage jobs. In the 2000 Census, 83% of foreign-born workers with less than a 9th grade education were LEP, and 84% of low-wage immigrants at that education level were LEP.¹⁴

FIGURE 1.3

Adult Civilians Who have Completed High School or Higher by Race/Ethnicity and Nativity, 2008



Source: NCLR calculation using U.S. Bureau of the Census, “Current Population Survey (CPS) Table Creator.” Housing and Household Economics Statistics Division. Washington, DC, 2008, http://www.census.gov/hhes/www/cps/cps_table_creator.html (accessed June 2009).

Difficulties with English can also block the path to well-paying jobs for highly educated or highly skilled workers. Highly skilled LEP workers are twice as likely as English-proficient individuals to work in unskilled occupations that require only “modest on-the-job training.”¹⁵ Despite these challenges, progress in English acquisition is evident between first-generation Latinos and their children. While only 23% of first-generation Latinos speak English very well, 88% of second-generation Latinos do. Among the third generation, English language proficiency improves significantly to 94%.¹⁶

Endnotes

¹ NCLR calculation using U.S. Bureau of the Census, "Current Population Survey (CPS) Table Creator." Housing and Household Economics Statistics Division. Washington, DC, 2008, http://www.census.gov/hhes/www/cpstc/cps_table_creator.html (accessed September 3, 2008).

² Algernon Austin and Marie T. Mora, *Hispanics and the Economy: Economic stagnation for Hispanic American workers, throughout the 2000s* (Washington, DC: Economic Policy Institute, 2008), <http://www.epi.org/publications/entry/bp225> (accessed November 1, 2008).

³ Jeffrey J. Passel and D'Vera Cohn, *U.S. Population Projections: 2005-2050* (Washington, DC: Pew Research Center, 2008), <http://pewhispanic.org/files/reports/85.pdf> (accessed March 2008). Not all working-age adults are in the labor force.

⁴ U.S. Bureau of the Census, "CPS Table Creator."

⁵ Ibid.

⁶ Jeffrey J. Passel and D'Vera Cohn, *U.S. Population Projections: 2005-2050*.

⁷ U.S. Bureau of the Census, "CPS Table Creator."

⁸ Jeffrey Passel and D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow* (Washington, DC: Pew Research Center, 2008), <http://pewhispanic.org/reports/report.php?ReportID=94> (accessed November 2008).

⁹ Jeffrey Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Washington, DC: Pew Hispanic Center, 2009), 12, 21, <http://pewhispanic.org/files/reports/107.pdf> (accessed April 2009).

¹⁰ For a detailed look at how human capital impacts the economic mobility of several generations of Hispanics, see Sonia Perez, *Moving Up the Economic Ladder: Latino Workers and the Nation's Future Prosperity* (Washington, DC: National Council of La Raza, 1999).

¹¹ U.S. Bureau of the Census, "CPS Table Creator."

¹² Ibid.

¹³ Pew Hispanic Center, "Table 19. Language Spoken at Home and English-Speaking Ability by Age, Race and Ethnicity: 2006," *Statistical Portrait of Hispanics in the United States, 2006* (Washington, DC: Pew Hispanic Center, 2008), <http://pewhispanic.org/files/factsheets/hispanics2006/Table-19.pdf> (accessed January 2008).

¹⁴ Randolph Capps et al., *A Profile of the Low-Wage Immigrant Workforce* (Washington, DC: Urban Institute, 2003), <http://www.urban.org/url.cfm?ID=310880> (accessed April 2008).

¹⁵ Jeanne Batalova, Michael Fix, and Peter Creticos, *The Employment Pathways of Skilled Immigrants in the United States* (Washington, DC: Migration Policy Institute, 2008), <http://www.migrationpolicy.org/pubs/BrainWasteOct08.pdf> (accessed November 2008).

¹⁶ Shirin Hakimzadeh and D'Vera Cohn, *English Usage Among Hispanics in the United States* (Washington, DC: Pew Hispanic Center, 2007), <http://pewhispanic.org/reports/report.php?ReportID=82> (accessed May 12, 2008).

Chapter 2

Bedrock of the Economy, Bottom of the Labor Market



Broadly speaking, Latinos have the highest labor force participation rate of any racial or ethnic group, which means they are more likely to be employed or actively searching for work than other groups. In 2008, 68.5% of Latinos over age 16 were in the labor market, compared to 66.3% of Whites and 63.7% of Blacks. Not only are Hispanic workers more likely than other groups to be part of the labor force, they are also more likely to be employed.¹ Although they have a robust presence in the labor force, Latinos are concentrated in jobs that require low levels of formal education and skills, often with insecure attachment to their employers.

A snapshot of Latinos in the labor force shows heavy representation in:

- **Low-paying jobs.** Latino workers are overrepresented in low-wage jobs with low requirements for education and experience. The education and wages of native-born Latino workers are significantly higher than those of their foreign-born peers.
- **Small businesses.** More than Black and White workers, Latinos are likely to work in firms with fewer than 25 employees.
- **Contingent and nontraditional jobs.** Compared to full-time, permanent jobs, these arrangements are usually less secure.

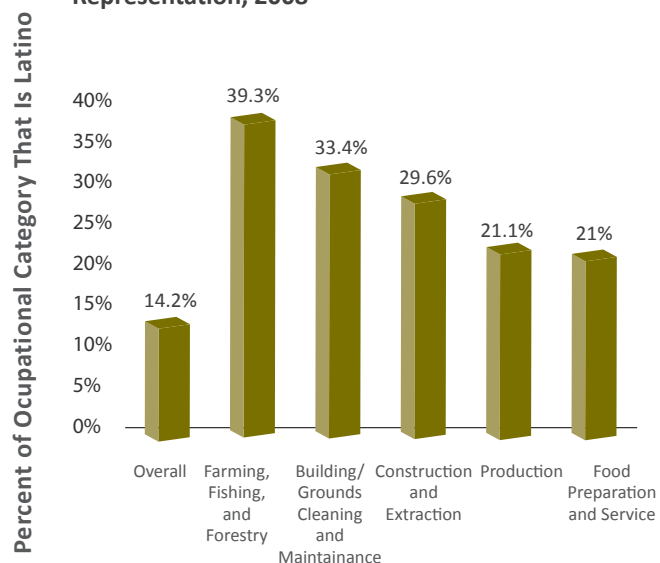
LABOR MARKET DISTRIBUTION

Latinos form the bedrock of several major occupation groups. As Figure 2.1 shows, Hispanic workers make up more than one in five employees in the following categories: farming, fishing, and forestry (39.3%); building/grounds cleaning and maintenance (33.4%); construction and extraction (29.6%); production (21.1%); and food preparation and service (21%).

Industry characteristics. Similar to the overall workforce, most Latinos work in the private sector. By contrast, Latinos are underrepresented in public jobs compared to other workers. Citizenship requirements bar many Hispanics from employment in government jobs; only 9.5% of Hispanics work for the government, compared to 19.5% of Blacks and 14.1% of Whites. Latinos are overrepresented among employees in private households. Although the total number of

FIGURE 2.1

Occupational Groups with High Latino Representation, 2008



Source: U.S. Department of Labor, "11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, <http://www.bls.gov/cps/cpsaat11.pdf> (accessed September 2008).

Hispanic domestic workers—officially 302,000, which is likely a conservative estimate—is small compared to the entire population of workers, this particular industry merits attention due to its unique set of job quality issues, discussed in Chapter 5.²

Latinos also make up the highest share of workers employed in service occupations relative to their group's overall employment. While Latinos compose only 14% of employed adults, they represent 20.2% of employees in the service sector.³ Less-skilled workers in the service sector tend to earn lower wages compared to their counterparts in the manufacturing sector. The service sector also has a higher incidence of short-term employment, which can jeopardize eligibility for employer-sponsored benefits.⁴

Occupational distribution. Figure 2.2 shows the occupational distribution of Latinos in the labor market. Using a socioeconomic index score developed by Toussaint-Comeau et al. to compare occupational groups,⁵ it is clear that Latinos are disproportionately employed in jobs that pay low wages and have low human capital requirements (see Table 2.1). In fact, more than half of the Latino workforce is employed in the eight major occupation groups with the lowest socioeconomic index scores: farming, fishing, and forestry; food preparation and service; building/grounds cleaning and maintenance; personal care and service; health care support; transportation and material moving; production; and construction and extraction.

Figure 2.2 illustrates that the vast majority of Latinos are employed in occupations with socioeconomic index scores below 50. With

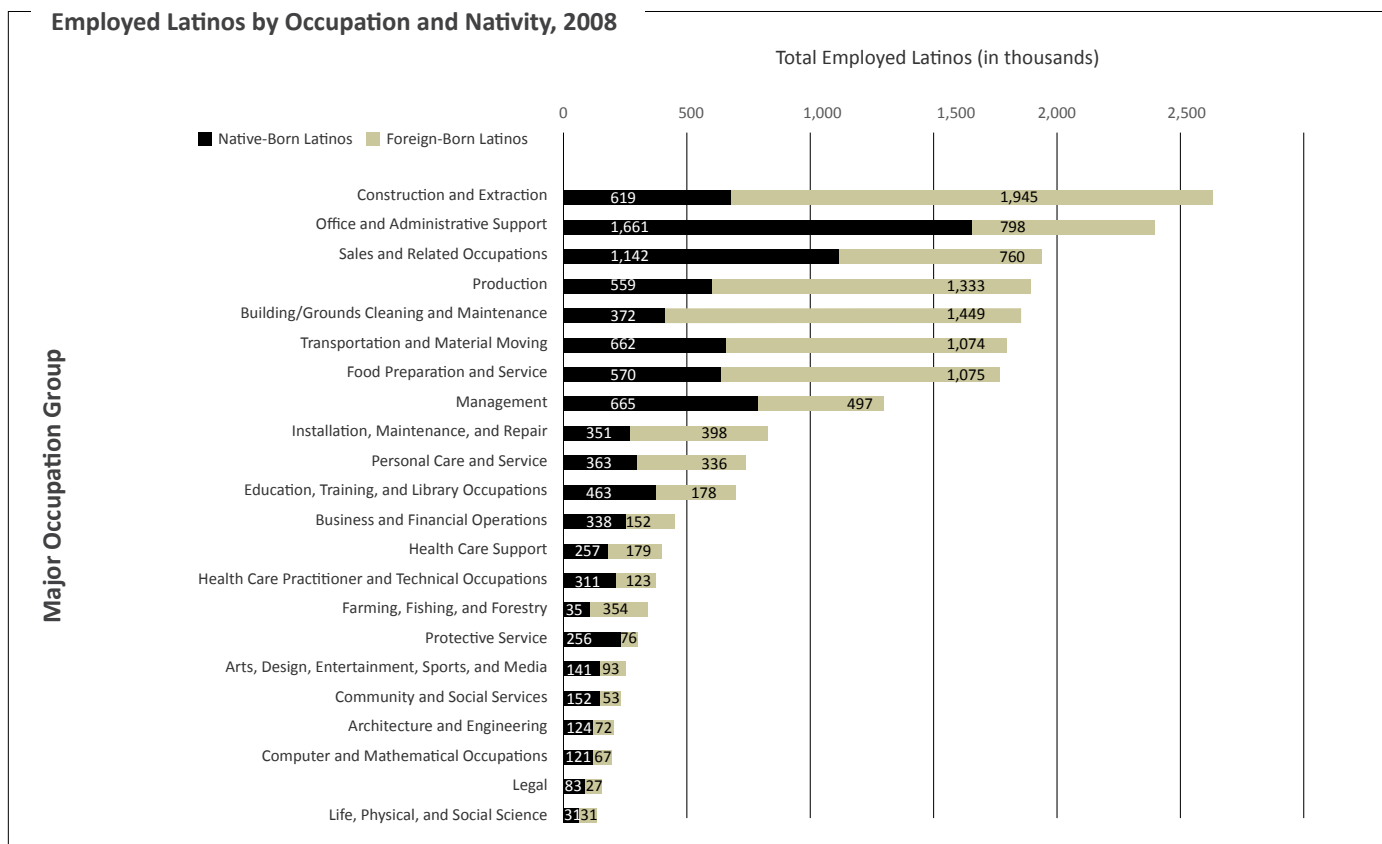
the exception of health care support, foreign-born Latinos have a larger presence in these low-scoring occupations than in the overall workforce. Meanwhile, native-born Latinos are more concentrated in jobs with higher pay and higher human capital requirements, such as office support, sales, management, education and library occupations, business and financial operations, and health care practitioners. This confirms the expectation that Hispanic immigrants tend to work in jobs requiring relatively few formal credentials or barriers to entry.

TYPES OF EMPLOYMENT

Latino workers are overrepresented in small businesses compared to their overall presence in the workforce. As will be discussed in Chapter 5, firm size is another fault line for job quality, since small businesses are often exempt from complying with worker protection laws. In different ways, employers of those who work on a contingent

FIGURE 2.2

Employed Latinos by Occupation and Nativity, 2008



Source: U.S. Bureau of Labor Statistics, "1. Employed and experienced unemployed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity," *Current Population Survey* (unpublished data). Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008.

or nonpermanent basis, often in nontraditional work arrangements such as day laborers, also leave workers open to low wages, poor benefits, and dangerous working conditions.

Small businesses. Latinos are more likely to be employed by small firms—those with fewer than 25 employees—than Blacks and Whites. In 2007, 36.2% of the Latino workforce was employed in small businesses, versus 29.1% of the White workforce and 21.4% of the Black workforce. Figure 2.3 demonstrates the unique “bottom-heavy” distribution of the Latino workforce according to firm size. In fact, 17.6% of small business employees are Latino, which represents a larger portion than their overall presence in the workforce (14.2%).

Contingent and nontraditional arrangements. In 2005, 2.5 million Latinos considered themselves to be contingent workers, meaning that they did not expect their jobs to last. The same year, approximately 1.7 million Latinos were employed in nontraditional arrangements (also called “alternative” and “nonstandard” employment arrangements by the U.S. Census Bureau). Figure 2.4 shows the distribution of Latinos employed in nontraditional arrangements. These categories of workers are noteworthy because contingent and nontraditional workers usually face uncertain job security compared to traditional workers. Furthermore, as discussed in the next chapter, these workers are less likely to be covered by employer-sponsored benefits, and some face increased risk of occupational injury and exploitation.

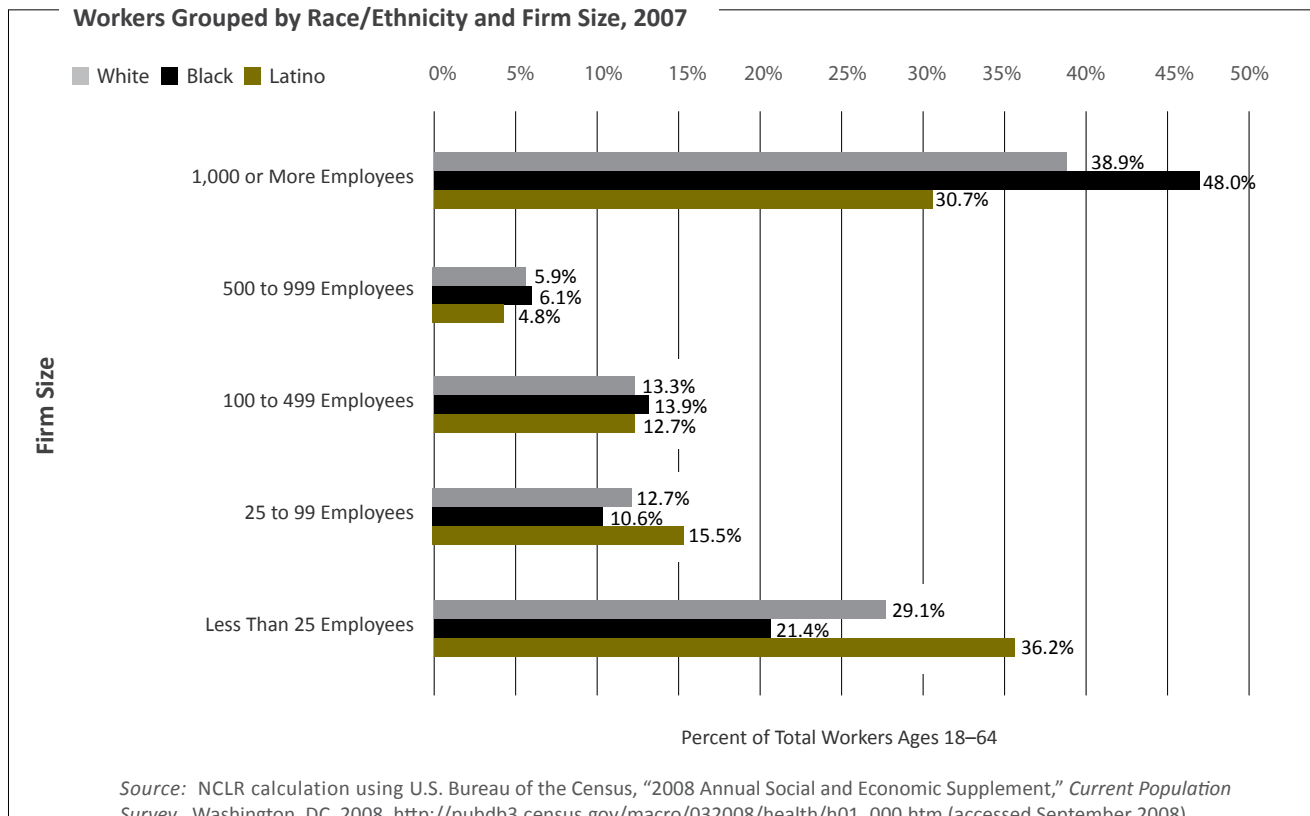
Source: NCLR calculation using U.S. Department of Labor, Bureau of Labor Statistics, “Contingent and Alternative Work Arrangements, February 2005,” news release, July 27, 2005, <http://www.bls.gov/news.release/pdf/conemp.pdf> (accessed September 2008),

*Socioeconomic index score ranges on a scale of 0 to 100, with the best score being 100. The scale is derived from several regression analyses of occupations based on wages and human capital requirements, in terms of education and experience. Only major occupational groups are listed.

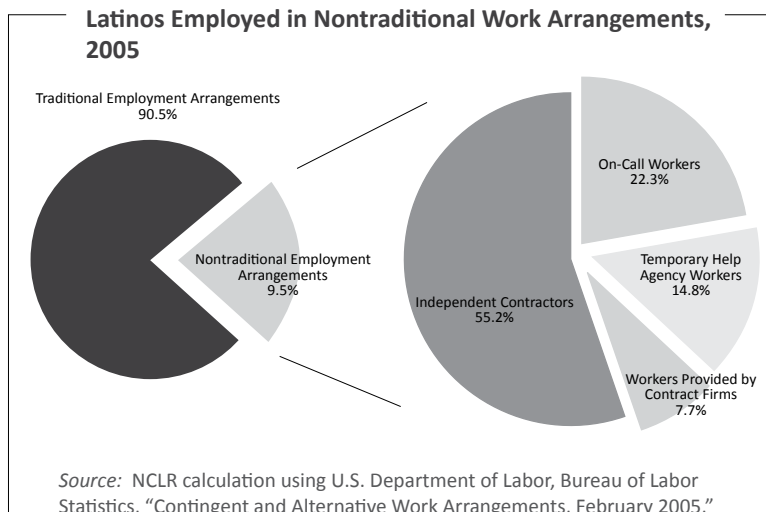
TABLE 2.1

Employed Latinos by Major Occupation Group and Socioeconomic Index Score, 2008

Occupation Group	Distribution of Latino Workforce	Socioeconomic Index Score*
Construction and Extraction	12.6%	27
Office and Administrative Support	12.1%	30
Sales and Related Occupations	9.3%	39
Production	9.3%	26
Building/Grounds Cleaning and Maintenance	9.0%	18
Transportation and Material Moving	8.5%	24
Food Preparation and Service	8.1%	17
Management	5.7%	54
Installation, Maintenance, and Repair	3.7%	33
Personal Care and Service	3.4%	22
Education, Training, and Library Occupations	3.2%	61
Business and Financial Operations	2.4%	52
Health Care Support	2.1%	24
Health Care Practitioner and Technical Occupations	2.1%	36
Farming, Fishing, and Forestry	1.9%	14
Protective Service	1.6%	37
Arts, Design, Entertainment, Sports, and Media	1.2%	37
Community and Social Services	1.0%	44
Architecture and Engineering	1.0%	45
Computer and Mathematical Occupations	0.9%	49
Legal	0.5%	51
Life, Physical, and Social Science	0.3%	42

FIGURE 2.3**Workers Grouped by Race/Ethnicity and Firm Size, 2007**

In 2005, the Latino portion of on-call workers (without a set work schedule or notice of a project), workers employed by temporary help agencies, and workers provided by contract firms was greater than the Latino portion of workers employed in traditional arrangements. For example, 15.7% of on-call workers, including day laborers, were Hispanic, compared to 13.1% of traditional workers.⁶ The largest major survey of day laborers found that immigrants dominate this subcategory; on a given day, 59% of those looking for work are immigrants from Mexico, 28% come from Central America, and 7% are U.S.-born.⁷ Workers provided by temporary help agencies and contract firms are also more likely to be Latino than their counterparts in traditional arrangements.

FIGURE 2.4**Latinos Employed in Nontraditional Work Arrangements, 2005**

Endnotes

¹ U.S. Department of Labor, "3. Employment status of the civilian noninstitutional population by age, sex, and race" and "4. Employment status of the Hispanic or Latino population by age and sex." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, <ftp://ftp.bls.gov/pub/special.requests/lf/aat3.txt> and <ftp://ftp.bls.gov/pub/special.requests/lf/aat4.txt> (accessed May 2009).

² U.S. Department of Labor, "12. Employed persons by sex, occupation, class of worker, full- or part-time status, and race" and "13. Employed Hispanic or Latino workers by sex, occupation, class of worker, full- or part-time status, and detailed ethnic group." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, <http://www.bls.gov/cps/cpsaat12.pdf> and <http://www.bls.gov/cps/cpsaat13.pdf> (accessed September 2008). For more information, see Luisa Grillo-Chope and Carlos Ramos, *Domestic Workers Working Hard to Sustain American Families, Compromising Their Social Security* (Washington, DC: National Council of La Raza, 2006), <http://www.nclr.org/content/publications/detail/41906> (accessed September 2007).

³ NCLR calculation using U.S. Department of Labor, "11. Employed persons by detailed occupation, sex, race, and Hispanic or Latino ethnicity." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics, Washington, DC, 2008, <http://www.bls.gov/cps/cpsaat11.pdf> (accessed September 2008).

⁴ Lawrence Mishel, Jared Bernstein, and Heidi Shierholz, *The State of Working America 2008-2009* (Ithaca, NY: Cornell University Press, 2009).

⁵ Maude Toussaint-Comeau, Thomas Smith, and Ludovic Comeau Jr., *Occupational Attainment and Mobility of Hispanics in a Changing Economy* (Washington, DC: report to the Pew Hispanic Center, 2005), <http://pewhispanic.org/files/reports/59.1.pdf> (accessed September 2008).

⁶ U.S. Department of Labor, Bureau of Labor Statistics, "Contingent and Alternative Work Arrangements, February 2005," news release, July 27, 2005, <http://www.bls.gov/news.release/pdf/conemp.pdf> (accessed September 2008), Table 5.

⁷ Abel Valenzuela Jr. et al., *On the Corner: Day Labor in the United States* (Los Angeles, CA: UCLA Center for the Study of Urban Poverty, 2006), http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf (accessed September 2007).

Chapter 3

Troubling Indicators of Job Quality



Although individual workers may value one aspect of their job over another, policymakers have generally prioritized wages, benefits, and working conditions as the core elements of job quality. Federal and state laws attempt to set the floor in these areas to protect them from the forces of competition (for more details, see Table 4.1). In general, by each of these three measures, Latinos are employed in low-quality jobs compared to White and Black workers. U.S.-born Hispanic workers fare considerably better than foreign-born Hispanic workers, but disparities remain. Moreover, since foreign-born workers compose more than half of all Latino workers, the experience of immigrant Hispanic workers heavily influences the status of the entire population.

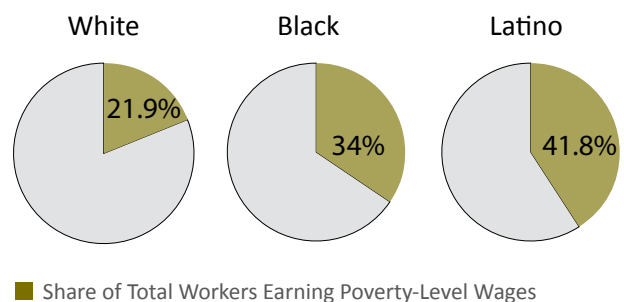
In general, Latino workers face major disparities in job quality compared to other workers, including:

- **Low wages.** Latinos are more likely than other workers to work in jobs that pay wages that are insufficient for raising a family of four above the poverty level.
- **Fewer standard benefits.** Compared to Whites and Blacks, Latinos have less access to health insurance and retirement plans at work.
- **Less access to benefits such as disability and life insurance.** While Latino workers need more life insurance due to having more dependents per worker and higher fatality rates on the job, they are unlikely to have access to life insurance at work.
- **Low unionization rate.** Latino workers benefit the most from unionization in terms of wages and benefits, yet Latinos are least likely to have unionized jobs.
- **Highest workplace fatality rate.** Every year, Latino workers, especially immigrant Latinos, consistently have the highest rate of fatal occupational injury of any group in the workforce.
- **Underreported workplace injuries.** Latino workers are concentrated in small businesses and other work arrangements where occupational injuries tend to be severely underreported.

WAGES

In 2007, more than two out of five (41.8%) Latino workers earned poverty-level wages, which were about \$10.20 per hour to sustain a family of four. By comparison, 21.9% of White workers and 34% of Black workers earned poverty-level wages (see Figure 3.1).¹

FIGURE 3.1
Workers Earning Poverty-Level Wages by Race/Ethnicity, 2007



Source: Lawrence Mishel, Jared Bernstein, and Heidi Shierholz, *The State of Working America 2008-2009* (Ithaca, NY: Cornell University Press, 2009).

As discussed in Chapter 2, foreign-born Latino workers are overrepresented in jobs that require relatively low levels of education and skills certification. These jobs also tend to pay low wages. Figure 3.2 illustrates the wage disparities between Latinos and other workers. According to the latest Census Bureau data, Hispanic women have the lowest wages of any subgroup, earning a median of \$501 per week, 30.5% less than White women and 10.6% less than Black women.² The occupational makeup of the Latino workforce as well as lower rates of unionization contribute significantly to these wage gaps.

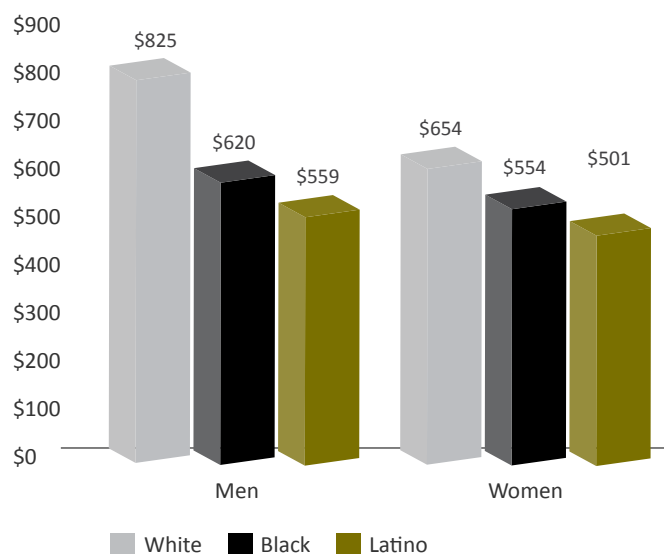
EMPLOYER-BASED BENEFITS

Employers may elect to offer their employees benefits to supplement their income and provide economic security in emergency situations and into retirement. However, low-wage earners tend to have less access to health care and retirement plans, the two most common types of employer-based benefits. Latinos receive the least benefits compared to Whites and Blacks. While data regarding race and ethnicity are not readily available for recipients of other types of benefits, including disability insurance, life

insurance, and paid leave, it is likely that Latinos experience similar gaps in these areas due to their low earnings and occupational distribution.

FIGURE 3.2

Median Weekly Earnings by Race/Ethnicity and Gender, 2008



Source: U.S. Department of Labor, "37. Median weekly earnings of full-time wage and salary workers by selected characteristics." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, <ftp://ftp.bls.gov/pub/special.requests/lf/aat37.txt> (accessed May 2009).

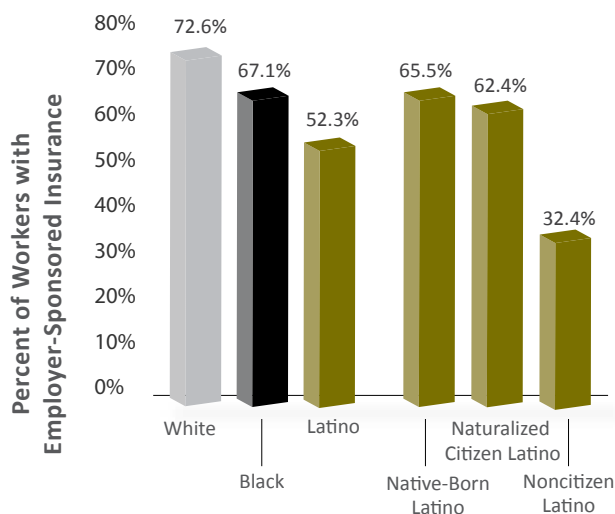
Health insurance. Overall, Latinos have the highest uninsurance rates of any racial or ethnic group in the country. Most insured Americans, including Latinos, obtain health insurance through their employers. However, in 2007, just over half (52.3%) of employed Latinos had employer-sponsored insurance (ESI), compared to 72.6% of non-Hispanic White and 67.1% of non-Hispanic Black workers.³ As Figure 3.3 shows, U.S.-born Hispanic workers are more likely to have coverage (65.5%) than naturalized Hispanics (62.4%), and both groups are nearly twice as likely to be covered as noncitizen Hispanics (32.4%).⁴

A Commonwealth Fund study in 2001 found that ESI disparities persist within industries; only 38% of Latino workers in agriculture were offered ESI, compared to 67% of non-Hispanic White workers. Similar gaps exist in the construction and retail services. The share of Hispanics versus Whites with access to ESI in construction was 47% versus 67%. In retail services, 56.9% of Latinos versus 77.1% of Whites were offered ESI.⁵

The type of employment arrangement also affects the likelihood that workers will have employer-sponsored coverage. In the total labor force, only 25.7% of on-call workers and 8.3% of temporary help agency workers had ESI in 2005. Contract firm employees fared slightly better, but their 48.9% coverage rate was still much lower than that of the average worker.⁶ Latinos' overrepresentation in these categories partially explains their low access to health plans, although other factors are also responsible.

FIGURE 3.3

Workers Receiving Employer-Sponsored Insurance by Race/Ethnicity and Nativity, 2007



Source: NCLR calculation using U.S. Bureau of the Census, "Current Population Survey (CPS) Table Creator." Housing and Household Economics Statistics Division. Washington, DC, 2008, http://www.census.gov/hhes/www/cpstc/cps_table_creator.html (accessed September 2008).

Retirement plans. In 2006, 34.6% of Latino workers ages 21–64 had access to a retirement savings plan or pension through their employer, compared to 60.6% of their White peers and 52.9% of their Black peers.⁷ Foreign-born Latinos had substantially lower access to a plan than their native-born peers; 49.1% of native-born Hispanics worked for an employer that offered a retirement plan, compared to only 25.7% of their immigrant counterparts.⁸ Figure 3.4 illustrates these differences.

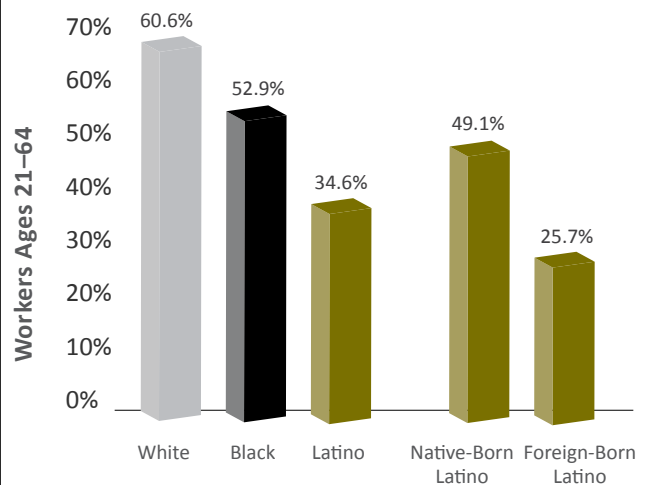
A worker's occupation and industry can determine his or her access to a retirement plan. A considerable portion of the Hispanic workforce is employed in low-coverage industries, such as agriculture, construction, wholesale, and retail. Latinos are also underrepresented in public sector jobs, where the pension coverage rate is higher than it is for private sector employees.⁹ Similar to ESI coverage, pension coverage for nontraditional employees is significantly lower than for their counterparts in traditional arrangements. In 2005, only 2.6% of independent contractors, 33.2% of on-call workers, 8.9% of temporary help agency workers, and 42.6% of workers provided by contract firms were eligible for an employer-based pension plan.¹⁰

Disability insurance. In the event that an unforeseen accident or sickness prevents an individual from working, disability insurance provides replacement income. Short-term disability insurance provides income for a six- to 12-month period, after which long-term disability benefits take over. Participation in disability insurance plans is more common among employees in medium and large private establishments than those employed by small businesses (fewer than 100 employees) or state and local governments. Since Latinos are overrepresented in small businesses (see Chapter 2), it is probable that Latinos are less likely to participate in disability insurance plans.

Life insurance. If a worker dies, life insurance can protect his or her family and dependents from financial destitution by providing them with replacement income. Hispanic families tend to have more children than non-Hispanic families; on average, Latino families have 2.13 children

FIGURE 3.4

Workers with Access to Employer-Based Retirement Plans by Race/Ethnicity and Nativity, 2006



Source: Unpublished Employee Benefit Research Institute estimates from the U.S. Census Bureau's March 2007 *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2007.

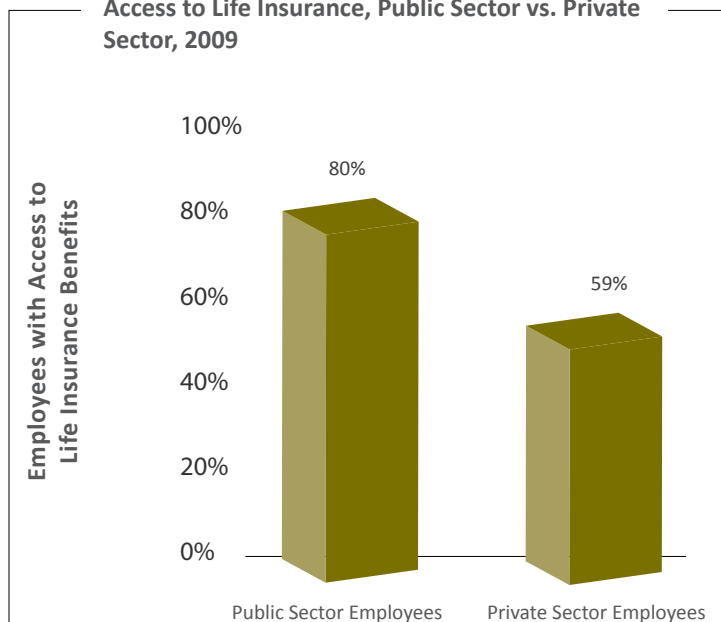
under 18 years of age while other families have 1.78 children.¹¹ Hispanic workers also report having more financial dependents outside their households. Therefore, life insurance should be of critical importance to Latinos.¹²

Publicly employed workers have much greater access to employer-sponsored life insurance than private industry employees; their access rates are 80% and 59%, respectively (see Figure 3.5). Latinos are less likely to have the option of life insurance, given their underrepresentation in public sector jobs. Life insurance is more prevalent in occupational groups with low Latino presence—such as management and professional jobs, in which 78% of workers have access to insurance—and less prevalent in occupations where Latinos are concentrated, such as service jobs (42%) or natural resources, construction, and maintenance (60%). Furthermore, only four in ten workers who earn an average hourly wage between \$10 and \$25—a substantial portion of the Latino workforce—have access to life insurance plans.¹³

Paid leave. All workers have family and medical needs, but many workers may risk jeopardizing their employment if they take days off to attend to personal matters. Although federal law (specifically, the Family Medical Leave Act, discussed in Chapter 4), grants some workers unpaid leave without the risk of job loss, low-income workers are far less likely to be eligible for this benefit than higher-paid workers. In addition to losing critical wages, it is not uncommon for low-wage and contingent workers who miss days of work to risk immediate termination or disqualification from bonuses, overtime, and promotions.¹⁴ Paid leave is even less common than unpaid leave; in 2008, only 37% of private industry workers had any paid personal leave. Research confirms that incidence of paid leave is dramatically lower among low-income workers, younger workers, workers with short job tenure, and those working for small businesses, all of which characterize Latino workers more so than White and Black workers.¹⁵

FIGURE 3.5

Access to Life Insurance, Public Sector vs. Private Sector, 2009



Source: U.S. Department of Labor, Bureau of Labor Statistics, "Employee Benefits in the United States, March 2009," news release, July 28, 2009, <http://www.bls.gov/news.release/pdf/ebs2.pdf> (accessed May, 2009).

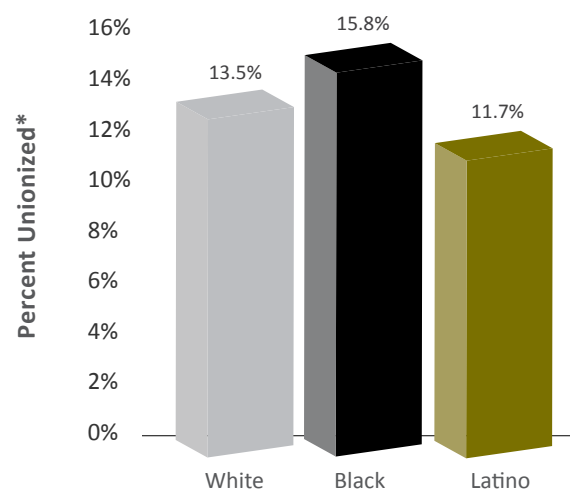
Latinos in Unions:

A Significant Boost but a Long Way to Go

Belonging to a union or being covered by a collective bargaining agreement can boost less-skilled workers' wages and benefits.¹⁶ The union wage premium for Hispanics is the highest of any racial or ethnic group; Hispanic men in unions earn 23.4% more than their nonunionized counterparts, and Hispanic women earn 18.7% more. By comparison, the union wage premium is 15% for White men, 9.1% for White women, 22.7% for Black men, and 14.5% for Black women. Low-wage Latino workers and immigrant workers benefit particularly well from unions.¹⁷ In terms of health-insurance coverage, low-wage Hispanic workers experience a 40.7% union premium. The union premium for pension coverage is 53.9%.¹⁸ Union members also tend to have better access to disability and life insurance, as well as paid leave.¹⁹

In addition to increasing wages and benefits coverage for workers, unions play an important role as a watchdog to ensure that employers comply with laws governing minimum wage, overtime pay, and occupational health and safety. Armed with technical expertise about regulations, unions are uniquely poised to take action on behalf of concerned workers because they are relatively protected from the threat of adverse action from employers.²⁰

However, despite the benefits unions bring to job quality, Hispanics are severely underrepresented in unions. As Figure 3.6 shows, in 2008, only about one in ten (11.7%) Latino workers belonged to a union, compared to 13.5% of White workers and 15.8% of Black workers.²¹ Latino immigrants were even less likely to belong to a union; between 2004 and 2007, the unionization rate for foreign-born Latinos averaged 8.5% while the overall Hispanic unionization rate averaged 11.1%.²²

FIGURE 3.6**Workers Represented by Unions by Race/Ethnicity, 2008**

Source: U.S. Department of Labor, "40. Union affiliation of employed wage and salary workers by selected characteristics." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, <ftp://ftp.bls.gov/pub/special.requests/lf/aat40.txt> (accessed May 2009).

* Percent unionized includes workers who are members of a union or whose jobs are covered by a union or an employee association contract.

HEALTH AND SAFETY

The impact of wages and benefits extends far beyond the workplace, affecting the economic security of workers and their families, as well as their social and physical well-being.²³ In addition to wages and benefits, the third element of job quality codified in law is the one with the most direct impact on workers themselves: the physical conditions under which they labor. In addition to the well-documented benefits of a healthy workforce, workplace health and safety standards exist primarily to protect workers from injury and illness. Ironically, the productivity of the U.S. in the global economy masks the fact that the typical American worker is at greater risk of death from a work-related injury than workers in many other "established market economies," including the United Kingdom, Germany, and France.²⁴ According to calculations based on International Labour Organization statistics, 5.6 out of every 100,000 U.S. workers were victims of fatal occupational injuries in 2006, compared to 0.8 in the United Kingdom, 3.6 in Germany, and 3.0 in France.²⁵

The U.S. Census of Fatal Occupational Injuries, the most comprehensive count of work-related fatal injuries in the U.S., calculates that in 2007, there were 3.8 workplace fatalities per every 100,000 U.S. workers.²⁶

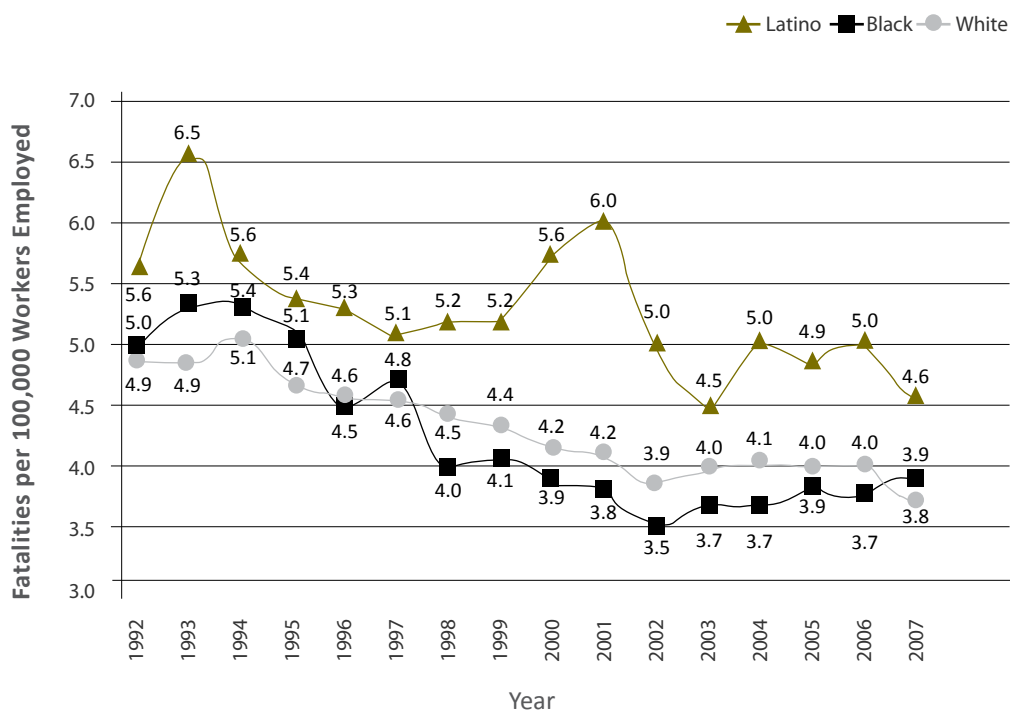
Fatal occupational injuries. Latino workers are more likely to die from an injury at work than White and Black workers. In 2007, 937 Latinos were killed by an injury at work, a fraction of the overall toll (see Figure 3.8). More often than not, Hispanic victims of fatal workplace injuries are immigrants, and the vast majority is male. Of the reported 937 Latino fatal injuries in 2007, 634 (67.7%) were injuries to immigrants and 894 (95.4%) were male.²⁷ The Hispanic occupational fatality rate was 21.1% higher than that of White workers and 17.9% higher than that of Black workers.²⁸ In fact, at 4.6 deaths per 100,000 workers, the Hispanic worker fatality rate surpasses that of many developing nations, as well as the U.S. fatality rate. As Figure 3.7 shows, these disparities match a trend spanning more than a decade in which Latinos have consistently seen higher rates of fatal workplace injuries than all other groups of workers. In contrast to the clear downward trend in fatal occupational injuries among White workers, the occupational fatality rate for Latinos has not declined consistently in recent years.

The concentration of Latinos in more hazardous jobs contributes to their relatively high risk of fatal injury. One study found that controlling for the major occupational groups significantly reduced Hispanic workers' risk of fatal injury, suggesting that Latinos' high presence in dangerous jobs accounts for most of the gap in fatality rates between Latinos and other racial and ethnic groups.²⁹ For example, public sector employees have a lower fatality rate (2.5 per 100,000) than employees in private industry (4.1 per 100,000). The overrepresentation of Blacks in public sector jobs, compared to Latinos' underrepresentation, may partially explain the lower fatality rate of Black workers.³⁰

The causes of injuries to Latino workers are also telling of their occupational representation and the quality of jobs they hold. As Figure 3.9 shows, Latinos are far more likely than other workers to die from a fall (20.2% of Latino fatalities) or contact with

FIGURE 3.7

Fatal Occupational Injury Rate by Race/Ethnicity, 1992–2007



Source: U.S. Department of Labor, Bureau of Labor Statistics, "Fatal occupational injuries, employment, and rates of occupational injuries by selected worker characteristics, occupations, and industries, 2007," *Census of Fatal Occupational Injuries, 2007*. Washington, DC, 2009, http://www.bls.gov/iif/oshwc/cfoi/cfoi_rates_2007.pdf (accessed June 2008).

* Data from 2001 do not include fatalities from the September 11 terrorist attacks.

objects and equipment (21.3% of Latino fatalities). Conversely, transportation incidents, assaults, and violent acts make up a smaller share of the causes of fatal injury for Latinos compared to other workers.

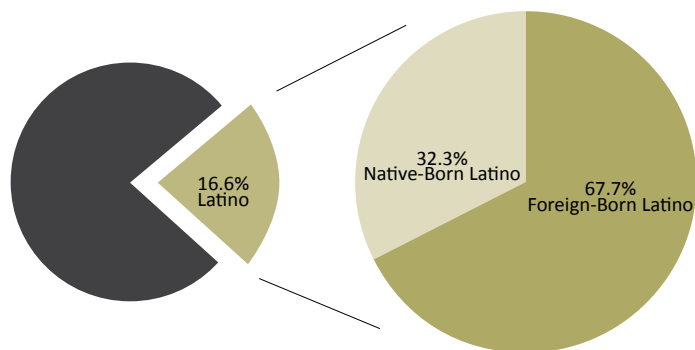
Despite the obvious effects of labor market distribution on relative risk of fatal injury, some disparities between Latinos and other workers persist within occupations. Latino men face especially high risk compared to their peers when employed as equipment cleaners, helpers, and

laborers; transportation workers and material movers; and farming, forestry, and fishing workers.³¹ Several of the occupations listed in Table 3.1, which shows the deadliest occupations for Latinos, belong to these high risk categories.

Table 3.2 details the typical tasks, work environment, education and training requirements, and wages of workers in occupations with the most Latino fatalities in 2007. The increased exposure to hazards tends not to be reflected in the wages of workers

FIGURE 3.8

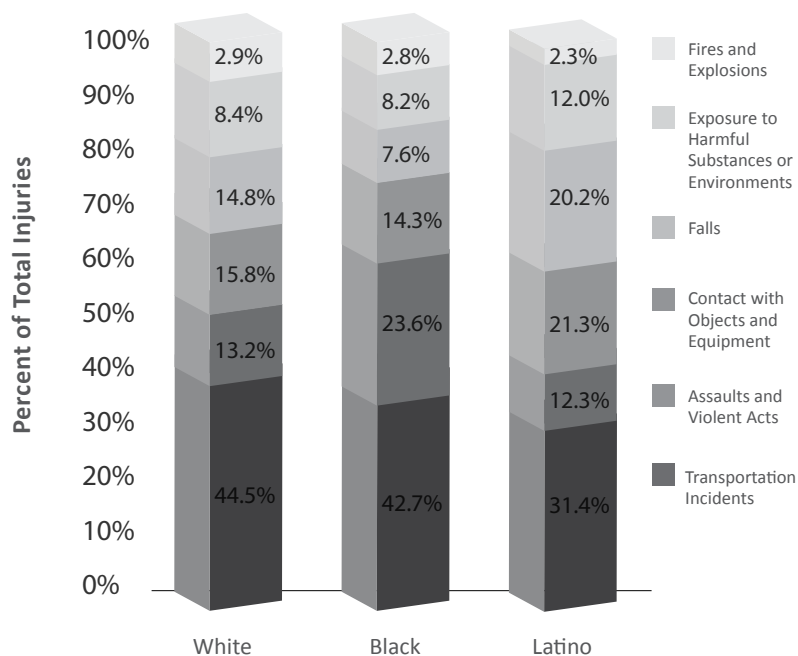
Latino Share of Workplace Fatalities by Nativity, 2007



Source: U.S. Department of Labor, Bureau of Labor Statistics, "Fatal occupational injuries, employment, and rates of occupational injuries by selected worker characteristics, occupations, and industries, 2007," *Census of Fatal Occupational Injuries, 2007*. Washington, DC, 2009, http://www.bls.gov/iif/oshwc/cfoi/cfoi_rates_2007.pdf (accessed June 2008); U.S. Department of Labor, Bureau of Labor Statistics, "Fatal occupational injuries to foreign-born Hispanic or Latino workers by selected characteristics, 2003–2007," *Census of Fatal Occupational Injuries*, unpublished data.

FIGURE 3.9

Causes of Fatal Occupational Injuries by Race/Ethnicity, 2007



Source: U.S. Department of Labor, Bureau of Labor Statistics, "Fatal occupational injuries by worker characteristics and event or exposure, All United States, 2007," *Census of Fatal Occupational Injuries, 2007*. Washington, DC, 2009, <http://www.bls.gov/iif/oshwc/cfoi/cftb0229.pdf> (accessed May 2009).

Table 3.1
Occupations with the Highest Latino Fatalities, 2007

	Construction Laborers*	Driver/Sales Workers and Truck Drivers	Miscellaneous Agricultural Workers	Grounds Maintenance Workers	Hand Laborers and Freight, Stock, and Material Movers	Roofers	Installation, Maintenance, and Repair Occupations	Carpenters
Fatal Injuries to Latino Workers	141	118	54	54	36	29	29	29
Latino Share of Fatal Injury Victims	40.9%	12.1%	43.5%	33.8%	27.3%	36.7%	13.4%	26.6%

Sources: NCLR calculation using U.S. Department of Labor, Bureau of Labor Statistics, "Fatal occupational injuries to foreign-born Hispanic or Latino workers by selected characteristics, 2003–2007," *Census of Fatal Occupational Injuries*, unpublished data.

* Only occupations with more than 20 fatal injuries to Latinos and more than 30,000 Latinos employed in 2007 are shown.

employed in hazardous occupations. The tasks and work environments described give some indication of the conditions that could cause injury if workers are not protected. Evidence shows a shift in the organization of work—toward longer hours, inadequate rest, time pressures, and more repetitive tasks—has led to an overall increase in occupational injuries and illnesses.³² The education and training levels of workers within each occupation varies, but on the whole, workers' earnings do not compensate for the exceptional risk of fatal injury that Latino workers face. The median wage for most of the occupations listed was below the national median wage in 2007 (\$695).

Table 3.2**Descriptions of Occupations with the Highest Latino Fatalities, 2007**

Occupation	Tasks ¹	Work Environment	Education and Training Requirements	Median Weekly Earnings ²
Construction Laborers	Removal, cleaning, loading, digging Operating equipment Most workers do not specialize in a task Local competition gives preference to high-skilled workers with the ability to relocate	Repetitive motion Weather conditions Schedule varies depending on employer, weather, and opportunities for work Hazards: heights, exposure to harmful substances, machinery, noises, and odors (especially in confined spaces)	Entry-level, on-the-job training Some employers require trade-specific classroom instruction Formal apprenticeships Occupational Safety and Health Administration (OSHA) safety training	\$514 The middle 50% earn between \$9.95 and \$17.31 per hour ³
Driver/Sales Workers and Truck Drivers	Driving heavy trucks and tractor-trailers Driving light/delivery vehicles Workers may travel long distances, help unload, and sell goods	Some may engage in physical labor Long hours Hazards: fatigue, other drivers, and obstacles	Driver's license for all trucks Commercial driver's license required for large trucks Some states require additional training	\$665 Median hourly earnings vary based on type of truck; restaurant drivers earn \$7.11 per hour, while general freight truckers earn \$18.38 per hour ⁴
Miscellaneous Agricultural Workers	Varies widely Farmworkers: tending to crops, nurseries, greenhouses, ranch animals Operating equipment Grading and sorting	Repetitive motion (bending, stooping, lifting) Mostly outdoors Time pressures, especially during planting and harvest seasons Many seasonal and migrant workers Hazards: exposure to harmful substances (e.g., pesticides), machinery, animals; limited access to sanitation and drinking water; muscle strain	Most jobs require little education, short on-the-job training, especially in the crop production sector	\$546 Median hourly wages vary greatly; farmworkers earn a median of \$7.95 per hour while agricultural inspectors earn a median of \$18.32 per hour
Grounds Maintenance Workers	Landscaping Grounds keeping Handling pesticides Trimming trees and pruning bushes	Repetitive motion (lifting, shoveling) Time pressures Often seasonal Usually outdoors Hazards: muscle strain and fatigue	Entry-level, on-the-job training Most workers have a high school education or less	\$420 Median hourly earnings range from \$9.82 for general workers to \$17.93 for supervisors

Occupation	Tasks	Work Environment	Education and Training Requirements	Median Weekly Earnings
Hand Laborers and Freight, Stock, and Material Movers	Moving and loading freight, stock, and other materials onto docks, vehicles, ships, containers, and between work areas	Repetitive motion May be seasonal Some shifts are overnight Hazards: heights, weather conditions, harmful fumes, noises, materials, substances, machinery	Mostly on-the-job training OSHA safety training	\$474 Median hourly earnings of \$10.20 per hour
Roofers	Mostly repairing roofs and reroofing	Repetitive motion (lifting, climbing, bending) Seasonal in northern states Time pressures, especially before bad weather Hazards: slips, falls, burns, and extreme heat	Informal on-the-job training High school education helpful Formal education may include apprenticeships OSHA safety training	\$550 The middle 50% earn between \$12.12 and \$20.79 per hour
Installation, Maintenance, and Repair Workers	Varies widely Repairing machines and appliances Maintenance Installing lines	Shift work is common Some workers on call Some long-distance travel Hazards: electrical shock, burns, and muscle strains	Much informal on-the-job training but some require technical training as well (e.g., heating, air conditioning, and refrigeration repair)	\$618 Median hourly wage varies greatly; equipment wholesalers earn \$20.53 per hour while vending machine operators earn \$12.94 per hour
Carpenters	New construction Installation Repair 32% of workers are self-employed Workers may specialize in one or two tasks	Repetitive motion (climbing, bending, kneeling) May be exposed to weather conditions Time pressures Hazards: contact with tools and equipment, falls, muscle strain, and fatigue	Informal on-the-job training Formal training may require three to four years of on-site and classroom instruction Apprenticeships usually limited to union members employees of commercial and industrial building contractors	\$615 The middle 50% earn between \$13.55 and \$23.85 per hour

¹ U.S. Department of Labor, *Occupational Outlook Handbook, 2008-09 Edition*, <http://www.bls.gov/oco> (accessed May 2009).

² Median weekly earnings listed are for 2007. U.S. Department of Labor, "39. Median weekly earnings of full-time wage and salary workers by detailed occupation and sex." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2007, <ftp://ftp.bls.gov/pub/special.requests/lf/aa2007/aat39.txt> (accessed September 2008).

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⁴ Median hourly earnings are for 2006.

Underreported workplace injuries and illnesses.

In addition to fatal injuries, serious injuries and illnesses are another indicator of occupational health and safety. However, there is a major discrepancy between fatal and nonfatal injury data for Latino workers. Compared to the dismal profile of workplace deaths, government records of serious injuries and illnesses are conspicuously low for Latinos. Evidence from employers, workers, and investigations makes it clear that underreporting—by employers and employees alike—is the main reason for these gaps.³³ National surveys, worker's compensation records, and medical records fail to account for between one-third and two-thirds of all workplace injuries, according to various estimates.³⁴ For instance, while the share of foreign-born and undocumented workers in poultry-processing occupations is rising, the rate of recorded musculoskeletal disorders has suspiciously declined from 88.3 for every 10,000 workers in 1996 to 20.8 for every 10,000 workers in 2006.³⁵

Underreporting appears to be more prevalent among Latino workers and those who employ them, including businesses with fewer than ten workers, which employ 32% of the Hispanic workforce.³⁶ While available data often neglects to code for industry, investigations reveal that underreporting is especially prominent in areas of the labor market where Latinos are employed in high numbers, including construction, poultry processing, and agriculture.³⁷ In addition, several studies have reported considerably high rates of injury and illness among nontraditional workers and immigrant workers.³⁸

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⁴ Ibid. For more information, see *Employer-Sponsored Health Insurance: Already Poor Access Further Dwindles for Working Latino Families* (Washington, DC: National Council of La Raza, 2008), <http://www.nclr.org/content/publications/detail/50277> (accessed February 2008).

⁵ Claudia L. Shur and Jacob Feldman, *Running in Place: How Job Characteristics, Immigrant Status, and Family Structure Keep Hispanics Uninsured* (Washington, DC: The Commonwealth Fund, 2001), http://www.cmwf.org/usr_doc/schur_running_453.pdf (accessed August 2007).

⁶ U.S. Department of Labor, *Contingent and Alternative Work Arrangements, February 2005*. Conducted by the U.S. Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2005, <http://www.bls.gov/news.release/pdf/conemp.pdf> (accessed September 2008), Table 9.

⁷ Craig Copeland, *Employment-Based Retirement Plan Participation: Geographic Differences and Trends, 2006*, Issue Brief no. 311 (Washington, DC: Employee Benefit Research Institute, 2007), http://www.ebri.org/pdf/briefspdf/EBRI_IB_11-20074.pdf (accessed November 2007), Figure 2.

⁸ Unpublished Employee Benefit Research Institute estimates from the U.S. Census Bureau's March 2007 *Current Population Survey*. For more information, see *Employer-Based Pension Plans: How Latinos Fare* (Washington, DC: National Council of La Raza, 2007), <http://www.nclr.org/content/publications/download/50689> (accessed September 2008).

⁹ Teresa Ghilarducci, Karen Richman, and Wei Sun, *Causes of Latinos' Low Pension Coverage* (Notre Dame, IN: University of Notre Dame du Lac, Institute for Latino Studies, 2007), http://latinostudies.nd.edu/pubs/pubs/Low_Pension_Coverage.pdf (accessed June 2009).

¹⁰ U.S. Department of Labor, *Contingent and Alternative Work Arrangements, February 2005*, Table 9.

¹¹ U.S. Census Bureau, "America's Families and Living Arrangements: 2007," *2007 Annual Social and Economic Supplement*. Housing and Household Economic Statistics Division, Fertility and Family Statistics Branch. Washington, DC, 2008, <http://www.census.gov/population/www/socdemo/hh-fam/cps2007.html> (accessed October 2008), Table AVG3.

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¹⁴ Lenore S. Azaroff, Charles Levenstein, and David H. Wegman, "Occupational Injury and Illness Surveillance: Conceptual Filters Explain Underreporting," *American Journal of Public Health* 92 (2002): 1421–1429, <http://www.ajph.org/cgi/reprint/92/9/1421.pdf> (accessed June 2008).

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¹⁸ *Ibid.*, 202.

¹⁹ U.S. Department of Labor, "Employee Benefits in the United States, March 2009."

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²⁴ Päivi Hämäläinen, Jukka Takala, and Kaija Leena Saarela, "Global estimates of occupational accidents," *Safety Science* 44 (2006): 145, http://www.ilo.org/public/english/protection/safework/accidis/est_method.pdf (accessed September 2008).

²⁵ *Ibid.*

²⁶ U.S. Department of Labor, Bureau of Labor Statistics, "Fatal occupational injuries, employment, and rates of occupational injuries by selected worker characteristics, occupations, and industries, 2007," *Census of Fatal Occupational Injuries, 2007*, http://www.bls.gov/iif/oshwc/cfoi/cfoi_rates_2007.pdf (accessed June 2008). The Census of Fatal Occupational Injuries (CFOI) is a compilation of state and federal government collection and coding of data from a variety of sources, including death certificates, worker's compensation reports, federal agencies such as the Occupational Safety and Health Administration (OSHA), Employment Standards Administration (ESA), and Mine Safety and Health Administration (MSHA). See U.S. Department of Labor, Bureau of Labor Statistics, *BLS Handbook of Methods*. Washington, DC, September 2008, <http://www.bls.gov/opub/hom/pdf/homch9.pdf> (accessed June 2009).

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Chapter 4

The Erosion of Job Quality: An Historic Perspective



As Chapter 3 demonstrates, Latinos face wide gaps in job quality compared to many White and Black workers. Disparities in wages, benefits, and working conditions are even more pronounced for Hispanic immigrants, who make up 53.8% of the Latino workforce. In order to address the current issues contributing to low job quality for Latinos, it is important to consider the history behind these issues, especially with regard to:

- **Labor market restructuring.** Since the 1970s, many Latinos and less-skilled workers have been crowded out of relatively high-quality manufacturing jobs and moved into lower-paying service occupations and nontraditional employment arrangements.
- **Immigration policy.** Many foreign-born Latinos have been left without secure legal footing in the workplace, which has taken a toll on job quality for all workers.
- **Federal labor laws.** A final consideration is the deep-seated reluctance of Congress and federal agencies to adopt—and adapt—policies to protect workers in the changing economy.

LABOR MARKET RESTRUCTURING

Beginning in the late 1970s, the U.S. economy began to shed goods-producing jobs in favor of service-providing jobs, which are more difficult to “export.” Many U.S. businesses shifted their labor-intensive operations to developing countries where they could pay workers lower wages, profoundly altering the composition of the U.S. labor market and producing downward pressure on job quality. Altogether, between 1979 and 2007, the economy lost 7.2 million manufacturing workers, while employment in the service sector grew by 14.2 million workers. Among other factors, these changes were driven by a new world financial system, advances in technology, and intensified international trade.

Shift to lower-paying service jobs. The industrial shifts in the second half of the 20th century produced a bifurcated American workforce of high-skilled and low-skilled workers. Likewise, the labor market distribution of Hispanic and non-Hispanic workers has become increasingly dissimilar. Latinos have been simultaneously crowded out of the remaining well-paying jobs from the older manufacturing economy and locked into lower-paying jobs in the new service economy.

By contrast, broad educational progress has enabled a significant number of Whites to advance out of low- and middle-skilled jobs and into professional and technical jobs.¹ Latinos have tended to fill low- to middle-skilled jobs left open by workers with advanced skills. For example, White men reduced their presence in farming by 99,500 between 1990 and 2000 while the number of Hispanic men grew in the farming sector by 84,800. Equally important is that Latinos played a major role in filling out the emerging service sector, where demand for less-skilled labor skyrocketed during the same period in response to changing consumer preferences. For example, Hispanic men filled 110,903 jobs that were added in the building and grounds cleaning category, which reflects the growing popularity of commercial landscaping.² Between 1990 and 2000, service employment grew by 373,055 for Hispanic men; 28.8% of that growth change was attributable to industrial shift, but 69.7% was caused by job growth.

Increase in nontraditional work arrangements.

Many labor market experts have been documenting a growing trend among employers to reconfigure their workforce to avoid the costs of compensating and insuring traditional wage-and-salary employees. One such practice is to hire workers on a contingent basis (described in Chapter 2) rather than through the use of a time-delimited contract.³ The Hispanic share of the contingent workforce has grown to surpass their overall share in the labor force; between 1995 and 2005, the Latino presence among contingent workers jumped from 12.7% to 21.4%.⁴ Yet in 2005, more than half (55.3%) of contingent workers reported that they would have preferred a permanent job.⁵ This preference is likely a reaction to the high job insecurity that characterizes contingent work. Contingent status is often closely associated with low job quality. Contingent workers are much less likely than noncontingent workers to be covered by employer-sponsored benefits,⁶ to receive extensive training,⁷ or to belong to a union.⁸

Growth of subcontracting. Most contingent workers are employed in nontraditional

arrangements. Since the majority of Latinos in alternative arrangements are employed as independent contractors (see Figure 2.4), Latino workers have been acutely and disproportionately impacted by the growing prevalence, complexity, and abuse of subcontracting arrangements. Subcontracting includes practices such as outsourcing of production or the provision of services, hiring independent or self-employed contractors, and procuring workers through labor intermediaries such as contractors, temporary help agencies, and employee leasing companies.⁹ Many employers use subcontracting arrangements to evade responsibility for upholding standards of job quality and fair treatment of workers (described in greater detail in Chapter 5). Latino workers involved in subcontracting arrangements tend to be employed in building and grounds cleaning occupations, food preparation and processing, home health care, and construction.¹⁰

IMMIGRATION POLICY

Many of the factors responsible for poor job quality are rooted in U.S. immigration policies that fail to provide sufficient legal channels for willing workers to enter the country, thereby promoting a cycle of illegality that leaves all workers vulnerable to exploitation. The number of employment-based visas issued by the U.S. government falls far short of employer demands. However, despite the shortage of legal options for entry, jobs continue to draw foreign-born workers, forcing many U.S. industries to become dependent on undocumented individuals. This trend has nearly paralyzed the labor market potential of millions of Latinos, who make up the majority of new immigrants. Furthermore, as Chapter 5 explains, these flawed policies ultimately drive down job quality for all workers who work side by side with undocumented immigrants, including legal immigrants and U.S.-born workers.

Supply and demand for immigrant labor.

Historically, public sentiment toward immigrants—and ultimately, government restrictions on legal entry—has fluctuated with the health of the U.S. economy.¹¹ Yet in contrast to restrictions on Chinese and European immigration (through the Chinese Exclusion Act of 1882 and the Quota Acts of 1921 and 1924), enforcement of immigration laws against Hispanic immigrants was relatively

lax in the early 20th century, with some notable exceptions. The unique treatment of Latinos was largely a product of their protracted attachment to the U.S. labor market: for more than a century, U.S. employers depended on Mexican workers, recruiting willing migrants to fill seasonal labor shortages as farmers, loggers, and miners in the 19th century Southwest. Consequently, when the creation of a Border Patrol in 1924 disrupted the steady supply of labor, U.S. farmers and ranchers lobbied Congress to preserve legal pathways for Mexican agricultural workers.

However, subsequent policy efforts to meet employers' demand for less-skilled labor, such as the *Bracero* program (1942–1964), failed to do so. More importantly, the program's porous labor standards and weak enforcement left workers extremely vulnerable to abuse. The 4.5 million workers who passed through the *Bracero* system regularly endured wage theft, deplorable living conditions, and a hazardous work environment—and they were essentially bound to their employers.¹² Many of these abuses continue in modern guest worker programs that have replaced the *Bracero* program. For instance, despite the requirement to pay H-2B (unskilled nonagricultural) guest workers the “prevailing wage” in an occupation to eliminate unfair competition against employers who hire U.S. workers, a 15-state study of H-2B workers found that in most cases, H-2B workers were paid well below the prevailing wage as reported by the Department of Labor.¹³

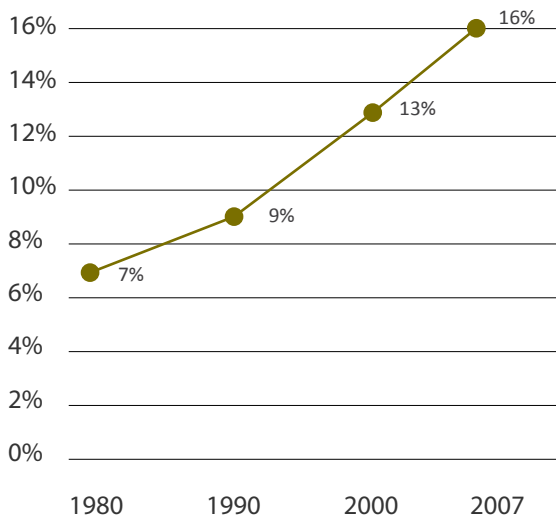
Restrictions on legal entry. The restructuring of the U.S. economy and advances in the human capital of U.S.-born workers created shortages of low-skilled labor that spread from the agricultural industry to other essential economic sectors, including construction, wholesale and retail trade, health care, manufacturing, and food processing.¹⁴ During that same period, more foreign-born workers a growing portion of whom were Hispanic—entered the U.S. labor market, shown in Figure 4.1. As demand for less-skilled workers grew, restrictions on employment-based immigration visas tightened, as Figure 4.2

illustrates. Today, most permits for entry favor highly skilled immigrants. With the exception of the Immigration Reform and Control Act (IRCA) of 1986, which legalized approximately 2.7 million individuals already living and working in the U.S., Congress has not made significant adjustments in visa levels to meet labor market demand.¹⁵

It should be noted that not all undocumented workers enter the U.S. illegally; rather, many enter through legal channels and remain in the country after their visas expire. Between 4.5 and six million undocumented immigrants residing in the U.S. in 2006 entered the country legally at a border and overstayed visas that were not intended for permanent immigration.¹⁶

FIGURE 4.1

Foreign-Born Workers in the U.S. Labor Force, 1980–2007



Source: Migration Policy Institute, "Foreign Born as a Percentage of the Total Population and of the Civilian Labor Force by State, 1980 to 2007," MPI Data Hub, <http://www.migrationinformation.org/datahub/charts/laborforce.2.shtml> (accessed September 2008).

Few Legal Pathways for Low-Skilled Immigrants

While experts are not in agreement on how to measure labor shortages, most agree that the number of U.S. workers in the labor market will decline significantly as baby boomers retire. It is estimated that in order to maintain the current trend of 3% annual growth in GDP, the workforce will need to add about one million workers per year between now and 2030.¹⁷ To do so will require hiring new immigrant workers.

Despite growing demand for workers from abroad, current legal avenues for immigrants seeking to work in the U.S. are extremely limited, which promotes illegality. Indeed, from 2003 to 2008, the share of undocumented workers in the U.S. labor force increased from 4.3% to 5.4%.¹⁸ Legal pathways are especially limited for less-skilled workers. In 2007, only 5,000 unskilled immigrants were granted lawful permanent residence ("green cards") by the U.S. government. Temporary residency options are more numerous, but guest workers must be sponsored by a specific employer. Temporary visa categories for seasonal agricultural workers (H-2A), seasonal nonagricultural workers (H-2B), and returning seasonal nonagricultural workers (H-2R) totaled 173,103 in 2008. Each year, the United States Citizenship and Immigration Services branch of the Department of Homeland Security receives far more employer applications for temporary workers than are accepted; the annual cap is usually reached within a week of the open application process.¹⁹

Barriers to naturalization. Even immigrants who obtain legal permanent residency face difficulties becoming naturalized citizens, which can limit their opportunities to advance in the job market, fully participate in the civic process, and improve their quality of life. One major obstacle to naturalization is the government backlog of citizenship applications. At the end of fiscal year 2008, 1,046,539 persons were naturalized, and decisions on 480,000 cases were pending.²⁰ Another 121,283 naturalization applications were denied.²¹

Limited English proficiency is another obstacle to naturalization for many Latinos, since proficiency in English is required for individuals to pass the citizenship exam. On October 1, 2008, U.S. Citizenship and Immigration Services (USCIS) began administering the redesigned naturalization exam.²² It is possible that this change will prompt new misconceptions about the test and the citizenship process, creating an additional impediment for many prospective applicants.

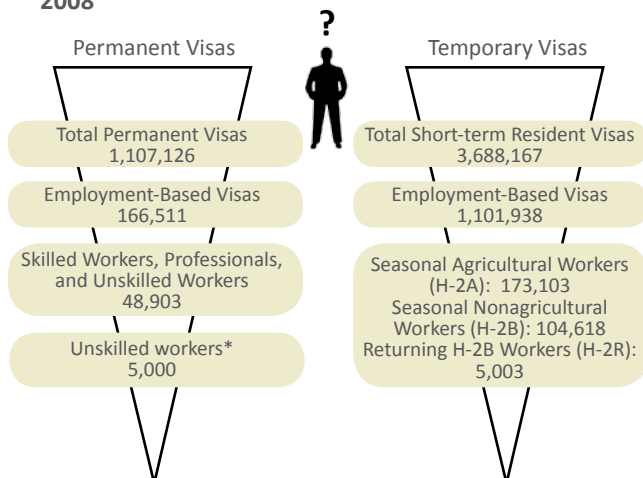
Finally, the application fee is prohibitively high for many low-wage earners, which reduces the likelihood that they will naturalize. On July 30, 2007, the cost for processing naturalization applications (form N-400) rose 80%, from \$330 to \$595.²³ Individuals applying for citizenship must also pay an additional \$80 biometric fee, bringing the total cost of applying for naturalization to \$675.

Employment verification. The job quality of many immigrant and foreign-born Latinos has been compromised by the tumultuous evolution of policies that restrict the hiring of undocumented workers. The passage of IRCA in 1986 was the first time Congress made it unlawful to hire undocumented workers. IRCA required employers to check the validity of the now ubiquitous I-9 form of all newly hired employees. IRCA threatened to penalize any employer who was found to “knowingly hire” an unauthorized worker (these penalties are known as “employer sanctions”). Rather than preventing the employment of undocumented workers, IRCA led to unintended consequences. It established a thriving fraudulent document industry and set in motion widespread discrimination against Latinos and other workers who are perceived to be “foreign.” Both were products of the fact that workers and employers were forced to find ways to work around a system that did nothing to widen legal channels to address the magnet of available jobs and the flow of willing workers.²⁴

In response to criticism from civil rights and worker advocates, as well as from employers who demanded clarity in order to avoid sanctions, Congress has sought to come up with a system that

FIGURE 4.2

Permanent and Temporary Employment-Based Visas, 2008



Source: U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2008*. Office of Immigration Statistics. Washington, DC, 2009, <http://www.dhs.gov/files/statistics/publications/LPR08.shtm> (accessed June 2009).

* The federal government caps the number of visas available for unskilled workers at 10,000 per year, with 5,000 reserved for the Nicaraguan Adjustment and Central American Relief Act (NACARA) of 1997. U.S. Department of State, *Report of the Visa Office 2003*. Washington, DC, 2003, <http://travel.state.gov/pdf/FY2003%20AppA.pdf> (accessed January 2008), Appendix A.

allows employers to automatically verify whether newly hired employees are eligible to work in the U.S. For more than two decades, employers have tested several versions of an electronic employment verification system (EEVS) designed to check newly hired employees' I-9 form against Social Security and immigration records held in government databases.

However, since EEVS was never intended to match a worker's identity with the information provided in their employment documents, the system has not fulfilled its purpose of preventing the hiring of undocumented workers. Furthermore, serious flaws in the system due to database errors and rampant employer misuse and abuse of EEVS have come at a major cost to job quality, disproportionately impacting U.S. citizens and legal residents with “foreign” last names. These issues

are described at length in Chapter 5. Although only about 4% of newly hired employees are verified electronically under the current system, called E-Verify, about 4,000 employers are registering for the program each month.²⁵ Thus, the problems with the current system could spread rapidly as E-Verify expands, to the detriment of job quality for both U.S. citizens and foreign-born workers. Essential protections for workers in an employment verification system are addressed in Chapter 6.

FEDERAL LABOR PROTECTIONS

By and large, federal policymaking has lagged significantly behind trends in the U.S. labor market. In fact, major federal legislative and regulatory activity concerning labor issues has been relatively dormant since the mid-1990s (see Table 4.1). As a result, the institutional framework for protecting workers has become increasingly porous.

Table 4.1
Major Federal Labor Laws

Law	Purpose	Year Enacted
Clayton Act ¹	Protects organized labor from penalty under antitrust laws.	1914
Davis Bacon Act ²	Requires individuals contracted for construction work by, or with the assistance of, the federal government to be paid no less than the local prevailing wage.	1931
National Labor Relations Act (NLRA/Wagner Act) ³	Gives workers the right to organize unions and choose their representatives, and protects them from certain employer retaliation. The law also establishes the National Labor Relations Board (NLRB) to arbitrate union elections.	1935, amended in 1947 by the Taft-Hartley Act
Fair Labor Standards Act (FLSA)	Sets the federal minimum wage, mandates the payment of overtime wages for workers earning below a certain income level, requires employers to keep records of employees' hours, and sets limits on the hours and types of jobs young people can work. Domestic workers and farmworkers are excluded from most protections under FLSA. ⁴	1938; notable amendments include the Equal Pay Act of 1963, modest expansion in 1966 to extend some protections for certain farmworkers, and the 1993 Family and Medical Leave Act
Labor-Management Relations Act (Taft-Hartley Act)	Prohibits the "closed shop," excludes "supervisory" employees from protections under the Wagner Act, and prohibits and restricts certain union actions.	1947; additions and clarifications to unlawful union practices added in the Labor-Management Reporting and Disclosure Act (Landrum-Griffin Act) of 1959 ⁵
Immigration and Nationality Act (INA) ⁶	Consolidates the provisions of several guest worker programs regarding the recruitment, certification, and hiring of workers.	1952
Equal Pay Act ⁷	Prohibits discriminatory pay for men and women in the same establishment who experience and labor under the same working conditions.	1963
Civil Rights Act, Title VII ⁸	Bans employment discrimination on the basis of race, color, religion, sex, and national origin, with exceptions for certain types of employers. Establishes the Equal Employment Opportunity Commission (EEOC) to enforce Title VII.	1964

Law	Purpose	Year Enacted
Occupational Safety and Health Act (OSH Act)⁹	Holds employers responsible for providing a safe and healthy workplace. Establishes the Occupational Health and Safety Administration (OSHA) to create and enforce health and safety regulations in the workplace, to research, educate, and train workers and the public, and to provide assistance to states to carry out similar tasks. OSHA's enforcement tools include monetary fines, and in cases involving worker deaths, criminal penalties.	1970
Employee Retirement Income Security Act (ERISA)¹⁰	Protects employees' pension benefits by establishing rules about disclosure, vesting, participation, and funding.	1974
Migrant and Seasonal Agricultural Worker Protection Act (AWPA)¹¹	Extends certain protections to migrant and seasonal farmworkers regarding recordkeeping, wages, supplies, housing, and working conditions.	1983
Immigration Reform and Control Act (IRCA)¹²	Establishes a national worker verification system and sanctions against employers who knowingly hire undocumented workers.	1986
Family and Medical Leave Act (FMLA)¹³	Requires certain employers to offer their employees up to 12 weeks of unpaid leave during a 12-month period for certain family and medical conditions without penalty in wages, benefits, or position. All public employers, as well as private-sector employers of at least 50 employees in certain industries, are covered by the act.	1993

¹ Clayton Act, U.S. Code, (1914), Title 15 § 12.

² Davis-Bacon Act, Public Law 107-217 (August 21, 2002, as amended).

³ National Labor Relations Act, U.S. Code (1935), Title 29 §§ 151–169.

⁴ Fair Labor Standards Act, U.S. Code (1938), Title 29 §§ 201–219.

⁵ Labor-Management Relations Act, U.S. Code (1947), Title 29 §§ 141–187.

⁶ Immigration and Nationality Act, U.S. Code (1952), Title 8 §§ 1101–1778.

⁷ Equal Pay Act of 1963, U.S. Code (1962), Title 9 § 206d.

⁸ Civil Rights Act, U.S. Code (1964), Title 42 §§ 2000e–2000e-7.

⁹ Occupational Safety and Health Act (1970), Title 29 §§ 651–678.

¹⁰ Employee Retirement Income Security Act, U.S. Code (1974), Title 29 §§ 1001–1461.

¹¹ Migrant and Seasonal Agricultural Worker Protection Act, U.S. Code (1983), Title 29 §§ 1801–1872.

¹² Immigration Reform and Control Act, U.S. Code (1986), Title 8 § 1324.

¹³ Family and Medical Leave Act, U.S. Code (1993), Title 29 §§ 2601–2654.

Legislative slowdown. Since the enactment of major labor laws in the early 20th century, the work environment and the structure of the labor market have changed dramatically; yet there has been no sweeping federal legislation to strengthen workers' rights in more than 15 years.²⁶ Early laws were intended to preserve private negotiation between workers (acting through unions) and employers, but when it became clear that unions were not always successful in their efforts—and many workers were altogether excluded from union membership—policymakers sought to establish basic labor standards through the force of law. The Federal Labor Standards Act of 1938 set the floor on wages and the hours and conditions under which youth could work. The Occupational Health and Safety Act was the landmark legislation meant to protect workers' physical well-being on the job by requiring all employers to follow health and safety laws. Today's workplace continues to be regulated by these laws.

Stalled rulemaking. Regulatory activity around workplace standards has also slowed considerably. Historically, the rulemaking process within the Occupational Health and Safety Administration (OSHA) has been heavily influenced by corporations and organized labor, with input from experts, other employee advocates, and scientists from the public and private sectors.²⁷ Throughout its nearly 40-year history, however, the vast majority of rules issued by OSHA have never been finalized. Particularly in the last decade, rulemaking and finalization has stalled; only seven major final rules were issued between 1997 and 2007, compared to approximately 26 final rules in the previous decade.²⁸ Of the standards that were finalized between 1971 and 1996, evidence suggests that the majority has generally favored the interests of business rather than those of workers.²⁹ Among other factors, the decline of the labor movement and the rise of multinational corporations have limited the capacity of workers, unions, and advocates to advance and defend pro-worker standards.

Endnotes

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² Ibid.

³ In reaction to growing global competition and soaring health insurance premiums, many businesses have cut costs by eliminating benefits for their employees. However, there is debate about whether contingent workers actually do cost less than their permanent counterparts. *Employer Health Insurance Costs and Worker Compensation* (Menlo Park, CA: Kaiser Family Foundation, 2008), <http://www.kff.org/insurance/snapshot/chcm030808oth.cfm> (accessed May 2008); Kathleen Barker and Kathleen Christensen, *Contingent Work: American Employment Relations in Transition* (Ithaca, NY: Cornell University Press, 1998).

⁴ U.S. Department of Labor, Bureau of Labor Statistics, "Contingent and Alternative Work Arrangements, February 2005," news release, July 27, 2005, <http://www.bls.gov/news.release/pdf/conemp.pdf> (accessed September 2008); U.S. Department of Labor, Bureau of Labor Statistics, "Contingent Worker and Alternative Employment Supplement, 1995." *Current Population Survey*. Conducted by the U.S. Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 1995, <http://www.bls.census.gov/cps/contwkr/1995/sdata.htm>.

⁵ U.S. Department of Labor, "Contingent and Alternative Work Arrangements."

⁶ Only 9.4% of contingent workers had employer-provided health insurance in 2005, and only 4.6% were included in an employment-based retirement plan. U.S. Department of Labor, Bureau of Labor Statistics, "Contingent and Alternative Work Arrangements," Table 9.

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⁸ In 1999, just 5.9% of contingent workers were unionized, compared to 14.8% of noncontingent workers. There is notable variation between industries, however. Construction unions have successfully organized contingent workers at a rate of 22.6%, perhaps due to workers' reliance on unions for stability in a job market that is traditionally transient. Steven Hipple, "Contingent work in the late-1990s," *Monthly Labor Review* (2001), <http://www.bls.gov/opub/mlr/2001/03/art1full.pdf> (accessed September 2008).

⁹ In addition to the economic incentives for employers to contract out work, the growth of subcontracting has also been fueled by new technologies and decentralized production chains, which make virtual and multisite operations possible. Thus, subcontracting arrangements are not limited to less-skilled occupations but rather have taken hold in higher-skilled, higher-pay occupations such as computer technicians. Catherine Ruckelshaus and Bruce Goldstein, *From Orchards to the Internet: Confronting Contingent Work Abuse* (New York, NY: National Employment Law Project, 2002), <http://www.bls.gov/opub/mlr/2001/03/art1full.pdf> (accessed September 2008).

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¹⁰ Planmatics, Inc. for the U.S. Department of Labor, *Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs* (Rockville, MD: 2000), 51, <http://wdr.doleta.gov/owsdrr/00-5/00-5.pdf> (accessed September 2008).

¹¹ T. J. Espenshade and K. Hempstead, "Contemporary American Attitudes toward U.S. Immigration," *International Migration Review* 30 (1996).

¹² Center for History and New Media, "Bracero History Archive," George Mason University, Smithsonian National Museum of American History, Brown University, and the Institute of Oral History at the University of Texas at El Paso, <http://braceroarchive.org> (accessed July 2009).

¹³ Denice Velez, "Wages for H-2B workers set lower than the prevailing wage" (Washington, DC: Economic Policy Institute, 2008), http://www.epi.org/economic_snapshots/entry/webfeatures_snapshots_20080813 (accessed August 2008).

¹⁴ The Essential Worker Immigration Coalition (EWIC) is a coalition of businesses, trade associations, and other organizations from across the industry spectrum concerned with the shortage of both lesser skilled and unskilled ("essential worker") labor. EWIC, "The Essential Worker Immigration Coalition," <http://www.ewic.org/index.php> (accessed August 2008).

¹⁵ *Immigration Reform and Control Act, U.S. Code* (1986), Title 8 § 1324.

¹⁶ *Modes of Entry for the Unauthorized Migrant Population* (Washington, DC: Pew Hispanic Center, 2006), <http://pewhispanic.org/files/factsheets/19.pdf> (accessed September 2008).

¹⁷ Ray Marshall, *Immigration for Shared Prosperity: A Framework for Comprehensive Reform* (Washington, DC: Economic Policy Institute, 2009), 26.

¹⁸ Jeffrey Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Washington, DC: Pew Hispanic Center, 2009), 15, <http://pewhispanic.org/files/reports/107.pdf> (accessed April 2009).

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²⁰ James Lee and Nancy Rytina, *Naturalizations in the United States: 2008*. U.S. Department of Homeland Security Office of Immigration Statistics. Washington, DC, 2009, http://www.dhs.gov/xlibrary/assets/statistics/publications/natz_fr_2008.pdf (accessed July 2009).

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²² Applicants who file a naturalization application on or after October 1, 2008 and those who are scheduled for a naturalization interview on or after October 1, 2009 will take the new test. U.S. Department of Homeland Security, "New Naturalization Test," U.S. Citizenship and Immigration Services, <http://www.uscis.gov/newtest> (accessed July 2009).

²³ U.S. Department of Homeland Security, "Adjustments of Immigration and Naturalization Benefit Application and Petition Fee Schedule." Final Rule 8 CFR Part 103, Docket No. USCIS 2006-0044. U.S. Citizenship and Immigration Services. Washington, DC, 2006, <http://www.uscis.gov/files/nativedocuments/FinalRule.pdf> (accessed July 2009).

²⁴ Charles A. Bowsher, *Immigration Reform: Employer Sanctions and the Question of Discrimination*, Statement before the Committee on the Judiciary, March 30, 1990, U.S. General Accounting Office, T-GGD-90-31, <http://archive.gao.gov/d38t12/141005.pdf> (accessed April 2009).

²⁵ Estimates from U.S. Citizenship and Immigration Services in U.S. House of Representatives Committee on the Judiciary, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law, *Employment Verification: Challenges Exist in Implementing a Mandatory Electronic Employment Verification System*, Statement of Richard Stana, 111th Cong., 2nd sess., 2008, <http://www.gao.gov/new.items/d08895t.pdf> (accessed June 2008).

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²⁷ In fact, the OSH Act created the National Institute of Occupational Safety and Health (NIOSH) to provide scientific guidance on standards.

²⁸ *Death on the Job: The Toll of Neglect* (Washington, DC: AFL-CIO, 2009), "Major OSHA Health Standards Since 1971," http://www.aflcio.org/issues/safety/memorial/upload/_24.pdf (accessed April 2009), 41.

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Chapter 5

Major Issues Affecting Job Quality for Latinos



Photo by Francisco Pacheco

Absent effective, responsive immigration policy or significant strengthening of workers' rights at the federal level, the structural changes in the economy and employers' growing reliance on less-skilled—often immigrant—workers have eroded the quality of U.S. jobs. While millions of workers have been negatively impacted by these trends, Latinos have emerged as the workers who are most likely to hold jobs with low wages, insufficient benefits, and dangerous working conditions. This chapter explores the major issues that help explain the quality disparity Latinos face on the job. These issues can be grouped into three categories:

- **Labor law violations.** Latinos are concentrated in occupations with where labor law violations are prevalent.
- **Gaps in legal protections.** Many Latinos are partially or fully excluded from coverage under laws designed to protect workers.
- **Inadequate government outreach and enforcement.** Latinos bear a disproportionate burden of the federal government's failure to enforce fundamental labor laws.

LABOR LAW VIOLATIONS

Several low-wage industries are plagued by violations of the major federal labor laws that are outlined in Table 4.1. Anecdotal and empirical evidence suggests that the majority of the Latino workforce is employed in workplaces where wage, benefit, and working condition regulations are not met. The industries in bold in Table 5.1 are those with a high frequency of labor law violations. The most common types of violations and the affected industries are listed in Table 5.2.

The Occupational Health and Safety Administration (OSHA) has documented a 6.4% rise in violations of standards and regulations since 2003, including a rise in “willful” violations in which employers knowingly violate the law.¹ While OSHA credits these increases with better oversight and reporting, the rising toll of Latino worker deaths raises the probability that the incidence—not just the discovery—of willful violations is on the rise. At the heart of this trend is that the penalties for violating labor laws are generally too low to offset the financial incentives for unscrupulous employers to cut corners. In order to avoid detection, many employers fail to report serious workplace injuries and illnesses, allowing substandard conditions to persist.

Table 5.1

Employed Latino Workers by Industry, 2008

Industry	Percent of Total Employed Who Are Latino*	Latino Workers (in thousands)†
Manufacturing	14.6%	2,323
Education and Health Services	15.0%	3,040
Wholesale and Retail Trade	13.8%	2,831
Construction	24.6%	2,701
Leisure and Hospitality	18.5%	5,664
Professional and Business Activities	10.5%	2,144
Other Services	9.0%	1,197
Transportation and Utilities	14.6%	1,155
Financial Activities	10.6%	1,083
Public Administration	3.1%	631
Information	1.6%	317
Mining	0.6%	127

*NCLR calculation using U.S. Department of Labor, “14. Employed persons in nonagricultural industries by age, sex, race, and Hispanic or Latino ethnicity.” *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, <ftp://ftp.bls.gov/pub/special.requests/lf/aat14.txt> (accessed September 2008).

† U.S. Department of Labor, “14. Employed persons in nonagricultural industries.”

Absent adequate health and safety training or the presence of a union, many Latino workers have little recourse in the face of widespread violations. The issue of employer noncompliance acutely affects workers employed in nontraditional arrangements, who often find it difficult to hold a single employer responsible.

Weak civil and monetary penalties. Depending on the laws that apply to certain categories of employees, an employer may be obligated to pay for an employee's salary, benefits, and personal protective equipment and training.² In many cases, however, the civil penalties for violating these laws are too weak to compel employers to fulfill their legal

Table 5.2**Most Common Labor Law Violations**

Violation	Commonly Affected Industries	Violation	Commonly Affected Industries
Wage theft. Employers' failure to pay workers their wages has serious implications for those who already earn low wages and are likely to be paid on an hourly basis. Refusing to provide any compensation and failing to pay minimum wage or overtime are all potential violations of the Fair Labor Standards Act (FLSA) and, for certain agricultural employees, the Migrant and Seasonal Agricultural Worker Protection Act (AWPA).	Agriculture	Inadequate sanitation, housing, and transportation. Several case studies have revealed the high incidence of violations of the AWP and the Occupational Health and Safety Act (OSH Act), which require adequate drinking water and sanitation in the fields, among employers of migrant and seasonal farmworkers.	Agriculture
Poor recordkeeping. An employer who neglects to record all hours an employee works as required by the FLSA and the AWP is likely to underpay the employee. While some recordkeeping errors are accidental, a common practice in the construction industry is to fail to record hours worked as overtime for employees who perform various tasks within one week for the same employer.	Construction	Scaffolding hazards. Occupational Health and Safety Administration regulations require that scaffolding be properly constructed to support workers on temporary elevated surfaces. In 2007, however, 88 workers died due to a fall from scaffolding. In fact, scaffolding standards were the most frequently cited rule violations in OSHA inspections during the fiscal year 2008 (October 2007 through September 2008). ³	Construction, especially masonry, drywall, and insulation work
Youth employment violations. In addition to the standards of the FLSA and the AWP, youth are subject to different employment restrictions depending on their age. One of the most common violations of youth employment law is to exceed the permissible number of hours a young person is allowed to work. According to a compliance survey of restaurants by the U.S. Wage and Hour Division, 47% of 14- and 15-year-olds employed in full-service restaurants were in violation of youth employment laws, most of them working more hours than permitted. ¹	Leisure and hospitality	Inadequate fall protection. This was OSHA's second most frequently cited workplace safety violation in fiscal year 2008. ⁴ Based on 2006 fatal occupational injury data, Latinos are more likely than other workers to be killed by a fall on the job; 20.2% of Latino fatalities were caused by falls, compared to 14.8% of White fatalities and 7.6% of Black fatalities (see Figure 4.9).	Carpentry Construction, especially roofing, siding, and sheet metal work
Misclassification of employees as independent contractors. In 2005, 951,000 Latino workers identified themselves as independent contractors, ² but due to the growing practice among employers to misclassify actual employees as independent contractors, this number is likely much higher. Misclassification, described in greater detail below, has serious consequences for workers who remain unaware of their tax obligations and legal vulnerability as self-employed workers.	Manufacturing	Insufficient hazard communication. OSHA's hazard communication standard requires employers to provide clearly accessible information (such as labels and descriptions) about chemicals in the workplace and their hazards. Failure to appropriately warn workers about hazardous chemical substance was OSHA's third most frequently cited safety violation in fiscal year 2008. ⁵	Construction, especially masonry, painting, and paper hanging

¹ NCLR calculation using U.S. Department of Labor, "14. Employed persons in nonagricultural industries by age, sex, race, and Hispanic or Latino ethnicity." *Current Population Survey*. Conducted by the Bureau of the Census for the Bureau of Labor Statistics. Washington, DC, 2008, <ftp://ftp.bls.gov/pub/special.requests/lf/aat14.txt> (accessed September 2008).

² U.S. Department of Labor, "14. Employed persons in nonagricultural industries."

³ U.S. Department of Labor, "Most Frequently Cited Standards," Occupational Health and Safety Administration (OSHA), http://www.osha.gov/dcsp/compliance_assistance/frequent_standards.html (accessed January 2009).

⁴ Ibid.

⁵ Ibid.

obligations. For instance, employers found guilty of violating the FLSA are required to pay back wages to unpaid or underpaid workers—in other words, no more than the amount rightly due to the worker.³ Fines for OSHA violations have not increased in nearly two decades. Even in the most egregious case—“willful” violations that result in a worker’s death—the maximum fine is \$70,000, far below fines leveraged for violations in other areas, such as environmental law.⁴

OSHA logs reveal that employers are not likely to pay the full fine levied against them. In fact, the median reduction in willful violations that result in a worker fatality is 58%, or \$40,600. This is partially by design: OSHA guidance instructs investigators to reduce fines for certain types of employers, including small businesses.⁵ Furthermore, since a willful violation is considered a Class B misdemeanor—with lower penalties than mail fraud—criminal charges are very rarely pursued. Between 2003 and 2008, OSHA deemed 237 fatality cases willful violations, but in only ten cases were employers prosecuted by the Department of Justice.⁶ The main obstacles to court action are the low classification of violations, a general lack of evidence in fatality cases, and employers’ tendency to seek alternative methods of making reparations to avoid public repudiation for being responsible for a worker’s death.⁷

Employee intimidation and underreporting.

Abnormally high rates of injury or illness can drive up an employer’s workers’ compensation premiums and can affect a business’ chance of winning certain government contracts.⁸ These considerations, coupled with the weak penalties discussed above, cause many employers to evade their legal obligation to accurately report serious incidents. Accounts from low-wage workplaces have exposed a wide range of tactics employers use to prevent workers’ complaints from reaching supervisors and government enforcement agencies. These include blatant violations of whistleblower protections—such as firing an employee who disputes a paycheck—to low-level disciplinary tactics that are more difficult to detect, such as verbal harassment, assigning workers

undesirable tasks or schedules, and passing up workers for bonuses and promotions.⁹

Even practices that appear to make positive investments in workers can inadvertently or deliberately discourage workers from issuing complaints. For example, employers who excessively reward “accident-free” workers with prizes or bonuses can maintain popularity with employees while still discouraging honest reporting. Another trend is to provide in-house medical care to workers who get sick or injured on the job. Especially in larger businesses, such as poultry-processing and meatpacking plants, some employers have instructed their in-house medical staff to downplay the severity of work-related injuries.¹⁰ Since only injuries serious enough to merit “lost work time” show up on OSHA logs and nationwide surveys, this practice distorts the accuracy of official injury reports and blocks workers from accessing the workers compensation process.

Ineffective delivery and content of health and safety training.

By law, employers are obligated to create a safe and healthy workplace. In addition to minimizing and eliminating hazards, it is their responsibility to train workers to protect themselves from injury and illness. However, many employers provide low-wage workers with little to no safety training. For instance, in a survey of restaurant employees in New York City, 52% of workers said they had not received any health and safety training.¹¹ When workers do receive training, it is often minimal, low-quality, or not delivered in a language or manner that enables them to fully comprehend it. In fact, several investigations into several cases of Hispanic worker deaths have concluded that inadequate training is a major cause of preventable deaths.

Language barriers often compromise the quality of vital safety training to Hispanic workers, particularly the foreign-born. Non-Spanish-speaking employers often fail to provide culturally and linguistically appropriate training to Spanish-speaking workers, in violation of their legal obligation to provide quality training.¹² OSHA

Workplace Discrimination and Harmful Employment Verification Measures

A discussion of Latinos' experience in the labor market cannot leave out the negative impact of racial, ethnic, and national origin discrimination on employment opportunities and job quality for Hispanic workers. Discrimination can be detrimental to all three core components of job quality: wages, benefits, and working conditions. One study found that "differential treatment explains one-fourth of the wage gap between foreign-born Latinas and white women even when human capital, broad occupational controls and neighborhood characteristics are included."¹⁵ The failure of occupational distribution to fully explain disparities in workplace fatality rates may be partially explained by differential treatment of workers in the same occupation.¹⁶ For instance, Latino or immigrant workers may be assigned inferior and more dangerous tasks than other workers with the same job title.

The proposed expansion of a flawed employment verification system threatens to reverse years of progress in combating workplace discrimination.¹⁷ Decades after a congressionally mandated General Accounting Office* report found that employment discrimination spiked in areas with Latino and Asian populations following the enactment of the Immigration Reform and Control Act (IRCA) in 1986, these groups continue to be more likely than others to be harmed by employer misuse and abuse of the system, or by database errors that prevent authorized individuals from being automatically confirmed to work.¹⁸

According to evaluations of the latest electronic employment verification system, E-Verify, U.S.-born and foreign-born workers with "foreign-sounding" surnames, foreign-born workers who are naturalized U.S. citizens, and other lawfully present foreign-born workers are more likely than U.S. citizens to be incorrectly denied automatic confirmation due to errors in government databases. These workers face greater risk of adverse actions from their employers. In violation of the rules of E-Verify, 31% of employers screened job applicants and new hires before issuing their first paycheck, 21.6% restricted work assignments, 16% delayed on-the-job training, and 2% reduced pay of workers who were not immediately confirmed to have work authorization.¹⁹ In other cases of abuse, some employers demand extra or "better" documents than legally required from people they believe to be immigrants. Others implement unlawful "citizen-only" policies to avoid a potentially longer and more costly verification for these "error-prone" workers.²⁰

* Now the Government Accountability Office.

has developed extensive compliance assistance resources in Spanish. However, public health models have shown that the effectiveness of these materials rests on the quality of delivery of information. Evidence shows that such outreach materials are often impractical, instructing employees on practices irrelevant to their occupation, or insensitive to cultural differences.¹³ Many employers remain unaware that limited-English-proficient (LEP) workers have not fully understood or benefited from training since soliciting employee feedback is rare. Instead, they may incorrectly assume that LEP workers understand safety instructions as long as they receive them in Spanish.¹⁴ This assumption further excludes workers for whom Spanish is not their primary language, or for whom low literacy is a barrier.

The high incidence of violations of E-Verify rules, coupled with persistent error rates in the Social Security and U.S. Citizenship and Immigration Services (USCIS) databases, come at a significant cost to all workers, especially Latinos. Expanding such a system through a mandate on all U.S. employers would drive up workplace discrimination, further deteriorating job quality.

Declining union presence. Compared to 1973, when nearly one in three workers was covered by a collective bargaining agreement,²¹ only 12.4% of workers were unionized in 2007.²² The decline of unions eliminated an important watchdog figure in the workplace, leaving workers more exposed to

employer violations. In the midst of disappearing union jobs, several court interpretations of labor laws have further restricted workers' right to organize.²³ Furthermore, since the 1970s, there has been a documented rise in employer tactics to discourage workers from joining unions and recruit employees from outside the unionized workforce.²⁴ These efforts have

succeeded in many industries, abetted by delays in union outreach to workers employed in the service sector. Although some unions have made progress recruiting immigrant and non-English-speaking workers, they continue to face challenges presented by complex contractor and subcontractor relationships, multisite operations, and nontraditional work arrangements.²⁵

Job Quality Comes Full Circle: The Case of Meatpacking

The evolution of the meatpacking industry is one example of how changes in workplace governance have affected the employment and job quality of Latino workers. At the turn of the 20th century, the business of slaughtering, processing, and packing beef employed predominantly immigrant workers at poverty-level wages and under extremely hazardous conditions.²⁶ Upton Sinclair's 1906 novel *The Jungle* exposed the destitute conditions experienced by meatpacking employees both at work and at home. Accounts like Sinclair's raised public consciousness about the problems facing workers, which led lawmakers to set some industry standards affecting the packing process and working conditions. Significant progress was made between 1946 and 1968, when two unions—the Amalgamated Meat Cutters and the United Packinghouse Workers of America (UPWA)—successfully organized 95% of the hourly workers in plants throughout the Great Lakes region. Workers' wages rose dramatically during this time, despite the fact that the industry was dominated by only four companies. In 1947, meatpackers' average hourly wages were about 4% higher than hourly earnings of workers in nondurable goods, but by 1968 they were 26% higher.

In 1968, Iowa Beef Packers (IBP) entered the meatpacking market with a new product: boxed beef. This method of packing enabled IBP to lower its costs by locating its plants closer to the livestock in rural areas. In order to fill labor shortages in these locales, IBP and other large businesses began recruiting Hispanics and Asians, many of whom were immigrants, to work in the packing plants. In the meat products industry, Hispanics' share of workers increased from 9% in 1978 to 21% in 1991.²⁷ Immigrants, women, and minorities were all groups that unions had found difficult to organize.²⁸ Together with active resistance to strikes and other union activities, IBP and a few other new entrants to the industry pressured unions to make major concessions on workers' wages. As wages declined in the 1980s, the rate of job-related injury increased, eventually coming to resemble the unregulated, nonunionized poultry-processing industry of the 1960s.²⁹ In fact, in 1987, OSHA sought \$2.6 million in fines against IBP for deliberately concealing the high incidence of occupational injuries and illnesses at its plant in Dakota City, Nebraska.³⁰

Since the late 1980s, employers in meatpacking have continued to drive down wages. The average hourly wage in meatpacking declined from \$13.22 in 1986 to \$11.47 in 2006 while the disparity between meatpacking and manufacturing wages grew.³¹ Meanwhile, in 2008, the U.S. beef industry was worth about \$76 billion.³² A relatively slim profit margin has prompted producers to implement other cost-cutting measures, such as faster production line speeds and longer hours, which have contributed to some of the highest serious occupational injury rates of any job in the country.³³ These conditions lead to extremely high employee turnover in meatpacking, often exceeding 100% per year.³⁴ Union activity has revived in the meat, pork, and poultry industries, often with the intent of organizing minority and immigrant workers to demand better wages and working conditions. However, heavy resistance from employers has slowed this process in many plants, such as the Smithfield Packing slaughterhouse in Tar Heel, North Carolina, which voted for a union in December 2008 after 15 years of organizing activities.³⁵ The uncertain future of job quality in meatpacking is especially critical to Latinos, who now represent 38.4% of butchers and other meat, poultry, and fish processing workers.³⁶

Exploitation of independent contractors. One of the most prevalent and harmful practices affecting the quality of work at nearly every level of the pay scale is the misclassification of legitimate employees as independent contractors. True independent contractors are considered self-employed and are thus required to purchase their own equipment and benefits and pay their own payroll taxes. Employers are not responsible for paying workers compensation payments if an independent contractor is injured on the job. While many employers hire legitimate independent contractors, misclassification of regular employees as independent contractors is a practice that is spreading among employers seeking to avoid the responsibility and costs of employing workers. A study commissioned by the U.S. Department of Labor estimated in 2000 that 30% of businesses misclassify their workers as independent contractors.³⁷ Although misclassification happens across occupations, it is best documented among construction and extraction workers. In New York, for example, an estimated 14.8% of construction workers, about 45,474 individuals, are misclassified each year.³⁸ The costs of misclassification are widespread. Workers who are misclassified face a host of potential problems that tend to surface only when they seek to exercise their rights as legitimate employees. Data from the Internal Revenue Service (IRS) suggest that a significant portion of independent contractors are unaware of their tax obligations. As a result, workers lose out on a significant portion of their expected contributions to Social Security and state and federal governments lose significant tax revenue.³⁹ It is also likely that misclassified workers are unaware that they are excluded from rights under the FLSA, the OSH Act, the Employee Retirement Income Security Act (ERISA), the Family and Medical Leave Act (FMLA), and the Civil Rights Act of 1964. Even legitimate independent contractors may face confusion as to their status under the law, since different labor laws define independent contractor in different ways.⁴⁰

Tackling the issue of misclassification is challenging because the practice is permitted under current

law in certain circumstances. For instance, the IRS code provides a “safe harbor” for employers who misclassify workers as independent contractors, disqualifying employers from penalty for misclassification if this is a common practice in their industry.⁴¹ The complexity of employer-contractor relationships adds to the difficulty of cracking down on employers who deliberately misclassify workers. For instance, as is the case with many of the violations listed in Table 5.2, the practice of misclassification is especially common in nontraditional employment arrangements and small businesses, where the lines of accountability between employees and employers are often obscured. The joint supervision of a contractor by multiple employers, rather than a single employer who takes sole responsibility for its workers, further complicates the problem. Recent attempts to regulate these types of arrangements, including the “hot goods” provision of the FLSA, which authorizes the Department of Labor to seize goods produced under substandard working conditions, have had some success. The intent of this regulation is to hold all employers in a production chain accountable for their labor practices.⁴²

GAPS IN LEGAL PROTECTIONS

Millions of Latinos work without the full protection of federal labor laws.⁴³ Explicit exclusions in the law affect broad segments of the Latino workforce, including the 7.6 million Latino small business employees. Specific occupations, such as domestic workers, are also singled out for exemption, leaving hundreds of thousands of workers exposed to exploitation on the job. The following groups of workers risk working in low-quality jobs because they are not fully covered by the nation's labor protections.

Small business employees. Due to their higher representation as small business employees, Latinos are more likely than Blacks and Whites to be excluded from federal labor laws. In 2007, 36.2% of the Hispanic nonelderly labor force (about 7.6 million Latinos, native-born and foreign-born alike) worked for a firm employing fewer than 25 employees, compared to 29.1% of Whites and 21.4% of Blacks.⁴⁴ Minimum establishment size is a common measure of eligibility for coverage under federal labor laws.

For instance, Title VII of the Civil Rights Act only applies to establishments employing 15 workers or more. The FMLA is even narrower, applying only to federal contractors and subcontractors with at least 50 employees working within 75 miles of each other.

While these exemptions are designed to prevent small businesses from experiencing undue burdens in hiring workers, it is also a common practice to deliberately contract out work in order to remain small enough to be exempt from occupational health and safety regulations, antidiscrimination laws, and record-keeping requirements.⁴⁵ Multiple layers of contractors also tend to blur the lines of accountability between employer and employee, leaving some workers without any protections under federal labor laws.

Agricultural workers. Another segment of the Latino workforce that is explicitly excluded from legal protections is the 426,000 Latinos who work in agriculture, the majority of whom are immigrants. In 2008, Latinos composed nearly half (45.1%) of miscellaneous agricultural workers, or farmworkers.⁴⁶ Legal exclusions of agricultural workers have their roots in the New Deal era, when conservative Southern Democrats in Congress refused to extend the protections of the FLSA to domestic workers and farmworkers, who were predominantly Black.⁴⁷ Although the FLSA was amended in 1966 to expand minimum wage requirements to some farmworkers, the law continues to exclude farmworkers from overtime pay provisions and full protections for young workers. Furthermore, many farmworkers, particularly those on small farms, work without any minimum wage requirements. Under the National Labor Relations Act (NLRA), agricultural workers are not protected from employers who retaliate against workers who attempt to organize unions. Many states also exempt agricultural employers from paying workers' compensation.⁴⁸

Domestic/household workers. Approximately 302,000 Latinos, the majority of them foreign-born, are employed in private households, usually as nannies, butlers, gardeners, and caretakers. In fact, Latinos make up 37.5% of domestic workers, which is likely to be an underestimate since many households fail to report employing individuals in their homes.⁴⁹ All domestic workers are explicitly excluded from the standards and whistleblower protections of the OSH Act and the NLRA. Despite the stability of the domestic workforce, the FLSA excludes "casual" babysitters and "companions" who care for the sick or elderly, which disadvantages workers whose hours and wages are not properly recorded by their employers. A study of New York City's domestic work industry found that 8% earn below minimum wage, 67% sometimes or never receive overtime pay (despite the fact that about half work overtime), and 33% have experienced abusive treatment by their employers, including verbal and physical abuse. The majority (59%) of workers interviewed were the primary earners for their families.⁵⁰

Undocumented workers. In 2008, an estimated 8.3 million undocumented immigrants worked in the U.S., representing 5.4% of the labor force.⁵¹ In 2009, the Pew Hispanic Center estimated that undocumented workers represent the following shares of these occupation groups:

- Farmworkers (25%)*
- Buildings, grounds keeping, and maintenance (19%)
- Construction (17%)
- Food preparation and service (12%)
- Production (10%)
- Transportation and material moving (7%)

*The National Agricultural Workers Survey estimates that 53% of farmworkers are undocumented. U.S. Department of Labor, Bureau of Labor Statistics, "Figure 1.4 U.S. Employment Eligibility," *National Agricultural Workers Survey*. Washington, DC, 2003, <http://www.doleta.gov/agworker/report9/toc.cfm> (accessed August 2009).

In 2006, more than 25% of workers in the following occupations were estimated to be undocumented:⁵²

- Drywall installers, ceiling tile installers, and tapers
- Construction trade helpers
- Butchers and other meat, poultry, and fish processing workers
- Pressers of textiles, garments, and related materials
- Grounds maintenance workers
- Construction laborers
- Brick masons, block masons, and stonemasons

Although federal laws do not take into account a worker's legal status, recent legal developments have cast a shadow of uncertainty on whether workers with insecure immigration status are conferred the full rights and protections of labor laws. The 2002, the Supreme Court's decision in *Hoffman Plastic Compounds Inc. v. NLRB* denied back pay—virtually the only recourse for illegal employer retaliation under the NLRA and the FLSA—to undocumented workers.⁵³ Not only has the *Hoffman* decision produced confusion among employers and workers, it has also opened the door to a wave of legal efforts to deny **all** rights to undocumented workers, including compensation for discrimination and work-related injuries and illnesses. Although the outcomes of the cases have been mixed, the movement to deny certain protections to workers based on immigration status has created a hostile environment for all workers seeking to exercise their rights.⁵⁴

Case Study:

Bosbely, a car wash worker, was fired after reporting dangerous working conditions to OSHA.

Bosbely worked at Vermont Hand Wash for nearly two years as a dryer and detailer. Bosbely and many of his coworkers suffered health effects from using acids and other toxic chemicals without protective gear such as goggles or gloves.

Bosbely reported the dangerous working conditions at the car wash to the California Division of Occupational Safety and Health and answered questions from the press when other workers were afraid to do so. He also joined his coworkers in taking legal action against the owners of the car wash for not paying minimum wage or overtime pay and not allowing workers to take meal and rest breaks.

Bosbely was one of the most outspoken union supporters in the car wash and took great personal risks to try to improve conditions for all workers there. In October 2008, management at Vermont Hand Wash fired Bosbely.

Source: Carwash Workers Organizing Committee, "Meet the Workers," Clean Car Wash Campaign, <http://www.cleancarwashla.org/index.cfm?act=cat&categoryID=12d390a7-5282-4de5-b76b-bc6dc4a3b06a> (accessed August 2009).

GOVERNMENT OUTREACH AND ENFORCEMENT

Government both assists employees and plays an enforcement role in protecting workers' rights to basic standards of job quality. The evidence is clear that labor law enforcement activities, whether planned or complaint-based, do in fact induce employers to correct violations.⁵⁵ Under certain conditions, employers seeking to avoid violations and proactively comply with the law are actually guaranteed protection from penalties for violations discovered by compliance assistance officers. Nevertheless, federal efforts to appropriately target high-risk industries and vulnerable worker populations have been met with significant obstacles. By and large, Latinos have not been well-served by government outreach and enforcement efforts in the workplace.

Insufficient resources for federal outreach and enforcement. The primary barrier to effective outreach and enforcement activities is declining funding for OSHA and the Wage and Hour Division

Case Study:

Guadalupe, a poultry worker, was encouraged by her company to lie to the doctor about her workplace injury. Then she was fired.

Guadalupe worked at the poultry processing plant where she was assigned to cut the bruised legs and wings from chickens as they came through the line on hooks. It took a lot of effort to hook and rehook the chickens with one hand because they came through the line so fast. The chickens were quite high, and she would have to scramble up a step stool to reach them. Her arm started to go numb and she had stabbing pains across her chest.

The company sent her to the hospital to have the pains checked out, and the doctor ordered 13 weeks of disability. She was diagnosed with a repetitive motion injury in her elbow and the doctor ordered that she was not supposed to lift more than five pounds. The company's human resources department told her that she could not work with that restriction and that she should go back to the doctor and report that she had no longer had pain. She went back to the doctor, who refused to discharge her. The company fired her.

Now Guadalupe can hardly sleep from the pain—she cannot lift her arm. She has trouble caring for her children because she cannot lift them. Without two incomes, her family is having difficulty paying bills.

Source: Guadalupe (last name withheld), interview by Sara A. Quandt, Ph.D., Wake Forest University School of Medicine, Winston-Salem, NC, and Francisco Risso, Western North Carolina Workers' Center, Morganton, NC, 2008.

of the Department of Labor in the federal budget. For instance, while the number of employees covered by OSHA grew from 3.9 million in 1975 to 8.7 million in 2006, the number of full-time OSHA employees has declined. As a result, each employee is responsible for 4,057 establishments, nearly four times the caseload of employees in 1975.⁵⁶ Similarly, the number of Wage and Hour investigators has dropped from 942 in 1997 to 732 in 2007.

As capacity declines, the quality of inspections performed by federal agencies suffers. For

example, OSHA has consistently reduced the time it spends on each health and safety investigation.⁵⁷ The ability of investigators to reach high-risk work sites is also curbed by limited agency resources for targeted inspections. In 2007, only 23% of Wage and Hour resources went toward targeted enforcement of high-risk industries, compared to 30% of resources in 2000 and 60% in 1968.⁵⁸ Moreover, despite major research and exposure of health and safety violations in the meatpacking industry,⁵⁹ a Government Accountability Office report in 2004 found that only 1% of OSHA's inspections occur in meat and poultry packing plants.⁶⁰ Evidence shows that OSHA tends to focus its enforcement on unionized workplaces. OSHA's Enhanced Enforcement Program (EEP), which is meant to monitor establishments with a record of repeat violations, intentional violations, or fatalities has only followed up with 514 of the 7,968 EEP fatality targets since the program began in 2003.⁶¹

Insufficient data on high-risk industries and firms. Federal enforcement officials rely on secondary information to guide their decisions about where to target inspections and compliance assistance. In fact, the vast majority of OSHA's inspections are planned rather than based on complaints.⁶² Bureau of Labor Statistics surveys, hospital medical records, workers compensation claims, and OSHA employer logs can help identify segments of the labor force with abnormally high rates of occupational injuries and illnesses.

As described earlier, the full scope of hazards and violations is likely skewed for much of the Latino workforce due to high rates of underreporting. While they are potentially useful in identifying populations with high rates of injury, medical records can also provide an inadequate estimate of risk because Latinos traditionally have lower access to clinical care than the general population, and many face language barriers that can inhibit communication with medical staff.⁶³ Ultimately, a mistaken understanding of vulnerable populations and high-risk industries directs scarce federal resources away from where they are needed most.

Conflicts with immigration enforcement

activities. Over the past decade, immigration raids at workplaces throughout the country have served as evidence of the elevated presence of the Immigration and Customs Enforcement arm of the U.S. Department of Homeland Security in the workplace. In many cases, these raids have occurred at workplaces where the Department of Labor is conducting investigations of possible labor standards violations. In several cases, raids have disrupted these investigations by removing potential witnesses through the swift detention and prosecution of undocumented workers and, in some cases, U.S. citizens. Among the many consequences of immigration raids is the heightened fear among immigrant workers to report even serious employer violations to the government. In one particularly egregious case, in a raid at Seymour Johnson Air Force Base, Immigration Customs and Enforcement posed as OSHA officials to lure workers to a mandatory “safety meeting,” where they arrested 48 workers.⁶⁴ Incidents like these breed worker distrust of all government entities and give employers greater leverage to pressure undocumented workers not to complain about violations. Finally, while raids have had a negligible effect on the size of the undocumented population, they have been widely criticized for harming individuals, their families, and their communities.⁶⁵

Inaccessible grievance process. In addition to employer efforts and government intervention, workers themselves play an important role in maintaining a safe and healthy workplace, reporting work-related injuries and illnesses and issuing complaints to the government about violations of the law. Even with adequate information and training, however, significant portions of the Hispanic workforce do not have full access to the complaint-driven process that governs the workplace.

Immigrants in particular may be unfamiliar with the fundamental labor laws regarding wages, benefits, and working conditions.⁶⁶ For instance, the underrepresentation of Latinos in workers’

compensation claims suggests that workers may view pain or injury as a personal cost of working in a hazardous job rather than a cause for redress.⁶⁷ Furthermore, even in cases in which workers successfully contact the Department of Labor, officials report that the quality of complaints—in terms of accuracy and adequate descriptions of the problems—is often lacking.⁶⁸

Workers who are prepared to know what to look for and report violations are more likely to use government resources effectively. However, legal recourse for workers who are victims of unlawful employer retaliation can be an unrealistic option for Latinos with limited access to affordable, culturally and linguistically appropriate legal resources.

Case Study:**Gonzolo, a residential construction worker, was not paid for two months of hard work.**

Gonzolo worked for a Minneapolis contractor to remodel a house. He worked six days a week, from 7:00 a.m. until 9:00 p.m., for two months gutting the home, painting it, doing tile work, and laying cement. This is Gonzolo’s story:

“My employer kept promising to pay us later. ‘I’ll pay you tomorrow, Tuesday, Thursday...’ I ended up being paid \$300 total. He owes me \$7,500—that’s how much he stole from me.

“I took him to court. On the first court date, my employer didn’t show up. He came to the second court date and told the judge that I hadn’t worked the hours I claimed. The judge ruled in his favor since I didn’t have paperwork to prove my case.

“When you are forced into poverty, you have to get used to it. We’ve had to buy a little bit less to eat. Can you imagine what it’s like to do all this work and come home penniless?

Source: Gonzolo (last name withheld), interview by Ted Smukler, Interfaith Worker Justice, translated by Brian Payne, at Gonzolo’s home in Minneapolis, August 2008.

Case Study

Candelario, Armenio, and other foreign workers who are legally present in the U.S. on H-2B visas endure numerous labor violations and offenses to their human dignity while planting trees in our national forests.

Many timber contractors utilize the H-2B temporary worker program to import workers from other countries when they can't find Americans willing to do the work. The occupation involves planting and thinning pine trees on our nation's public lands. The Southern Poverty Law Center has documented thousands of cases of abuse and exploitation of these workers, whom it calls "modern-day indentured servants." The following are direct quotations from these workers:

"[While working in the National Forest], we were forced to camp in the mountains as temperatures approached freezing. There were no sleeping pads, mattresses, or sleeping bags. The only drinking water came from the creek."

— *Candelario, H-2B forestry worker*

"We worked up to 12 or 13 hours and we could only plant 1,300 or 1,500 seedlings [because of difficult conditions]. Our pay would come out to approximately \$25 for a 12-hour workday..."

— *Escolastico, H-2B forestry worker*

"What happens is the companies do not want to lose time. I cut my thumb while I was planting trees. I wrapped it up and worked two more days until I couldn't work anymore because of the pain. Seven days after the injury, they [the company] finally took me to the doctor because my thumb was infected. I was in the hospital for 14 days and they told me they wanted to cut off my thumb because the infection was so bad."

— *Enrique, H-2B forestry worker*

"They told me that I should be careful because some people could kill me because of the lawsuit that I have filed against the company..."

— *Margarito, H-2B forestry worker*

Source: *Beneath the Pines: Stories of Migrant Tree Planters* (Montgomery, AL: Southern Poverty Law Center, 2006), http://www.splcenter.org/images/dynamic/main/ijp_beneaththepines_web.pdf (accessed August 17, 2009)

BARRIERS TO EMPLOYER-SPONSORED BENEFITS COVERAGE

The range of human capital and historical factors discussed above has channeled many Latinos into jobs with wages at or below the poverty level. Given their extremely limited resources, employer-sponsored benefits are vital to helping Latino workers and their families meet basic health care needs, prepare for unforeseen economic strains, and save for retirement. Yet of the nation's 21.8 million Latinos who worked in 2007, only 8.6 million (39.3%) were covered by health insurance sponsored by their employer, and 10.9 million (49.8%) had access to an employer-based retirement plan.⁶⁹ The following factors contribute to the pervasive benefits coverage gaps between Latinos and other workers.

Dwindling benefits coverage. The disparities Latinos face in health and retirement coverage through their employers is the most recent chapter in a long-term trend. Hispanic workers lost 23.1 percentage points of employer-sponsored health insurance coverage between 1979 and 2006, compared to a 10.7 point drop for White and Black workers. Similarly, Latinos lost 15.5 points of employer-provided pension coverage over the same time period, compared to a 3.7 point drop for White workers and an 8.3 point drop for Black workers.⁷⁰ Dwindling access to basic health and retirement plans also bars many Latinos from employer-based disability insurance, life insurance, and paid leave, which tend to be offered only in conjunction with health insurance and pensions.

Participation gap. As Chapter 3 shows, Latinos are less likely than Blacks and Whites to work for an employer who offers health and retirement benefits to their employees. In addition to the offer gap, the rate of participation in a benefits plan is another important consideration, especially when examining trends in retirement plans. Of Latinos who worked for an employer that offered a pension plan in 2007, only 28.5% participated in the plan, compared to 52.2% of White workers and 43.4% of Black workers.⁷¹ Participation is particularly low among foreign-born Latinos; in 2006, 18.9% of foreign-born, working-age Latinos participated in an employer-sponsored

retirement plan, versus 38.5% of their native-born counterparts.⁷² Contrary to conventional explanations for this gap, including income, firm size, and age, low participation persists even among Latinos with the “right” job demographic and job characteristics.⁷³ The Survey of Income and Program Participation reveals a complex set of reasons explaining why Latinos do not participate in employer-sponsored retirement plans.

Involuntary nonparticipation. In 2006, more than 1.5 million Latino wage and salary workers were ineligible for their employer's retirement plan. Of those excluded, 26.7% had not worked long enough for the employer; 26.5% did not work enough hours, weeks, or months per year; and 14.4% reported that employees in their type of job were simply not offered the plan. These reasons are consistent with those reported by ineligible White and Black workers.⁷⁴ One explanation for these barriers to eligibility is that ERISA, the law governing employer-based retirement plans, allows employers to exclude some workers from their plans to qualify for certain tax provisions. Exclusions are usually based on the amount of time an individual has worked for an employer.

Voluntary nonparticipation. Latinos are slightly more likely than other workers to choose not to participate in a pension plan through their employers. A larger share of Latino workers (26.5%) say that lack of affordability is the primary reason they do not participate, compared to 22.7% of Black and 20.6% of White workers. Like all workers, Latinos identify solvency as the second biggest deterrent to putting money in a retirement savings account, saying that they “do not want to tie up money.” Third, Latinos are more likely than other workers to say that they “have not thought about” saving for retirement; 10.5% of Hispanics cited this as a reason for nonparticipation.⁷⁵ Similarly, a 2003 survey of minority workers found that 43% of Hispanics had “no knowledge” of investing or saving for retirement, compared to 13% of Blacks.⁷⁶ Clearly, limited financial knowledge is a factor preventing Latinos from contributing to employer-based retirement plans.

Disparate benefits coverage is made more troublesome by the fact that public safety net programs do not adequately cover Latinos. Although Latino families are nearly 2.5 times more likely than Whites to qualify for Medicaid and the Children's Health Insurance Program (CHIP), federal restrictions enacted in 1996 deny eligibility for these programs to a significant portion of foreign-born Latinos.⁷⁷ The unemployment insurance program compensates workers who lose their jobs through no fault of their own, ensuring that workers continue to meet basic family needs during spells of unemployment. However, due to program restrictions regarding work history and income, Latinos receive unemployment insurance benefits at a rate about 25% less than that of other workers.⁷⁸

The Social Security system, to which most workers and employers contribute through payroll taxes, is another public program on which Latinos rely as a source of disability insurance and retirement income. Despite its importance, however, Social Security coverage is unusually low among Latinos; only 76% of Latinos age 65 and older receive Social Security retirement benefits, compared to 89% of the general population age 65 and older.⁷⁹

The greatest obstacle to Social Security coverage is an inaccurate or absent record of lifetime earnings, usually resulting from unreported or underreported wages. Improper wage reporting can lead to reduced retirement benefits or the exclusion from Social Security coverage entirely. Whether accidental or deliberate, improper reporting is most common in low-wage occupations that employ large numbers of Latinos and other minorities, including domestic employees, restaurant workers, and farmworkers. Low-wage independent contractors often do not realize that they have been classified as independent contractors and thus fail to self-report wages, thereby jeopardizing their future eligibility for Social Security coverage.

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Chapter 6

Rebuilding Job Quality for Latinos and All Workers



As this report has shown, the Latino workforce as a whole faces immense disparities in job quality compared to their peers. Indeed, much consideration and policy debate must be devoted to raising the level of employer-based health and retirement plan coverage among Latinos.¹ Yet by focusing on protecting the wages and the workplace safety of low-wage and immigrant workers, it is possible to take steps to improve job quality for all workers. The following are essential to improving the quality of the jobs Latinos hold:

- **Improve compliance with existing laws.** Holding employers accountable for adhering to existing labor laws requires credible deterrents: adequate penalties and empowered workers.
- **Modernize legal protections to cover marginalized workers.** Labor protections must adapt to new realities in order to protect workers in an increasingly complex labor market. Comprehensive immigration reform is central to improving job quality for all workers.
- **Bolster federal outreach and enforcement.** Strong protections for workers rely on adequate backing from the federal government, whose efforts can be strengthened by cooperating with entities at the local level.

IMPROVE COMPLIANCE WITH EXISTING LAWS

The job quality impasse facing Latino workers could be narrowed significantly if employers simply follow the laws on the books and workers are better prepared to safely assert their rights.

Make the punishment fit the crime for employers who break the law. It is clear from the high frequency of labor law violations that many employers in a handful of American industries treat fines and citations as a cost of doing business rather than as deterrents against breaking the law. Compliance with the Fair Labor Standards Act (FLSA) and the Occupational Health and Safety Act (OSH Act) could be strengthened—especially in low-wage workplaces—by authorizing long-overdue increases in fines for violators. Legal remedies can also be stronger; for instance, the U.S. Department of Labor (DOL) should be allowed

to seek additional damages—beyond payment of back wages—in wage and hour cases.² In addition to legal penalties, egregious and repeat violators of workplace regulations could also be subject to restrictions. Proven deterrents include stop-work orders or restricted eligibility for government contracts for employers who fail to comply with wage and hour laws or who refuse to carry a workers' compensation plan.³

As a tactic for reducing occupational injuries and fatalities, the case for raising the civil and monetary penalties in the occupational health and safety arena is incontrovertible. Quite simply, the penalties must reflect the true costs of breaking the law: workers' lives. An employer whose "willful" violation results in a worker's death should be charged with a felony rather than a misdemeanor. Not only would this stronger penalty be more consequential for employers charged with violating health and safety laws, it would function as a warning to other businesses by increasing the likelihood that prosecutors would take up worker fatality cases.⁴ These changes would help to rein in the unacceptably high fatality rates among immigrant Latino workers.

Support community-based organizing structures for nonunionized and nontraditional workers.

Throughout its history, the labor movement has enabled workers to organize for positive change in their workplaces by compelling employers to abide by the law and strive to improve job quality. Given the documented benefits to compensation that unionized Latinos experience, it is clear that improving opportunities for Latinos to join unions is an important way to elevate job quality for Latino workers. One essential step toward raising the Hispanic unionization rate is better outreach from unions to Latino and immigrant workers. Additionally, policies to strengthen protections for workers who choose to form unions, such as the "Employee Free Choice Act" (H.R. 1409/S. 560), can help more Latinos organize in the workplace.

These tactics alone will not suffice unless they address the growth of nontraditional employment

structures, which have challenged conventional union organizing. The shift from traditional single-site workplaces with long-term employees to multiple work sites, nontraditional arrangements, and contingent work—all of which are especially common among Hispanic workers—demands new ways of organizing workers. Various strategies have been proposed and tested; some campaigns target workers in specific occupations, such as dressmakers, while others attempt to organize entire production or subcontracting chains, such as the garment industry. Geographically based campaigns, which target low-income neighborhoods, are also gaining popularity.⁵ In nearly all of these examples, community-based organizations (CBOs) play a central role. One community-based model that has seen tremendous expansion in recent years is the worker center, which typically serves low-wage, predominantly immigrant workers. In addition to offering a safe place for workers to gather, which is especially vital for day laborers,⁶ most worker centers offer a wide range of resources, including worker rights information, worker advocacy activities, health and safety training, English-as-a-second-language classes, and other social services.⁷

It is important to note that while these new organizing models sometimes arise in the absence of unions, a community-based approach does not necessarily exclude union involvement. In fact, the success of such campaigns often depends on funding and support from unions. Unions have an important stake in the outcome of community-based organizing, since workers involved in nontraditional campaigns often go on to become union organizers themselves.⁸

Actively protect all whistleblowers, regardless of immigration status. Widespread violations of workers' rights will persist in Latino- and immigrant-dominated workplaces as long as substantial segments of the workforce are prevented from coming forward with formal complaints. The Department of Labor should allow anonymous complaints from workers as a way of opening up the grievance process to

immigrant and other vulnerable workers. The Occupational Safety and Health Administration (OSHA) and the Department of Labor's Wage and Hour Division should be obligated to follow the same steps for pursuing anonymous complaints as they do under the current grievance process.⁹

In addition, federal agencies must send a strong signal to immigrant workers and their employers that the enforcement of immigration laws should never undermine the enforcement of labor laws. In 1998, the Department of Labor and U.S. Immigration and Customs Enforcement (ICE) signed a memorandum of understanding that discourages immigration enforcement activities in workplaces where labor law investigations may be underway.¹⁰ However, recent immigration enforcement raids at workplaces with illegal labor practices have underscored the need to strengthen this agreement.¹¹ DOL and ICE should publicly reaffirm their commitment to keep their operations separate and bolster oversight of field offices to ensure that this guidance is followed in all communities.

MODERNIZE LEGAL PROTECTIONS TO COVER MARGINALIZED WORKERS

In order to guarantee basic standards of job quality for workers, policymakers must reform the federal worker protection framework. The dual objectives of these changes should be to eliminate outdated *de jure* exclusions and cover workers in emerging employment arrangements.

Correct historical inequities in wage and hour laws. The rampant exploitation of agricultural and domestic workers is no longer hidden from the public eye. Advocates have been active at the state level to achieve modest legal standards to protect domestic workers, and indeed some state laws have more comprehensive coverage than federal laws.¹² However, absent federal reform to the FLSA, court cases in defense of domestic workers have been met with strong resistance.¹³ Congress must seriously consider extending reasonable legal protections to domestic workers, especially as the number of workers in this occupation grows.

Strengthening protections for farmworkers is another priority that is long overdue. While the Migrant and Seasonal Agricultural Worker Protection Act (AWPA) applies specifically to agricultural workers and employers, farmworkers continue to labor in some of the worst jobs in the labor market. Legislation that shores up protections for these workers, including the expansion of FLSA and National Labor Relations Act (NLRA) rights to farmworkers, is particularly crucial in the face of lobbying efforts by some agricultural employers to further weaken existing AWPA provisions.¹⁴

Strengthen policies to protect workers in nontraditional arrangements. As described in the previous section, contractor arrangements allow for various abuses of the current worker protection framework. Several policy interventions could help prevent abuses of contractor arrangements and protect workers in those categories. First, Congress should pass legislation to close the tax loophole that provides a safe harbor for employers who misclassify workers as independent contractors. One model bill from the 110th Congress is the “Employee Misclassification Prevention Act” (S. 3648/H.R. 6111). This bill would require stricter recordkeeping by businesses that employ contractors and higher penalties for those who deliberately misclassify workers. The “hot goods” provision of the FLSA is another important first step toward challenging employer exploitation of contractor arrangements to shield abuses against workers. This model should be thoroughly evaluated and its successful aspects expanded to the service sector. Other forms of multiple employer accountability, such as joint employer arrangements, should also be tested.

Uphold the rights of all workers through comprehensive immigration reform. By any measure, the largest and most vulnerable group of marginalized workers is the undocumented population. Yet immigrants are not the only workers who suffer at the hands of unscrupulous employers. As long as immigrants are prevented from fully exercising their rights in the workplace,

and as long as some employers escape punishment for actively subverting workers’ complaints, job quality declines for *all* workers.

The first step toward leveling the playing field in the labor market is to fix the nation’s broken immigration system. A comprehensive approach to immigration reform, which addresses the source of the problem instead of attacking the symptoms, must deter employers from seeking to hire and exploit undocumented workers. Above all, any reform must legalize the nearly 12 million undocumented individuals in the U.S. Adjusting the legal status of foreign-born workers and increasing avenues for legal entry will help restore balance to the labor market.

The immigration system must also be updated to better respond to labor market pressures, thereby transforming an illegal flow of immigrants into a legal flow. Together with equal protections for incoming workers, these broad guidelines would restore and maintain order in the immigration system as well as uphold the rights of all workers. Although the current economic environment has decreased the need for workers, the demand will return as the economy recovers. Thus, the current environment provides a good opportunity to structure a system that better responds to economic needs while protecting workers. These actions would significantly reduce the size of the undocumented population, thereby freeing up resources to focus enforcement efforts on employers who hire undocumented workers to shield their unlawful labor law practices. Numerous national polls and multiple election cycles have demonstrated that the American public supports these measures as essential elements of reform.¹⁵

Clearing the path to citizenship for eligible immigrants is another important step toward safeguarding legal immigrants’ rights in the workplace. Of course, the acquisition of citizenship is also critical to the full integration of individuals in their local communities. For these reasons, efforts to reform the immigration system must be accompanied by a more streamlined

naturalization process that is accessible to eligible applicants. This requires a stronger commitment from the federal government to integrate immigrants rather than erect more hurdles on the road to citizenship. Specifically, additional funding must be made available for U.S. Citizenship and Immigration Services to reduce the backlog of citizenship applications, lower the naturalization application fee, and establish structured immigrant integration initiatives. More resources must also be made available for community-based delivery of English classes. In addition, the change to the citizenship exam presents the agency and key stakeholders with an opportunity to enhance prospective applicants' knowledge of the naturalization process and prepare them to obtain citizenship through improved outreach in immigrant communities.

Finally, a comprehensive reform package should provide employers with a reliable employment verification system that addresses the problems with the E-Verify system and makes strong investments in the infrastructure on which such a system rests. For example, improving the current E-Verify system would require a tremendous increase in resources for the Social Security Administration (SSA). The Government Accountability Office (GAO) has warned that these measures are critical to ensuring that SSA has the capacity to address existing backlogs, fix data inaccuracies, and handle the estimated 63 million inquiries annually from employers verifying new hires.¹⁶ SSA has estimated that expanding the current E-Verify program to all employers would require SSA to hire 700 new employees between 2009 and 2013.¹⁷ In addition, adequate resources for compliance assistance for employers, as well as enforcement of the program's rules, must accompany any mass adoption of a verification system. Detailed rules to prevent discrimination must include strong protections against national origin discrimination to ensure that lawfully present immigrants and recently naturalized

citizens are not disproportionately harmed.

BOLSTER FEDERAL OUTREACH AND ENFORCEMENT

The third strategy to improve job quality for Latinos is to restore government accountability for protecting workers. The Department of Labor must be given adequate funding to assist workers and businesses with compliance and to police rogue employers. However, since no amount of resources will ever enable DOL to monitor every workplace, DOL must be equipped to make smart decisions about where to focus its limited time and attention. Reaching the most vulnerable workers will require DOL to develop creative ways of gathering information from at-risk populations and community-based advocates.

Increase funding for OSHA and Wage and Hour, with special emphasis on hiring bilingual personnel.

As noted above, the government agencies responsible for carrying out enforcement and compliance are woefully underfunded. Federal budget allocations for DOL must be restored to adequacy in order to more effectively tackle growing complexities of the labor market. The President's 2010 budget currently requests an additional \$228 million devoted to hiring an additional 288 full-time employees dedicated to the enforcement of wage and hour standards.

Within a general funding increase, policymakers should target resources toward hiring and training inspectors who can communicate with workers whose primary language is not English. Bilingual investigators should be required to be present during an investigation in a workplace in which a majority of employees are limited-English-proficient. This will strengthen DOL's ability to uncover cases of exploitation of immigrant and undocumented workers.

Devote at least half of OSHA and Wage and Hour resources to targeting high-risk industries and work arrangements.

While increased resources for DOL agencies is critical to improving its enforcement capacity, the sheer volume of OSHA and Wage and Hour caseloads calls for concentrated efforts. These agencies must be prepared to target the "types" of employers—whether by occupation or employment arrangement—who have shown egregious

violation of labor laws. At least 50% of OSHA and Wage and Hour resources should be devoted to planned initial and follow-up inspections in workplaces in high-risk industries.¹⁸ The high-risk industries described earlier in this report, including agriculture, construction, leisure and hospitality, retail trade, and manufacturing, offer a preliminary sketch of the areas of workplaces where OSHA and Wage and Hour Division could target inspections in their annual plans.

Work with community-based observers to identify high-risk workplaces and repeat violators. Maximizing scarce resources to reach workers in the lowest-quality jobs requires DOL to construct an accurate and thorough picture of high-violation workplaces and at-risk workers. However, compliance data based on industry classifications may be too broad for effective targeting of specific tasks, employers, and occupations.¹⁹ Furthermore, as discussed earlier, a host of barriers prevent some workers, especially Latino immigrants and low-wage workers, from filing formal reports of violations.

Community-based organizations could assist DOL in narrowing its focus. As trusted institutions providing education and resources to empower communities, CBOs have a unique “insider” perspective that qualifies them to serve as the voice for underrepresented workers. One possibility is for DOL officers to field complaints from workers off-site, using CBOs as a neutral meeting place for workers who are uninformed of their rights or are fearful of complaining on the job.

Invest in innovative worker outreach and education models. Latinos and other workers in high-risk occupations must be better prepared to identify hazards, avoid injuries, and participate in the reporting process at work. Since contingent work, language barriers, and low levels of literacy can compromise the effectiveness of traditional employer-based training schemes, it is necessary to develop and test new models on a national scale to deliver critical health and safety information to workers who face these barriers.

Many organizations also offer legal services and therefore actively track worker complaints. DOL should be required to formally consult with CBOs before designing their annual outreach and enforcement plans. DOL should also establish a process by which a CBO can issue a complaint on behalf of a worker.

OSHA has demonstrated some success by hosting health and safety fairs in Hispanic communities to offer trainings on fall protection and electrical safety, among other topics.²⁰ These events, however, lack continuity and are not readily adaptable to different industries. Community-wide outreach events should be supplemented by specialized outreach campaigns that empower community members to educate their peers in a manner that is comfortable, convenient, and culturally and linguistically appropriate. Such lay health educators, or *promotores de salud*, have successfully raised awareness in Latino communities about other topics, such as diabetes and heart disease.²¹ Some community-based groups have applied a similar model in an occupational health and safety context.²² These pilot efforts warrant additional investment for evaluation and expansion.

Endnotes

¹ The National Council of La Raza has produced extensive research and policy recommendations on Latino health coverage and retirement security. Please visit www.nclr.org/health and <http://www.nclr.org/retirement> for information and publications on these topics.

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