



Overview of Strategic Enforcement

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The vast majority of U.S. workers rely solely on labor standards laws for protections (94% of private sector workers)



Wage theft:

- is rampant
- keeps workers in poverty
- disproportionately impacts workers of color, women, and immigrants

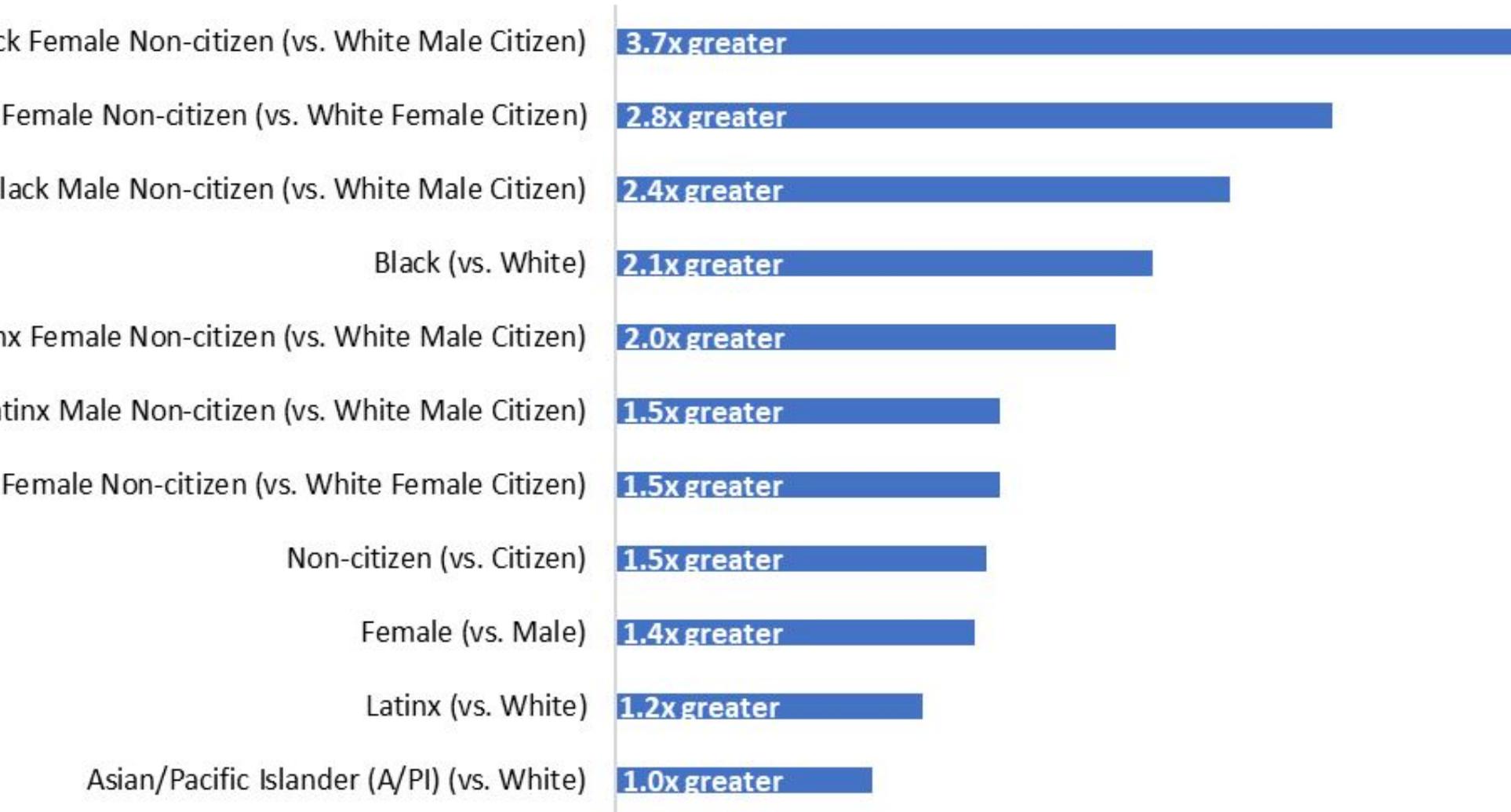
Findings from our Minneapolis/St Paul Study

- Minimum wage violations in the greater Minneapolis-St. Paul metropolitan statistical area (MSA) cost Minnesota workers an estimated \$886 million over the past decade, an average of nearly \$90 million a year.
- We estimate that over 32,000 low-wage workers in the metro area are paid below the minimum wage each year, with an average annual underpayment of roughly \$2,700 per worker.
- Minneapolitans in food services, social assistance, personal and laundry services and arts, entertainment and recreation disproportionately experience minimum wage violations compared to other sectors.
- Workers in low-wage service jobs related to personal care, food preparation, and landscaping are particularly likely to experience minimum wage theft.

Findings continued

- Black workers and Latinx workers are significantly more likely to experience minimum wage theft than white workers. Workers of intersecting marginalized identities are more likely to experience wage theft; Black female noncitizens are nearly four times as likely to experience a minimum wage violation as a white male citizen.
- Young, female, and part-time workers experience disproportionately high rates of wage theft, as well as those that didn't graduate from high school.

Figure 3. Probability of Minimum Wage Violation by Demographic Group (Relative to Reference Group), Minneapolis-St. Paul MSA (Exc. WI), 2013-22



Evolution of Our Economy and Labor Practices



Fissuring: Large employers shed legal and social obligations – shift from role as primary source of employment to utilization of supply chain method and multi-tier system of subcontractors.



Fissuring Structures

- **Subcontracting**
- **Third party management**
- **Franchising**
- **Temping**
- **Independent contracting**
- **Payment in cash**

Resulting Shifts in...

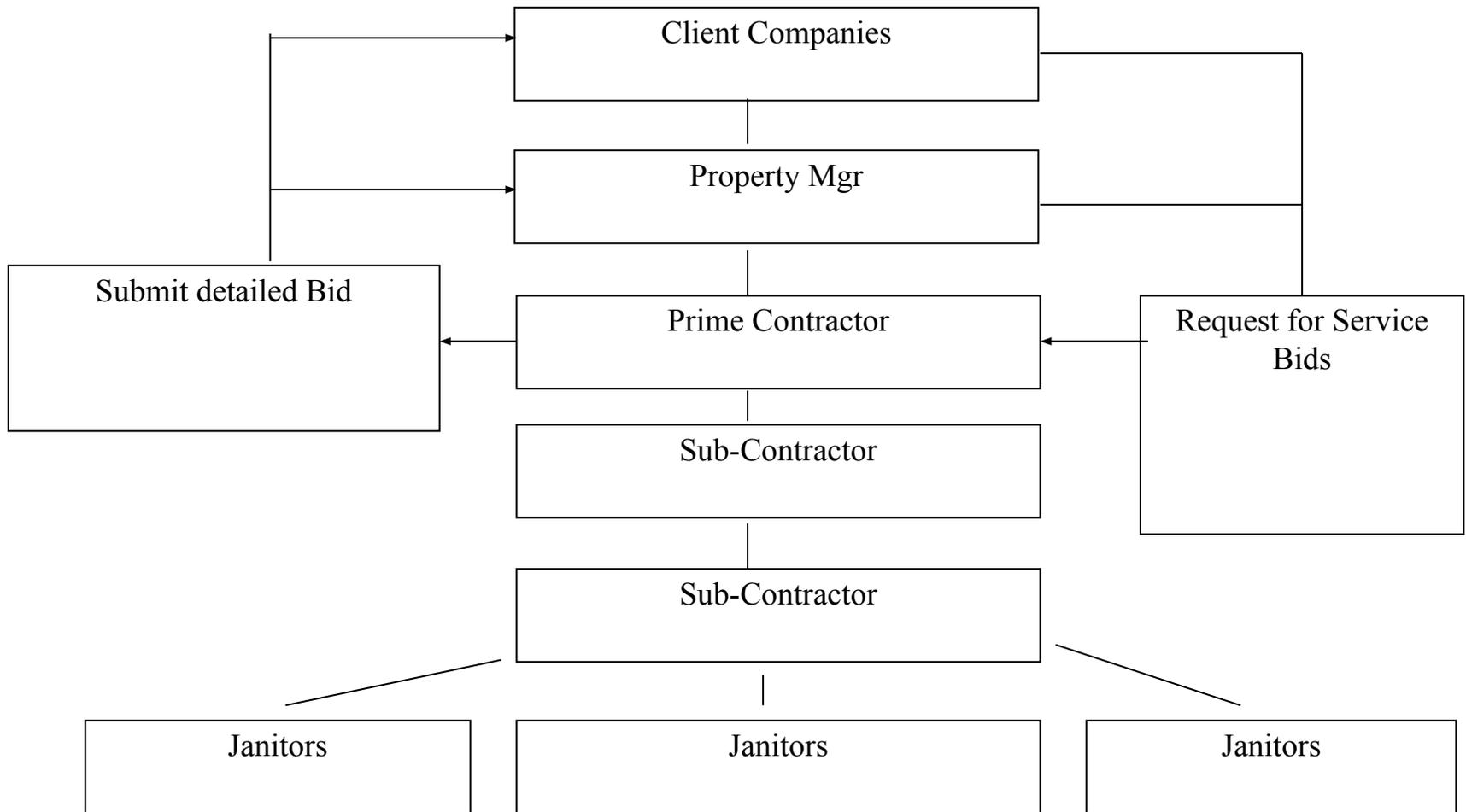
- **Wage setting & supervision**
- **Surplus investment**
- **Responsibility for liability, oversight and supervision**
- **Risk**

Janitorial Services: Pre-1970s Working Conditions

- Janitors hired, trained, supervised, paid by single employer
- Worked with fellow employees in facility owned by employer
- Single recordkeeping system at known physical location
- Paid with payroll checks with legal deductions



Growth of Subcontracting



Impact On Working Conditions

BEFORE:

- EEs knew details of ER
- Checks with deductions
- Hourly rate
- Uniforms
- Tools, supplies & equipment provided by ER
- Recordkeeping system
- Direction & control by ER

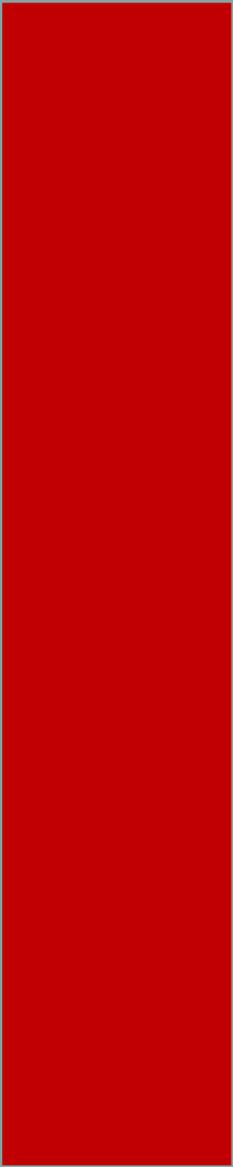
AFTER:

- EEs have little info
- Cash
- Flat rate
- No uniform
- EEs take supplies from client, purchase themselves or get charged by ER
- No record keeping system
- Limited to no communication
- Direction & control by many

Impact on Industry

- **Lowball contracts**
- Significant **increase in number of employers**
- Growth of **illegitimate contracting**
- High **turnover; destabilization** of jobs
- **Rampant** employment law **violations**
- **Deliberate distancing** of liability by client companies
- Complex **joint emp**





The Problem

The predominant model of enforcement is complaint-based enforcement

The Assumption

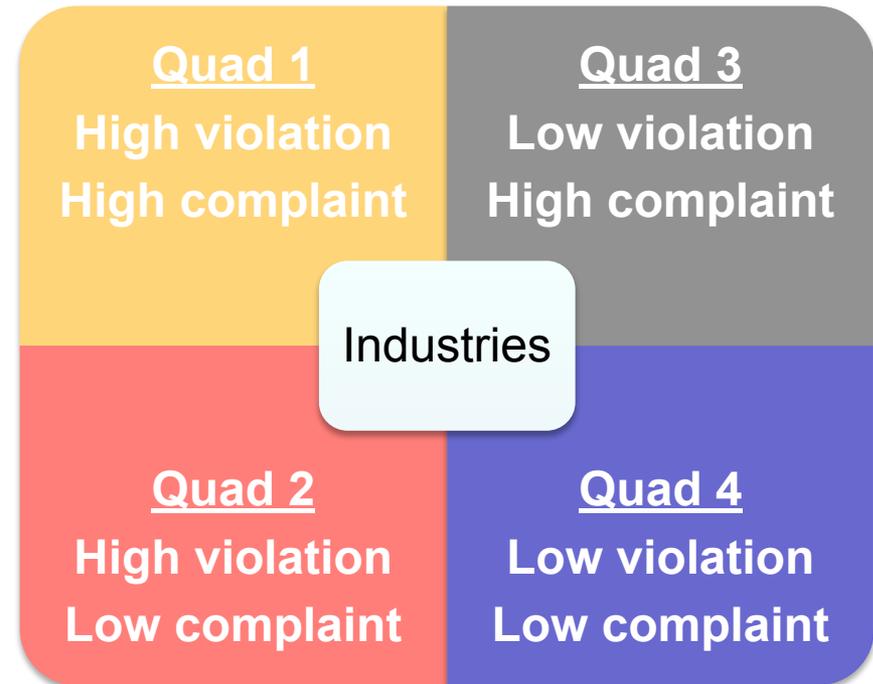
Workers who experience violations are equally able and willing to alert enforcement agencies to employers' violations.

Who are we missing when we rely solely on complaints?

The problem with complaint-based enforcement alone:

Research on minimum wage enforcement in the U.S. suggests that workers in some industries with the worst conditions are much less likely to complain

Complaints/Compliance*



*This matrix is from David Weil and Amanda Pyles, "Why Complain?: Complaints, Compliance, and the Problem of Enforcement in the Us Workplace," *Comp. Lab. L. & Pol'y. J.* 27 (2005).

Table 1. Low-Wage Occupations within High-Violation Industries

Industry	Example Low-Wage Occupations
Food services and drinking places (11.3%)	Fast food workers Waiters and waitresses Cooks and food preparation workers Bartenders Dishwashers
Social assistance (8.3%)	Personal care aides Preschool teachers Childcare workers Social and human service assistants Vocational rehabilitation specialists
Personal and laundry services (7.2%)	Hairdressers and cosmetologists Manicurists and pedicurists Laundry and dry-cleaners Parking attendants Animal caretakers Massage therapists
Arts, entertainment, and recreation (6.7%)	Amusement and recreation attendants Gambling service workers Exercise trainers and fitness instructors Locker room and coatroom attendants
Administrative and support services (5.7%)	Janitors and cleaners Security guards Landscapers and groundskeepers Customer service representatives Office clerks
Retail trade (4.6%)	Cashiers Retail salespersons Laborers and movers Stockers and order fillers
Nursing and residential care facilities (4.5%)	Home health and personal care aides Nursing assistants Orderlies Psychiatric Aides
Educational services (4.2%)	Teaching assistants Secondary school teachers

Fear of Retaliation Keeps Workers Silent

- 2009 national survey found that **43%** of workers who complained to their employers about pay and working conditions were victims of illegal retaliation.
- Among surveyed workers experiencing a workplace violation and not complaining, **the top two reasons were their fear of being fired and belief that the claim wouldn't make a difference.**
- They also **feared reduced wages or hours** or simply didn't complain because **they knew of other workers who had experienced retaliation for asserting workplace rights.**
- The workers who did not complain were the "**less powerful and economically stable**" workers.

Fear of Retaliation (cont.)

- As workers consider the costs and benefits of reporting workplace violations, **the actual and perceived costs may be very high**, which underscores the importance of strong retaliation protections and enforcement efforts aimed specifically at these workers.

Complaint-Based Enforcement



Strategic Enforcement

Strategic enforcement is a proactive approach to enforcement in which labor standards agencies focus their limited resources on industries, influential employers, and common noncompliant industry practices to achieve sustained, widespread compliance

Main Components of Strategic Enforcement

- Targeting industries **high in violations but low in complaints**
- **Triaging** complaints
- **Maximizing** the extent of **legal penalties** imposed on violators, **especially for retaliation**
- Informational campaigns to businesses and workers
- Strategic communications and signaling to employers including **“naming and shaming”** strategies
- Robust **settlement agreements** and **compliance monitoring**
- **Creating partnerships** with civil society & other agencies
- **Constant communication**
- **Frequent evaluation**

STRATEGIC ENFORCEMENT AT EVERY STAGE OF THE CASE

Throughout the investigation: partnerships with civil society

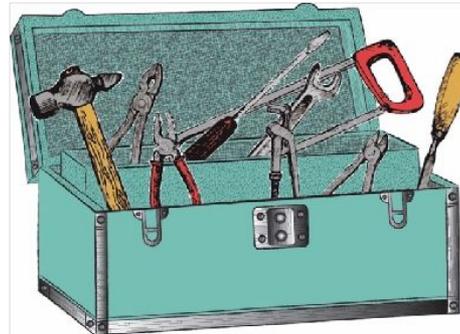
Strategic communications and signaling to employers including “naming and shaming” strategies

Pre-Investigation/Intake

Strategic outreach • sectoral mapping • preliminary interviews • triage • pre-judgment wage liens • bonds • asset assessment • allow 3rd party and anonymous complaints • ER and industry research • contact CBOs • surveillance • investigative plan • determine whether ER is prior violator • identify other agencies that have leverage over employer

Triaging complaints

- **Proactive industries high in violations but low in complaints**
- Holding **up-the-chain entities** liable
- **Maximizing the use of penalties and fines** imposed on violators



Post-investigation

Compliance monitoring • publicizing the results/naming and shaming • work with CBOs

Investigation

Proactive investigations • Company-wide investigations • site visits • surveillance • offsite interviews • joint employment • misclassification • community partnerships • up-the-chain liability • subpoenas • burden shifting when no records

Judgment enforcement and collections

Levy assets • intercept tax refunds • mechanics' liens • license suspension/revocation • wage bonds • fraudulent conveyance • stop work orders • individual liability • work with CBOs

Citation/Settlement

Full back wages • interest • liquidated damages • civil penalties and fines • employer and employee training • compliant policies (e.g. rest break policy) • proof of compliance • work with CBOs • ER funding for compliance monitoring

Robust, creative settlement agreements

Creating Ripple Effects

- Increasing cost of non-compliance by using all enforcement tools including licensing, maximizing fines and penalties, strong settlement agreements, bringing criminal charges
- Identifying formal and informal networks in which the employer is embedded, including labor and product supply chains, in order to hold parties further up the chain jointly liable for violations, and to alter their behavior
- Publicizing repeat violators as well as the results of significant cases through the media

Individual versus ***Systemic*** regulation

- An **individualized regulatory approach** conceives of each individual case—or worker complaint—as an isolated and idiosyncratic incident.
- In this view, each worker complaint is handled as a separate transaction that takes place solely between the worker and the enforcement official and yields no other regulatory actions beyond opening and closing the particular case at hand.
- The case itself is severed from the broader structural context from which it emerged and therefore **regulatory action begins and ends with each individual worker.**

Problem with Individualized Regulation

- Broader impact of labor standards enforcement as a mechanism to shape and mold the labor market is muted.
- Regulation exists to address each isolated individual's unique experience rather than to reshape the systemic power imbalance between workers and employers that is at the root of labor law violations.

Systemic Regulation

- A systemic approach to regulation analyzes each violation as a **possible symptom that springs from an underlying cause.**
- Each violation, in this view, is **not simply an individual complaint**, but also **represents a potential signal of a broader pattern of labor market violation.**
- Treats violations as **indicators of broader power asymmetries between workers and employers.** Under this view of regulation, **labor standards enforcement is a mechanism to redress the underlying structural problems in the labor market.**

Defining Strategic Enforcement Partnerships (aka co-enforcement)

Formal and sustained joint enforcement efforts in which government enforcement agencies partner with worker centers, legal advocacy organizations, unions, and other community-based organizations that are embedded in low-wage worker communities and high violation sectors

Strategic enforcement partnerships leverage the unique capabilities of enforcement agencies and each partner to achieve **better enforcement outcomes**

Some of the Unique Capabilities of Community Orgs



Access to expertise that the agency lacks (e.g. industry knowledge, cultural and language capacity, organizing capacity)



More complaints from workers who otherwise would suffer violations in silence + capacity to build cases/find additional aggrieved workers



Trust of workers, which provides access to information that would otherwise remain hidden



Sustained worker engagement/participation throughout the life of the case = better cases!

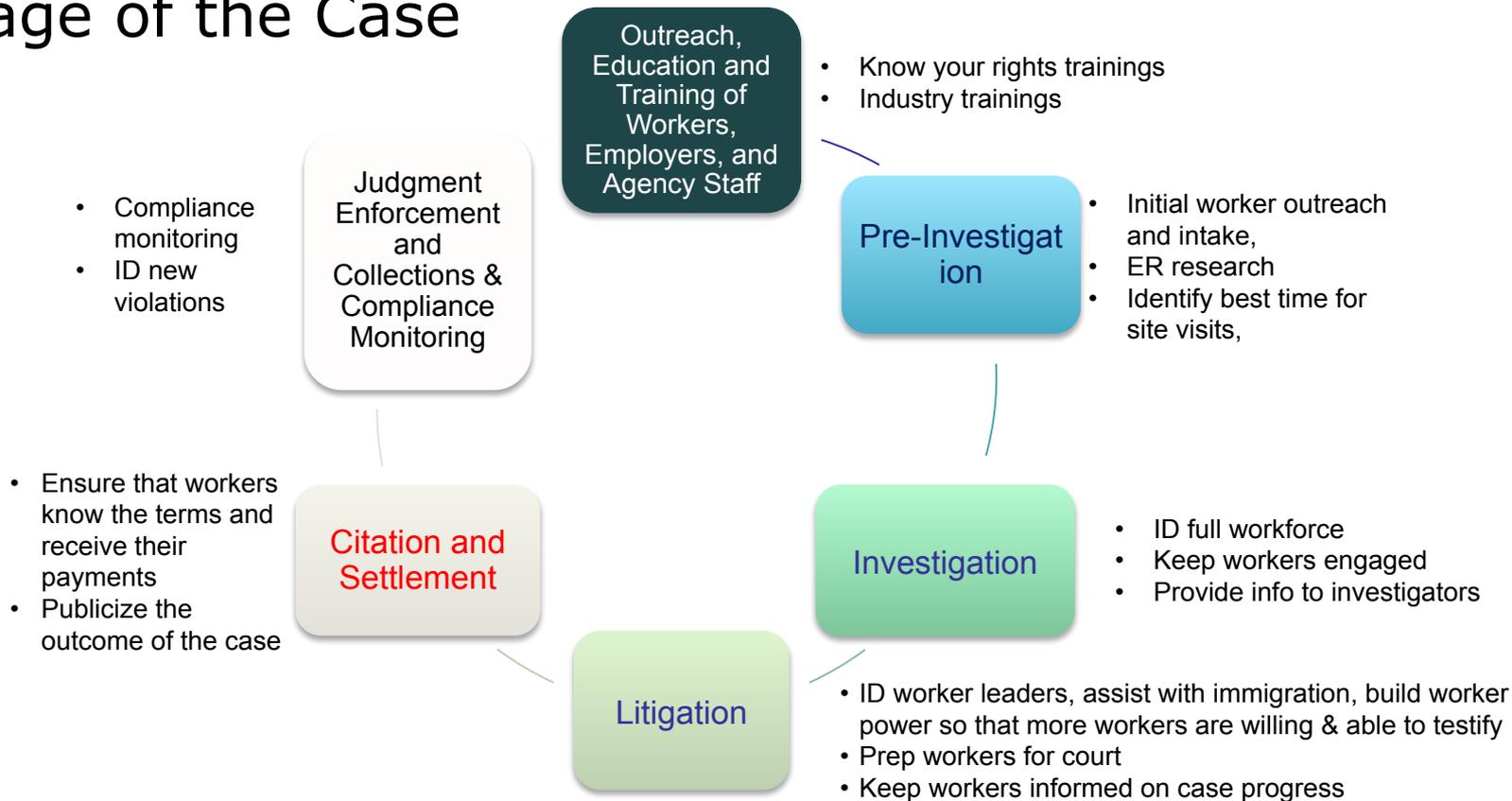


Capacity to be an enduring presence to ensure compliance after the case has concluded



Political support to defend robust enforcement efforts and pass stronger laws

Examples of Organizational Participation at Every Stage of the Case



California Labor Commissioner

Community Partners -

Workers' Centers | Industry Watchdogs |

Civil Rights and Legal Service Organizations

National Employment Law Project

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice - Los Angeles

Bet Tzedek Legal Services • Carpenters and Contractors Cooperation
Committee

Chinese Progressive Association • CLEAN Carwash Campaign

California Rural Legal Assistance • Garment Worker Center

Koreatown Immigrant Workers Alliance • Mixteco Indigena Community
Organizing Project • Maintenance Cooperation Trust Fund • Pilipino Workers
Center

Restaurant Opportunities Center, Los Angeles • Young Workers United

Partnership Structure – Industry Teams

Targets Low-wage Industries:

- Agriculture
- Janitorial
- Residential Care Facilities
- Restaurant
- Garment
- Construction

Role of Community Partners

- Identify employer targets
- Preliminary investigation of wage theft cases
 - Initial worker intake
 - Identify violations
 - Employer research
- Partner through all stages of investigation
- Support worker participation and broader community efforts to fight wage theft

Minnesota Misclassification Bill

- 1-Big section of the bill operationalizes key agencies working together, sharing documents, investigations. There's a strong expectation of collaboration (DOL, AG, DEEC, DoR, DoC)
- 2-Significant expansion of enforcement toolbox including Stop Work Orders and penalties for the act of misclassification itself
- Stop Work Orders are very effective because they allow the agency to act quickly when they find something at the worksite bc often the contractor will act swiftly to cover up the practice (so its there one day and gone the next)
- 3-Attaches responsibility at the highest level in the chain rather than 2 person LLC or labor broker because that is what changes the industry!

Not in the bill but important to keep pushing for:

- One uniform test of whether worker is an employee or an independent contractor across all departments, rather than different definitions at each one. A number of states including Massachusetts, New Jersey, Vermont, and California – have adopted the more protective ABC test for determining whether a worker is an independent contractor. The ABC test simplifies the misclassification analysis for enforcement agencies which decreases the opportunity for employers to manipulate the test.
- Bear in mind that misclass is not only having someone fill out a 1099 rather than a W-9, it is when contractors are rounding up workers and paying them in cash
- And remember, misclass is not only a problem in construction!