

CHALLENGING THE BUSINESS OF FEAR

ENDING WORKPLACE RETALIATION,
ENFORCING WORKERS' RIGHTS



EXECUTIVE SUMMARY

“Workers’ participation is essential to an employer compliance system. [And when workers make claims], [t]he issue is that people are not being protected.”

**—Jennifer Gordon, Professor of Law at Fordham Law School
and Founder of New York-based Workplace Project**

Illinois workplaces have become dangerous and abusive sweatshops through the growing use of fear as a way of doing business. Violations of workers’ rights are pervasive throughout numerous low-wage industries and sectors, and low-wage workers confront an almost entirely lawless environment. Retaliation is a constant threat deployed by employers in response to workers who courageously bring attention to abuses and try to improve work conditions for themselves and others. Together with employer policies and practices that deliver a consistent message of expendability to workers, retaliation is effectively forcing workers to silently accept these conditions.

Illinois’ system of enforcement depends on workers claiming their rights, which makes the state’s failures to protect against retaliation both incomprehensible and deeply troubling. A scattered patchwork of retaliation prohibitions under state and federal law provide uneven

and unreliable protection, which fails some workers completely and, for others, is both confusing and too uncertain. Moreover, procedural legal hurdles, such as an unreasonable burden of proof placed on workers, make it very difficult for workers to secure justice in the face of retaliation, reducing these on-the-books protections to little more than rhetoric. When you add fragmented, complex and recklessly slow complaint resolution processes to this degraded enforcement landscape, you create a perfect storm of impunity for abuse against workers who are inevitably pushed into silence.

Consequently, even when penalties for retaliation are available under the law, they are rarely imposed. And when they are, they are ill designed to incentivize employers to correct and prevent abuse. Additionally, outside of responding to complaints, there is no sign that state agencies are even attempting to monitor employer

compliance with basic workplace standards. Given that the vast majority of low-wage workers are in no position to walk away from even the most abusive job, consequences for abusive employers are few and far between. Thus, Illinois' system of enforcement not only clearly fails to provide adequate relief from retaliation, it also fails to deter and prevent these abuses.

There is a way to reverse this crisis and restore rule of law. A new approach to enforcement that empowers and protects workers on the frontlines of defending rights and freedom at work is possible. Given that workers are the only ones who are always present when abuse occurs, we need to look to worker-driven models for solutions.

Union contracts and legally binding supply chain agreements, designed by workers for workers, have proven that innovative and effective models are more than within our reach. The public policies required to replicate the essential elements of these worker-driven models have also been tested in other states, countries and municipalities, and, under some circumstances, even in Illinois. These should be adopted statewide to create an effective, holistic approach to worker-centered enforcement.

This report recommends incorporating at least three essential elements in Illinois' enforcement system to move towards a worker-centered approach: (1) adequate and fair legal coverage, (2) accessible and timely complaint resolution and (3) built-in systems for the prevention and deterrence of retaliation. This requires shifts in public policy along with political will on the part of state—and ideally federal and local—enforcement agencies to implement change through effective collaboration with workers' organizations. Specifically, we recommend the State of Illinois pass a comprehensive anti-retaliation bill that:

- Ensures all workers can access relief from retaliation on a consistent basis through broadening legal protections and creating fair assumptions and burdens of proof under the law;
- Ensures speedy and timely resolution for retaliation complaints in order to meet workers' needs; and
- Imposes legal penalties that effectively deter employers from delaying and denying justice for workers.

BUSINESS OF FEAR WORKER SURVEY RESULTS

RIGHTS VIOLATIONS AT WORK

- 48%** Wage theft¹
- 70%** Unsafe conditions
- 51%** Work injuries
- 70%** Discrimination and/or sexual harassment
- 74%** Two or more violations

CONSTANT RETALIATION THREAT

- 48%** Retaliation for reporting abuse or organizing¹
- 75%** Lost work²
- 64%** Harassed
- 39%** Threatened
- 8%** Unfair immigration action
- 7%** Physical violence
- 73%** Avoided reporting abuse sometimes out of fear¹

BARRIERS TO RETALIATION RELIEF

Retaliation complaints to government and/or employer:

- 66%** Did not get adequate relief³
- 55%** Not treated seriously
- 8%** Resolved quickly

Government complaint process:

- 56%** Confusing⁴
- 26%** Scary or threatening
- 15%** A waste of time
- 10%** Easy

¹ All survey participants

² Participants who experienced retaliation

³ Participants who made retaliation complaints

⁴ Participants who made workplace complaints to government