Protecting Labor Rights: Roles for Public Health

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ABSTRACT

Federal, state, and local labor laws establish minimum standards for working conditions, including wages, work hours, occupational safety, and collective bargaining. The adoption and enforcement of labor laws protect and promote social, economic, and physical determinants of health, while incomplete compliance undermines these laws and contributes to health inequalities. Using existing legal authorities, some public health agencies may be able to contribute to the adoption, monitoring, and enforcement of labor laws. We describe how routine public health functions have been adapted in San Francisco, California, to support compliance with minimum wage and workers' compensation insurance standards. Based on these experiences, we consider the opportunities and obstacles for health agencies to defend and advance labor standards. Increasing coordinated action between health and labor agencies may be a promising approach to reducing health inequities and efficiently enforcing labor standards.

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Laws and standards on working conditions, including those for the minimum wage, the eight-hour work day, workplace safety, child labor, and collective bargaining, exist to prevent involuntary hazards and to assure that compensation for workers is sufficient to meet their basic economic needs. These working conditions are also understood to be social, economic, and physical determinants of health and health inequalities.[1,2] The minimum wage, for example, serves to assure a minimum income. Income is a prerequisite for nutrition, housing, transportation, and leisure,[3–5] and is associated positively with health outcomes, including longevity.[6–8] The adoption and enforcement of occupational health safety standards similarly prevents work-related injuries.[9] Figure 1 provides a brief overview of key labor laws that impact worker health and well-being.

Although most labor laws have existed for decades, many workers, particularly immigrants and those in low-wage positions, may not benefit from them.[10,11] Some workers routinely experience nonpayment of wages and other labor violations.[12] Of 4,387 workers surveyed in New York, Los Angeles, and Chicago, 26% were illegally paid less than minimum wage, 68% had at least one pay-related violation in the past week, and

Figure 1. Key U.S. labor laws that impact working conditions and employee well-being

Type	*Year*	*Law*	*Effects on working conditions and well-being*
Laws that address workplace safety	1970	Occupational Safety and Health Act[a]	• Requires employer-provided workplace protections against recognized hazards to prevent death or serious injury to employees. • Establishes enforceable workplace standards for biological, chemical, and other physical exposures.
	1999	Motor Carrier Safety Improvement Act[b]	• Establishes working conditions for drivers to prevent traffic collisions.
	Varies by state	Workers' compensation laws[c]	• Provide for medical care, temporary disability, and permanent disability benefits for workers who are injured or acquire an illness on the job.
Laws establishing floors for wages and compensation	1938	Fair Labor Standards Act[d]	• Establishes the minimum wage. • Establishes rules for overtime pay. • Restricts child labor.
	1983	Migrant and Seasonal Agricultural Worker Protection Act[e]	• Establishes wage, housing, and occupational safety protections for seasonal farmworkers.
	2008	Healthy Families Act[f]	• Allows employees to earn and use paid time off for illness.
Laws protecting employment or income security	1935	Social Security Act[g]	• Provides long-term monetary benefits for retired or disabled workers and surviving spouses.
	1939	Federal Unemployment Tax Act[h]	• Provides temporary monetary benefits for workers who have lost jobs.
	1974	Employee Retirement Income Security Act[i]	• Protects employee pension benefits.
	1993	Family and Medical Leave Act[j]	• Requires larger employers to allow workers to take up to 12 weeks of unpaid leave annually for certain family and health conditions.
Other laws governing employer-employee relations	1935	National Labor Relations Act[k]	• Establishes the right of workers to collectively bargain for working conditions.
	1964	Civil Rights Act[l]	• Prevents discrimination in the workplace based on race, color, religion, gender, or national origin.

[a]Pub. L. No. 91-596, 84 Stat. 1590 (December 29, 1970).

[b]Pub. L. No. 106-159, 113 Stat. 1748-1773 (December 9, 1999).

[c]Laws governing workers' compensation established and implemented at the state level

[d]29 U.S.C. Ch. 8 (1938).

[e]Pub. L. No. 97-470 (January 14, 1983).

[f]This law has been proposed but not adopted at the federal level. Similar paid sick day laws have been adopted at the state and local level.

[g]Pub. L. No. 74-271, 49 Stat. 620 (August 14, 1935).

[h]Pub. L. No. 76-379 (1939).

[i]Pub. L. No. 93-406, 88 Stat. 829 (September 2, 1974).

[j]Pub. L. No. 103-3, 107 Stat. 6 (February 5, 1993).

[k]Pub. L. No. 74-198, 49 Stat. 449 (July 5, 1935).

[l]Pub. L. No. 88-532, 78 Stat. 241 (July 2, 1964).

one in five workers who either made a complaint to an employer or tried to form a union experienced retaliation.[13] Similarly, hazardous working conditions and preventable occupational exposures, injuries, and deaths are prevalent, particularly among people of color, immigrants, and others who are disproportionately employed in low-wage and nonunionized jobs.[13–16] Unsafe working conditions and labor rights violations may generate further vulnerability to poor health outcomes through higher levels of stress and limited access to basic needs, such as affordable and quality housing, education, food, transportation, and medical care.[3]

Despite incomplete compliance, during the past three decades, agencies responsible for labor standards enforcement have experienced a decline in their resources and capacity.[17,18] Political and economic factors have also played a role in weakening labor protections.[1,19] Reversing these trends will require new fiscal and political commitments.

Collaboration among regulatory agencies, each with particular mandates and roles, is one potentially efficient and effective means to increase enforcement capacity. As a local public health agency, the San Francisco Department of Public Health (SFDPH) regulates multiple health and safety conditions in local businesses. In 2009, following demand from community organizations, SFDPH began to use its regulatory authority to protect labor rights. The initial focus was on restaurants—one of the largest city employers of low-wage workers and the frequent subject of labor rights complaints. This article describes the current local and federal context of labor law enforcement and, using two case studies, describes SFDPH activities to support labor law compliance. We then consider the obstacles and opportunities for public health agencies to advance and protect healthy labor standards and healthy working conditions.

PURPOSE

The decline in capacity of federal and state labor standards enforcement agencies is evident in the reduction in number of regulators relative to workers and workplaces and in the shift to reactive enforcement. From 1975 to 2004, the number of covered workplaces increased by 112%, while the number of staff investigators decreased by 14%.[18] In 1975, there was one occupational safety inspector for every 27,845 workers; in 2011, there was one inspector for every 57,984 workers.[17]

Although proactive or "directed" investigations were common in the past, in 2010, more than 70% of all enforcement cases involving alleged violations of wage laws were complaint driven.[20] Proactive investigations, where they occur, focus on larger employers and high-risk industries. Workers in industries with the worst labor conditions may be less likely to issue complaints to enforcement agencies.[21]

Existing penalties also may not provide sufficient disincentives against violations. From 1970 to 2010, there were more than 360,000 worker deaths across the United States. During this time, the U.S. Department of Labor (DOL) reports that only 84 cases of worker death resulted in civil or criminal prosecution, with defendants serving a total of 89 months in jail.[17] In 2010, the average federal Occupational Safety and Health Administration (OSHA) penalty was $1,052, and the median initial penalty per worker death was $5,900. The maximum civil penalty that OSHA can charge for a worker's death is $70,000, compared with a maximum civil penalty of $270,000 for violations of the Clean Air Act, $325,000 for indecent content on a TV or radio station, or $1 million for tampering with a public water source.[9]

Strong political support for deregulation has also been evident during the past decades.[19,20] Federal legislative efforts to remove barriers to union formation and collective bargaining, such as the Employee Free Choice Act,[22] have encountered strong opposition. Several U.S. states have proposed right-to-work laws, which may adversely affect wages, employment, and benefits by eroding collective bargaining rights.[23–27] Loomis and colleagues found that states with right-to-work laws, low union membership density, and low labor grievance rates were more likely to have higher rates of fatal occupational injury than states with higher union membership.[28]

Broader economic forces are also contributing to weakening of labor standards.[29] Competition among employers to lower labor costs is a key force behind efforts to weaken or avoid regulations. Subcontracting and the shift to temporary and part-time work results in fewer workers protected by laws that cover full-time, permanent employees. Unions play a key role in monitoring and enforcing compliance with labor laws, and declining union membership may diminish this function.

Despite these unfavorable administrative, political, and economic trends, DOL, along with worker and legal advocates, has recently been working to strengthen federal and state enforcement of labor standards through administrative and policy actions.[30] For example, DOL has strengthened worker protections in the temporary non-agricultural worker visa program[31] and for home health-care workers who historically were

excluded from minimum wage and overtime protections.[32] In 2010, DOL publicly released enforcement data of four federal agencies to increase transparency and public access to violations data.[33] Since 2011, DOL has signed memorandums of understanding with 12 states to address worker misclassification.[34] DOL's fiscal year 2013 budget illustrates a commitment to "spur economic growth and promote workers' rights, enforce statutory rules that keep workers safe, and help workers keep what they earn," and includes requests for $15 million for additional enforcement staff, $6 billion in training and employment programs, and $125 million for a Workforce Innovation Fund.[35]

Additional monitoring of labor compliance by diverse local and state regulatory agencies could be an efficient means to complement these federal initiatives. Coordinated code enforcement is a commonly used strategy in several contexts. For example, the Office of the City Attorney in San Francisco coordinates inspection and enforcement activities when properties are subjects of multiple complaints to housing, building, fire, police, and planning departments. Through such coordinated, interagency efforts, staff members learn to recognize and monitor compliance outside their own agency's regulatory mandates and become able to facilitate action by partner agencies.

METHODS AND OUTCOMES

Case study 1: health agency enforcement of unpaid wage violations

In San Francisco, the Office of Labor Standards Enforcement (OLSE) enforces violations of local labor laws, including the local minimum wage standard ($10.24/hour in 2012) and a law guaranteeing the accrual and use of paid sick leave. OLSE responds to complaints from workers for nonpayment or underpayment of wages. Investigations can lead to a judgment against the employer and an order for the employer to pay wages owed and additional penalties. Typically, recovering wages or penalties is time consuming and can require civil litigation. As an alternative enforcement approach, OLSE can also request that other city agencies revoke or suspend permits of employers who do not comply with local labor laws.

SFDPH thought restaurants might be a good context to test coordinated code enforcement strategies with OLSE. Restaurants are overrepresented in wage-enforcement cases nationally.[20] In San Francisco, about one-third of OLSE cases are complaints against restaurant employers. Surveys of restaurant workers in San Francisco's Chinatown found that 50% of workers were not receiving minimum wage.[36]

SFDPH issues permits to restaurants and conducts routine inspections to ensure safe food practices. SFDPH has the authority to revoke or suspend a permit not only when a food establishment exhibits unsafe food practices, but also when a business violates any other local, state, or federal law.[37] The potential suspension or revocation of a permit can be a significant financial disincentive for a business, and this administrative sanction can be invoked more rapidly than the civil enforcement tools otherwise available to OLSE.

In 2010, OLSE leveraged SFDPH's permit authority to compel resolution of a case of underpayment of wages to five restaurant workers. After an investigation conducted in 2006, OLSE ordered the employer to pay owed wages with penalties, yet the employer failed to pay the full amount owed despite hearings and appeals. In 2010, OLSE requested that SFDPH suspend the permit until payment was made. Regulatory staff from both agencies jointly prepared and presented evidence on the case to the hearing officer, who ordered the owner to pay owed wages and penalties. Within four months of the Director of Health's orders, the workers received the money owed to them.

OLSE has subsequently used SFDPH's authority to compel compliance in additional wage cases. SFDPH and OLSE are exploring other coordinated strategies for labor standards compliance. For example, SFDPH is requiring new food operators to acknowledge their responsibility to comply with labor laws as a condition of obtaining a new restaurant permit. SFDPH and OLSE are considering whether they should target compliance monitoring based on both food safety inspections and employee labor standards complaints. SFDPH is also considering additional sanctions on businesses with chronic labor code violations confirmed by labor agency rulings.

Case study 2: routine monitoring of workers' compensation insurance

All businesses in California are required to maintain workers' compensation insurance that pays for medical care and disability benefits when workers acquire a job-related injury or illness.[38] Many employers do not carry insurance or do not carry sufficient insurance for all employees.[13] Inadequate insurance creates a barrier to workers getting timely or preventive care for job injuries and disability benefits to replace lost wages when injured.[39]

In 2010, SFDPH began requiring restaurant operators to provide proof of workers' compensation insurance when they applied for permits. Existing businesses received a warning that failure to provide proof of workers' compensation insurance could prevent permit

renewal. To proactively enforce the new rule, SFDPH requested proof of coverage from a random sample of permitted businesses. SFDPH then withheld the permit renewal if a business did not provide proof of coverage.

Of businesses in the first sample, 10% did not have workers' compensation insurance prior to SFDPH's request for proof of coverage. While some acquired insurance after this request, 4% did not provide proof of coverage until SFDPH threatened to suspend their permits. After being compelled to attend public hearings, all businesses except one provided proof of insurance coverage. SFDPH is currently studying additional ways to incorporate monitoring of occupational health and safety conditions into the routine tasks of field inspectors.

LESSONS LEARNED

Labor laws exist to ensure minimally acceptable physical and economic working conditions. These conditions have direct and indirect influences on human needs fulfillment and human health, and, thus, should be considered health determinants. There is a long history of occupational medicine advocating for and establishing such laws.

Interagency collaboration to support labor code enforcement: opportunities and barriers

SFDPH's work illustrates opportunities for local public health agencies to use their authority to support oversight and enforcement of labor laws. Simply put, public health agencies can treat failures to adhere to labor laws or comply with administrative labor rule as violations of general conditions under which the permit was granted. Public health laws governing restaurant operation in California provide explicit authority for such actions. The use of administrative enforcement mechanisms available to public health agencies may be considerably more efficient than those available to labor agencies.

Notably, we could not identify any published reports on similar interventions involving public health agency monitoring or enforcing labor standards. The lack of action by public health on labor standards may reflect the lack of practical models, limited working relationships between public health and labor agencies, or, more simply, the absence of attention by public health to labor issues.

We acknowledge that public health agencies may have reasons to oppose participation in labor regulation. For example, the New York City Department of Public Health (NYCDPH) testified against the 2008 Restaurant Responsibility Act, which would have required restaurants to disclose affirmed wage and hour violations and NYCDPH to consider violations in the decision to grant permit renewals. NYCDPH argued that wage and hour standards did not have public health significance and that labor regulation would compete with the agency's focus on food safety.[40] Despite competing testimony and arguments from council members, restaurants, and the public, the Act was "laid over" by the New York City Council Committee on Health, and no further action was taken.[41]

Limited direct evidence on labor laws and health may be a potent barrier to replication of the San Francisco initiative. While there is a substantial body of evidence linking working conditions—including the use of protective equipment, the right to paid sick leave, and the degree of job control—with human health,[2] the impact of labor laws on health is not a typical subject of empirical scrutiny. Labor laws are clearly enacted to benefit public welfare; however, the study of regulation often focuses on issues of compliance, business behaviors, and regulatory costs and not on the welfare outcomes.[42–44] Study of the effectiveness of labor laws and their enforcement on health outcomes may be necessary to stimulate public health agencies to participate in their realization.

Segregation of responsibilities among and within institutions is another deeply entrenched characteristic of public bureaucracies limiting coordinated enforcement; however, there are also promising examples of interagency collaboration. At the federal level, the development of a National Prevention Strategy through a 17-agency National Prevention Council[45] and the promotion of green jobs through collaborations between the federal Departments of Labor, Education, Energy, and Housing and Urban Development[46] are concrete examples. At the state level, California recently created the Labor Enforcement Task Force,[47] involving six state bodies and local district attorneys to target the underground economy; New York[48] and Michigan[49] have established interagency bodies to address worker misclassification; and coalitions on occupational safety and health in various states have helped bring together local labor, health, and safety organizations.[50]

In San Francisco, a key condition supporting interagency coordination and collaboration was the leadership within the environmental health and labor agencies. Initially, some restaurant inspectors raised concerns that increasing the agency's focus on labor law could dilute attention to food safety and sour their relationships with business owners. These inspectors initially opposed expansion of the scope of restaurant regulation; however, both agencies now routinely brainstorm new ways to collaboratively solve

problems. Additional contributing factors in local experience include advocacy for coordinated action from organized stakeholders, a public health agency mission inclusive of social and economic determinants of health, and a small and innovative local labor standards office.

Engaging public health institutions in labor standards protection may require overcoming more general public perceptions that labor law enforcement is undesirable or antibusiness, particularly in the current economic climate. Regardless of anti-regulatory rhetoric, most businesses do comply with labor rules and consider that noncompliance by a competitor creates an unfair business practice.[29,51] Employer violations of employment and labor law have significant economic costs to society. In Chicago, Los Angeles, and New York City, wage theft is estimated to cost low-wage workers and their cities $56.4 million per week.[13] Reports by federal and state agencies affirm that employer noncompliance with wage and hour rules not only undermines workers' economic security but also increases the expenses of public safety nets.[11,51,52] One study found that if all workers in California earned a minimum of $8 per hour, the state's 10 largest public assistance programs would save $2.7 billion per year.[53]

Opportunities for other public health actions for healthy workplaces

Public health agencies can support healthful workplace conditions in ways other than direct participation in labor enforcement activities. As illustrated in Figure 2, strategies for public health authorities to support working conditions correspond to well-established public health functions.

Monitoring health conditions attributable to working conditions and conducting research linking working conditions to health outcomes are core functions of public health authorities. Dissemination of these data and analyses could support attention to labor violations and lead to enhanced enforcement efforts or needed policy change. Such monitoring and assessment requires more routine incorporation of information

Figure 2. Potential roles for public health agencies in supporting health-protective labor standards in the U.S.

10 Essential Public Health Services[a]	*Potential public health agency roles*
1. Monitor health status to identify community health problems.	• Include information on occupation, industry, and employment conditions in data-collection instruments (e.g., surveys) used to assess population health. • Monitor the health status of vulnerable employee populations.
2. Diagnose and investigate health problems and health hazards in the community.	• Analyze epidemiologic relationships between health outcomes and employment conditions.
3. Inform and educate about health issues.	• Inform employees and employers about preventive strategies for common occupational hazards. • Conduct health impact assessments of proposed labor policies.
4. Mobilize community partnerships to identify and solve health problems.	• Engage in participatory research with employees to identify and improve working conditions.
5. Develop policies and plans that support individual and community health efforts.	• Provide data and analysis to support initiatives to adopt or implement health-protective labor laws (e.g., paid sick days).
6. Enforce laws and regulations that protect health and ensure safety.	• Monitor compliance with labor laws in routine agency activities, referring potential violations to labor enforcement agencies. • Use permit and licensing authority to sanction businesses that do not comply with labor laws.
7. Link people to needed personal health services and assure the provision of health care when otherwise unavailable.	• Identify work-related illnesses and injuries, referring injured workers to health-care and disability benefits. • Refer patterns of occupational injury or illness to labor enforcement agencies for investigation and action.
8. Assure a competent public health and personal health-care workforce.	• Ensure that public health workers understand labor standards and the responsible enforcement agencies.
9. Evaluate effectiveness, accessibility, and quality of personal and population-based health services.	• Analyze population disparities in achievement of labor standards and access to compliance and enforcement resources.
10. Research for new insights and innovative solutions to health problems.	• Implement and evaluate coordinated initiatives by labor and health agencies.

[a]Centers for Disease Control and Prevention (US), National Public Health Performance Standards. The public health system and the 10 essential public health services [cited 2013 Jul 5]. Available from: URL: http://www.cdc.gov/nphpsp/essentialservices.html

on occupational status and working conditions in data-collection instruments. In 2011, a panel convened by the Institute of Medicine found that "occupational information could contribute to fully realizing the meaningful use of electronic health records in improving individual and population health care."[54]

Public health agencies can also play a role in educating workers about their legal rights and how to access those rights. Participatory research and education initiatives conducted with vulnerable workers, including farmworkers, home health-care workers, day laborers, poultry workers, and nail salon workers, have contributed to an increased understanding of how workers can protect themselves and others on the job. These activities also result in policy changes needed to promote health and safety.[55] In San Francisco, research conducted with restaurant workers documenting violations of minimum wage laws was instrumental in motivating the coordinated enforcement efforts described in this article.[36,56]

Initiatives that inform consumers about either poorly performing or high-performing businesses may also be an effective way to change culture. Public disclosure of restaurant safety scores has been credited with decreasing the transmission of foodborne illness in restaurants[57] and improving employer practices.[58,59] A number of local jurisdictions have launched healthy food initiatives to promote healthy menu options and healthy eating in restaurants.[60]

Voluntary initiatives recognize businesses that perform at a high standard of environmental or social responsibility. Internationally, fair trade certification and labeling recognize products whose production practices are responsible to workers. Organizations such as the Restaurant Opportunities Center have begun working with employers who take the "high road to profitability" as part of a Restaurant Industry Roundtable to "promote sustainable business practices for employees and consumers while boosting their bottom line."[61] Environmental organizations such as Green Seal and Green America have launched programs to recognize food and other businesses with better environmental practices. New initiatives at the local to national level in the U.S. could be designed to recognize businesses that provide workers with living wages or health-supportive benefits.

Finally, health impact assessments (HIAs) can help advance health-protective labor policies. In 1999, SFDPH conducted an assessment of the potential health benefits of a living wage ordinance, using available epidemiologic and economic data to estimate the expected health effects of an increased minimum wage for employees of city contractors and leaseholders.[6] In 2009, the nonprofit organization Human Impact Partners conducted an HIA on a federal legislative mandate for sick days.[62] These HIAs appear to have improved awareness and understanding of how policies affecting labor conditions also affect health, cultivating public health advocate support for these policy initiatives.[63]

CONCLUSION

Interagency collaboration among local, state, and federal government agencies—as well as collaboration with community-based organizations and the private sector—is a promising mechanism of efficiently meeting regulatory commitments in a resource-constrained environment. Local health departments can support compliance with labor laws by monitoring working conditions, educating workers and employers, using existing enforcement authorities, and recognizing exemplary businesses. Improving working conditions should be viewed as a key function of public health.

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