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Brokered Pathways to Justice and Cracks in the Law: A Closer Look at the Claims-Making Experiences of Low-Wage Workers

Shannon Gleeson

Cornell University, smg338@cornell.edu

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Keywords

low-wage workers, legal rights, workplace violations, labor standards, unauthorized workers

Disciplines

Labor and Employment Law | Labor Relations | Workers' Compensation Law

Comments

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Brokered Pathways to Justice and Cracks in the Law:
A Closer Look at the Claims-Making Experiences of Low-Wage Workers

Shannon Gleeson
Cornell University

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Abstract

This article examines the factors that shape low-wage workers' decision to mobilize their legal rights following a workplace violation. I discuss the diverse mechanisms of employer retaliation, including the role of employer sanctions, the role of community social networks, and the myriad challenges that claimants face in navigating the labor standards enforcement bureaucracy. I demonstrate how, although unauthorized status is formally not a barrier for accessing many key benefits in California, the structural position of unauthorized workers place them at a particular disadvantage, significantly so for subcontracted and seasonal workers. These data are based on a survey of 453 claimants who have sought assistance from a nonprofit legal aid clinic for low-wage workers in the San Francisco Bay Area, and in-depth follow-up interviews with a representative subsample of 90 respondents, 12-30 months later. Five years of participant observation at a legal aid clinic focused on workers' compensation claims, and interviews with 24 injured workers, also inform these findings.

Introduction

The new global economy features opportunities for innovation and wealth production never before imagined. Global firms today enjoy new communication and travel tools, and the regions where they are located are home to an affluent class of information workers. Yet, this new economy has simultaneously expanded opportunities for low-wage work, as demographic growth and new forms of disposable income have fuelled service industries such as retail, restaurants/hospitality, and domestic work. Workplace violations are rampant in these low-wage postindustrial industries, especially those where immigrants comprise a substantial part of the workforce (Bernhardt et al. 2009; Burnham and Theodore 2012). There is a demand for unauthorized labor, and unauthorized workers enjoy a number of workplace rights. However, an expanding immigration enforcement apparatus, and the formal prohibition against hiring undocumented workers, complicates the ability to enforce their rights. The steep decline of union membership and the predominance of at-will and contingent employment relationships further facilitates workplace abuse and retaliation against workers who would speak up.

The challenges associated with worker legal mobilization do not end for those workers who successfully come forward. Labor standards enforcement agencies are underfunded, understaffed, and backlogged (Bobo 2008; Government Accountability Office 2009), and lack of affordable legal counsel and unpaid judgments mean that the promises of labor standards often ring hollow (Bernhardt et al. 2008; Cho, Koonse, and Mischel 2013). Significant gaps in the law leave large swaths of contingent workers unprotected, and those workers who are protected, but are unable to summon the necessary evidence and resources to prove their case, are also left out (Epp 2010).

This article examines the factors that support workers' decision to come forward, and the barriers they face throughout the claims-making process. I begin by reviewing the literature on the conditions of workplace exploitation and the function of employer retaliation. I then discuss the challenges inherent in the labor standards enforcement bureaucracy and the gaps in the law. I describe my mixed methods approach, which is based on a survey of 453 clients at nonprofit workers' rights clinics in the San Francisco Bay Area, eighty-nine follow-up interviews, and five years of ethnographic observation. My findings interrogate the mechanisms of employer retaliation that workers encounter when they attempt to bring forth a claim and the ways in which deportability and at-will employment work in tandem to discipline workers. I highlight the important roles that community networks play in empowering workers, though suggest that informal information channels may play a bigger role than do media campaigns and other civic organizations. However, I challenge notions of worker solidarity and highlight the ways in which employers foster discord and competition in order to stifle dissent. Once a worker enters the administrative bureaucracy, a myriad of challenges plague the claims process, thus disadvantaging undocumented and contingent workers in particular.

Literature Review

Workplace Violations and Employer Retaliation

Employer retaliation plays a key part in deterring or shutting down worker claims-making. Based on a national survey of low-wage workers in Los Angeles, Chicago, and New York City, 43 percent of respondents reported experiencing one or more forms of illegal

retaliation at the workplace (i.e., their employer threatened to fire/suspend them, call immigration authorities, or cut their hours or pay) (Bernhardt et al. 2009, 3). Alexander (2013) also describes the wide-ranging forms of “anticipatory retaliation” that act as mechanisms for preemptive labor control. “In each scenario, an unscrupulous employer attempts to silence its workforce, to nip potential worker claims-making in the proverbial bud...Anticipatory retaliation can take many forms: an employer might preemptively fire a worker whom it believes will file a lawsuit or complain to a government agency, or might, as in the scenarios above, threaten workers with the consequences of contacting a lawyer, reporting a workplace injury, or “making trouble” on the job (Alexander 2013, 780-1).

Employer retaliation is also fueled by the ever-present risk of deportability for those workers lacking legal status. Consequently, undocumented workers are a significant group of marginal workers that face particular challenges to navigating the system of workplace protections in the U.S. (Garcia 2012, Kerwin and McCabe 2011). On the one hand, federal and state workplace protections protect all workers from abuse, regardless of immigration status. Yet, the 1986 Immigration Reform and Control Act prohibits undocumented workers from legally entering or working in the U.S. Following the 2002 Supreme Court decision *Hoffman Plastics v. National Labor Relations Board*, undocumented workers are precluded from reinstatement or from receiving back pay for work not performed (Fisk and Wishnie 2005). While the ruling is limited to the union context of the National Labor Relations Act, the logic of the *Hoffman* decision has seeped into other areas of workplace rights prompting a litany of challenges. For example, employers have argued, largely unsuccessfully, that unauthorized workers are ineligible for workers’ compensation and restitution for wage theft.¹ Even though state and other federal labor standards enforcement agencies have reaffirmed the rights of undocumented

workers,² the unsettled nature of undocumented worker rights means that they *may* have limited remedies in the courts (Cimini 2012). Advocates fear that the overlap of immigration and employment law, which (Griffith 2011a) has dubbed “immigration law,” has had a chilling effect on undocumented worker rights, and fuelled employers’ attempts to raise the issue of immigration status in order to promote fear and deter legal mobilization.³

This article examines how the protections inscribed in labor and employment law play out in the lives of low-wage and immigrant workers on the ground. Precarious employment relationships, combined with the narrow logic of rights bureaucracies and aggressive litigation, prevent workers from achieving full restitution (Smith 2012). While employer sanctions work at cross-purposes with worker rights, illegality works alongside other forms of structural inequality (Menjivar and Abrego 2012). For example, undocumented workers are more likely to work without the benefit of a union, have low levels of human capital, and to hold precarious forms of unemployment, (like temporary, seasonal, or subcontracted work that rely on cash payment). Explicit threats from intimidating employers do matter, though the ever-present fear of deportability is effective even when not explicitly articulated (Gleeson 2010). Further, it is often not even the threat of detention and deportation that drives the short-term concerns of undocumented workers, but sometimes rather, the threat of losing a job and the challenges of getting a new one in a hostile and recessionary labor market.

Below, I suggest a multifaceted definition of employer retaliation that challenges a dichotomous relationship between aggrieved employee and nefarious employer, to also conceptualize a wider array of actors that subjects workers to constant surveillance and is consequently more effective than overt threats. Complicated management hierarchies (which may not always be in agreement), contentious relationships between coworkers (who compete in

an environment of scarce resources), community social networks, bureaucrats, and attorneys, all shape the challenges low-wage workers face in seeking justice. These barriers complicate the ability for workers to realize their rights in practice.

Accessing Rights Bureaucracies and the Importance of Legal Brokers

Once workers have made it past the initial stage of coming forward and into the administrative bureaucracy of filing a formal claim, they face a series of challenges in accessing these formal rights. Here, they are required to present compelling evidence of employer wrongdoing, must commit to a series of time-consuming meetings, and may be asked to summon witnesses to corroborate their experience (Seiler et al. 2008). Institutional inequalities persist throughout these organizations and statutory arenas (Albiston 2010), and bureaucratic brokers such as legal aid clinics can be crucial allies to workers who are unfamiliar with the system or who face linguistic barriers (Gordon 2007). Because they also face their own set of constraints and profit considerations, these attorneys may also present certain obstacles to workers as well.

Many workers, however, fall outside statutory protection. For example, very small employers may not be covered by statutes such as the Fair Labor Standards Act or Title VII of the Civil Rights Act; federal wage and hour standards require businesses to gross \$500,000 or engage in interstate commerce, and federal discrimination laws only cover establishments with 15 employees or more.⁴ Certain categories of workers may also be excluded altogether from otherwise universal protections such as workers' compensation.⁵ Misclassification of independent contractors, who do not enjoy the same rights of covered employees, is also rampant. The Internal Revenue Service, federal and state labor standards enforcement agencies,

many immigrant rights groups and even employers concerned with unfair business practices have rallied against misclassification, and Congress has sought the advice of experts to design a solution to the rampant practice (Ruckelshaus 2007).⁶ Other nontraditional employment relationships, such as subcontracted and short-term workers, may also struggle to prove liability and gain restitution (National Employment Law Project 2009).

While private counsel is typically not a requirement to bring a claim before a labor standards enforcement agency, for many workers with low levels of education and limited English abilities, the task of preparing and presenting their case can seem daunting. For those who can afford it, private counsel is certainly an option, and critical to litigating a claim in superior court. It is especially important for those workers who cannot communicate directly with agency staff, or who have complicated cases requiring persistent advocacy. Pro bono legal aid is the only option for workers who are unable to afford or find an attorney. Workers' rights clinics all over the nation provide a one-stop shop for eligible low-wage claimants seeking information, guidance, and sometimes even representation. Fine (2006) refers to this legal aid as one of the "most developed aspect of the services" that worker centers provide (74). The staff of these organizations often develop extensive relationships with regulatory agencies in the area, and are able to provide linguistic and cultural competencies that government bureaucrats often miss. While they are by far not a panacea to the problem of worker exploitation, they serve an important function for both workers and agencies that rely on them to screen potential claimants and help them organize the facts of the case. Nonetheless, these free to low-cost clinics are severely constrained in their ability to assist some of the most precarious workers. Though many nonprofits benefit from crucial private foundation funding, legal aid societies that rely on federal Legal Services Corporation funds are unable to support the assistance of undocumented clients

(Rhode 2014). Public interest law firms are also frequently limited in their ability to handle complex or weak cases, or those that otherwise do not serve their organization's mission (Cummings and Rhode 2010). This article examines the experiences of workers who have chosen to mobilize their rights with the help of one of these crucial bureaucratic brokers.

Methods

This research relies on a survey of 453 workers who did seek assistance with one of four workers' rights clinics in the San Francisco Bay Area, and 89 follow-up interviews. These legal aid clinics are emblematic of the "emergent labor market institutions" that Freeman, Hersch, and Mishel (2005) identify have been increasingly important for nonunion workers who are mobilizing their rights. Strictly speaking, they are "public interest" legal organizations (Jolls 2005). However, if we consider the typology Fine (2006) provides of *service*, *advocacy*, and *organizing* groups, the legal aid clinics from which I recruited workers could be best characterized as nonunion *service* organizations. Two were university-based legal clinics that also trained law students, while the other two were part of free-standing community law centers. Three of these clinics worked in conjunction with an umbrella legal organization focused on access to justice, while the fourth worked independently with volunteer attorneys.

I also draw on field notes from two ethnographic experiences. In the first, I volunteered as a translator for a workers' rights clinic at a nonprofit law center on the central coast of California. Additionally, from 2008 to 2013, I observed monthly workshops provided by the State of California Division of Workers Compensation for injured workers. I also recruited 24 interview respondents from these spaces.

Case Study

The San Francisco Bay area is home to some of the most affluent communities in the nation, as well as the most diverse. Seven million residents, 43 percent of whom are nonwhite, reside in the area. Forty percent of residents speak a language other than English at home, and 30 percent are foreign born. However, this affluence exists alongside a large and struggle working class, many of whom are immigrants (de Graauw 2009; Zlolski 2006), and who often work in precarious jobs that are much less likely to be unionized and provide key benefits.

Immigrant workers—who range from engineers to day laborers—comprise 37 percent of California’s labor force (Bohn and Schiff 2011), over twice the proportion nationwide. Undocumented workers are overrepresented in this state (7.8 percent versus 5 percent of the U.S. workforce) (Passel and Cohn 2009), and in the San Francisco Bay Area, levels range from 3.7 of the workforce in San Francisco County, to 8.4 percent of Alameda County (Oakland and Berkeley), and 10.2 of Santa Clara County (San Jose) (Hill and Johnson 2011). These workers are among the most vulnerable to workplace violations and struggle to access the formal rights they are afforded under the law (Garcia 2012).

California provides some of the most stringent wage and hour laws,⁷ discrimination protections, and health and safety standards in the country.⁸ In each of these areas, undocumented workers in California enjoy explicit protections.⁹ Consequently, this research site represents a best-case scenario for understanding legal mobilization. The demographic concentration of immigrants and the dense civil society for immigrant and worker advocacy also means that the respondents captured here enjoy relatively more resources than those available in other more hostile context for immigrant and worker rights. As a result, what follows is a

conservative estimate of the structural challenges likely to be present in the process of navigating labor standards enforcement bureaucracies.

Empirical Approach

This study reports on an original survey of 453 claimants seeking assistance from a community-based legal aid clinic. By its very nature, this is not a sample that is representative of the general low-wage worker population. Instead, this sample represents those workers who are generally aware of their rights, feel they have suffered a violation, and have begun the process to mobilize to seek redress from those violations and exert their legal rights. These are workers who, relative to their counterparts who have not come forward, are likely to possess more information and resources to make their claim successful. As a result, these findings probably understate the difficulty that the average workers will face in asserting their rights. This research was designed, therefore, to examine the challenges that workers who have already ventured into the labor standards enforcement process continue to face, thus cautioning against the often singular focus on mainly educating workers about their rights and encouraging formal claims.

Surveys were conducted from June 2010 through April 2012, and span four workers' rights clinics in San Francisco (97), Oakland (61), Berkeley (58), and San Jose (237).¹⁰ These clinics took place at a set time each month, typically a weekday evening, where workers were scheduled for a consultation with a volunteer law student or attorney. All told, surveys were collected through 93 two-hour site visits, and with the assistance of four bilingual researchers. These law clinics attend to cases involving a range of workplace issues, including wage theft, discrimination, sexual harassment, and workers' compensation. Respondents were surveyed

while waiting for their consultation, with the understanding that they were free to opt out and that their participation would in no way affect their claim.¹¹ I queried workers regarding their employment history, the conditions that gave rise to their claim, and the resources and referrals they relied on prior to coming to the legal aid clinic.

Insert Table 1 Here

Eight-two percent of the 453 surveys at these four clinics agreed to a follow interview. All workers who agreed to a follow-up interview were contacted at least twice, resulting in 89 follow-up interviews (approximately 20 percent of survey respondents) conducted with claimants 12 to 30 months following their initial survey. This extended time frame was necessary to capture a meaningful retrospective on the process of filing a workplace claim, which can commonly take two years or more. However, given the precarious circumstances of many of these workers' lives, we were unable to reach many workers one to three years later. Those workers who we did interview were asked to elaborate on the circumstances that led them to file a formal claim, what challenges they encountered, and whether they were satisfied with the final outcome of their case. By returning to examine the experiences of workers beyond the initial stage of claims-making, these findings highlight the challenges associated with navigating the labor standards enforcement bureaucracy throughout the process. As Table 1 confirms, the sample of interviewees is representative of the original sample of survey respondents. All but four interviews took place in person, lasting on average one hour. Sixty interviews were conducted in Spanish, and one in Mandarin.

Lastly, I also draw on a five-year study of occupational injury, through ongoing ethnographic work with the California Division of Workers' Compensation, which offers monthly Injured Workers Workshops, which I visited regularly in Oakland, Salinas, and San Jose (29 workshops total, 14 in English, 15 in Spanish, from December 2008 to December 2013). From this setting, I recruited 24 injured workers to be interviewed regarding their experiences in navigating their workers' compensation claim (11 in Spanish). My ethnographic data also include field notes from my time as a volunteer for a workers' rights clinic on the central coast of California (including visits to 25 clinics dedicated to workers compensation, and 14 dedicated to wage claims, from November 2010 to June 2014).

Respondent Profile

These four clinic sites draw from a range of communities and worker backgrounds. Of the 453 claimants surveyed for this project, over three quarters are foreign born; of those, 27 percent identify as citizens, 22 percent as legal permanent residents, and 51 percent are undocumented.¹² Two thirds of respondents in this sample self-identified as Latino, followed by roughly equal proportions of African-American (9 percent), Asian/Pacific Islander (11 percent), and White (10 percent) respondents. Ninety percent of Latino respondents in this survey were foreign born, and 56 percent were undocumented. Among foreign-born respondents, the average length of time in the U.S. is 17.3 years, with a shorter tenure for undocumented respondents (12.5 years). Forty-one percent (186) of surveys were conducted in English, 58 percent (262) in Spanish, and 1 percent in Mandarin (2) or Vietnamese (1).

The profile of respondents reflects a balance of men and women of working age with low levels of human capital. Slightly more than half of survey respondents (54 percent) identified as male, with a slight overrepresentation of undocumented male claimants (60 percent). The average claimant was 43.1, while undocumented claimants were on average younger (37.5), and white claimants on average older (47.7). Fifty-three percent of respondents reported they were married, and 52 percent of all claimant reported having children who were still in school. Overall, workers in this sample have a lower human capital profile from the general workforce in the region. Twenty-seven percent of all respondents had less than a high school degree, compared to 3 percent of native-born respondents, 35 percent of foreign born and 45 percent of undocumented respondents. Forty-nine percent of respondents reported that they were English speakers (i.e., have English fluency at the level of “native speaker,” “very well,” or “well”).¹³

Survey respondents represented a diverse set of low-wage industries and positions, ranging from cashier to day laborer to food service. To qualify for services at these legal clinics, all claimants had to meet low-income guidelines. The largest pluralities of respondents were employed in restaurants (15.4 percent of all, 27.6 percent of undocumented), as janitors (8.2 percent of all, 17.1 percent of undocumented), and in construction (7.7 percent of all, 11.8 percent of undocumented). These are overwhelmingly workers in the formal economy; 75.3 percent report having taxes taken out of their paycheck (including 62 percent of the undocumented), and only 11.3 percent of all workers were paid in cash (24.7 percent of the undocumented).

This analysis takes an ethnographic, rather than purely legalistic approach to understanding the mechanisms of workplace justice. My approach is rooted in paradigms of social stratification, and not limited to the formal opportunities provided by the law (Lucas

2008). In some instances, workers have additional remedies under the law, however, they are difficult to enforce in practice. However, the goal of this analysis is to examine the legal-bureaucratic structures that govern employer retaliation and limit administrative relief. I also explore workers' own understanding of justice at the workplace and in the labor standards enforcement system.

Insert Table 2 Here

I focus in particular on the challenges facing undocumented workers. However, I emphasize that undocumented status is not a singular factor shaping worker precarity. The neoliberal flexibility of at-will employment is improved tremendously by the specter of deportability, regardless of whether particular protections exist for undocumented workers who succeed in fighting for them. The threat of deportation, as with the threat of firing (or reduction in hours, pay, etc.), work hand in hand. Neither threat need be articulated explicitly to achieve its desired end of maintaining a pliable labor force. I also highlight how the federal context of deportability, and a weak recovery post-recession, makes more stringent state and local protections for undocumented workers more difficult to enforce.

Findings

While previous scholarship has emphasized the challenges workers face in speaking up for their rights (e.g., Gleeson 2010), this article and emphasizes the challenges these workers face once they resolve to come forward and initiate a legal claim. I argue that the challenges of

legal mobilization continue throughout the claims-making process, and I focus on the role of community social networks in educating workers, the role of employer retaliation in stifling legal mobilization, and workers' experiences as they navigate government bureaucracies and legal brokers. Specifically, I explore where do workers learn about their right workplace rights? What happens once workers confront their employer? What challenges do claimants face as they traverse complex administrative government agencies? And how do legal brokers influence this process? Drawing on workers who have beaten the odds to come forward and assert their rights, I highlight the barriers that even they encounter.

The Landscape of Workplace Violations

This respondent sample reflects the typical landscape of workplace violations, and seems consistent with other studies on the predominance of wage and hour violations (Bernhardt et al. 2009). Over a third of respondents in this survey, and 59 percent of undocumented claimants, reported wage and hour violations.¹⁴ Controlling for demographic and socio-economic characteristics, construction and restaurant workers were significantly more likely to report age and hour problems. Workers who were paid in cash (either alone or in conjunction with check payments) are also more likely to experience one of these wage and hour violations, as were undocumented workers. The remainder of claimants' alleged discrimination (24 percent) or sexual harassment (3.7 percent), or needed help filing for unemployment insurance (7.2 percent) or a workers' compensation claim (3.1 percent).¹⁵

Workers also reported a surprising level of past experiences with workplace violations prior to their current claim. Fifty-eight percent reported rest or meal breaks denied or shortened

throughout their working life, and half reported problems with timely payment. Thirty-six had been denied time off for illness, and 55 percent had been become injured ill because of their job.¹⁶ Sixty-four percent had experienced verbal abuse or degrading treatment,¹⁷ and over a quarter of all women reported being sexually harassed at some point.¹⁸ Seventeen percent had previously filed a workplace claim.¹⁹ It is possible that those who had previous experience with the claims bureaucracy simply had the skills to pursue a legal claim on their own.

We also asked foreign-born survey respondents specifically about the climate of fear at their workplace. Only 6.3 percent of immigrant workers claimed that their employers had ever threatened to call immigration authorities or had ever experienced a raid at their workplace. Yet there was still a keen feeling that immigrant and undocumented workers were treated differently. Sixty percent of immigrant respondents affirmed that they felt that they had ever been treated unjustly because “have ever been treated unjustly at work because you are an immigrant,”²⁰ and 86 percent agreed, “Workers who don’t have papers are more targeted for workplace abuse.”²¹

Survey results also reflect a predominance of *legal* workplace practices that constitute what Kalleberg (2011) calls “bad jobs,” characterized by uncertainty and economic precarity in worker’s lives. Forty-one percent of all (and 28 percent of undocumented) respondents reported ever receiving safety training at the job related to their claim, and only 53 percent of all workers (and 47 percent of undocumented) had ever received a raise. Only 38 percent of the jobs in question provided sick leave (17 percent of undocumented), and 46 percent provided paid vacation (23 percent of undocumented). While 39 of all claimants (and 15 percent of undocumented) received health insurance from their employer, this coverage is far below state and national levels, which both stand at over 50 percent (Fronstin 2011).

Insert Table 2 Here

Information and Referral Networks

Following a workplace violation, workers' social networks play an important role in spurring legal mobilization. Past studies have emphasized the importance of outreach through public service announcements and other media campaigns (Smith, Sugimori, and Yasui 2004), yet the direct impact of these efforts is difficult to assess. Among survey respondents, only two percent of workers reported that they had heard about the workers' rights clinic from television, radio, or newspapers. A slightly higher proportion (6 percent) turned to the Internet for help.²² Even more respondents (8 percent) said they were referred to the clinic directly by another community or religious organization. For example, we spoke with Mariana, a domestic violence survivor and mother of three whose employer refused to update her personnel records when she received work authorization via U-Visa for victims of crime. Though she risked jeopardizing her new legal status if she continued to work with false papers, the human resources representative for this major ethnic grocery refused to make the requisite change. She turned to her Catholic parish for help, and was referred to the legal aid clinic.²³

One venue for information gathering is via the various civic activities in which workers are involved. Thirty-five percent of respondents report volunteering at a church (24 percent), school (10 percent), union (7 percent), or other organization (12 percent)—all important spaces for resource exchange, even if not branded worker education.²⁴ For example, Berta, an undocumented mother of three who had suffered egregious verbal abuse and wage theft at her

restaurant job, somehow managed to find time to do volunteer work at her church, a neighborhood group, and at her children's school.²⁵ I asked whether these experiences had affected her decision and ability to come forward. She flatly replied "No." Yet upon further reflection, she explained, "It's not like we go around passing out propaganda, but you know how us women are, we discuss 'Hey, you know I had this problem,' this and that. 'Oh, why don't you go to this place, maybe they can help you, they're free.'" Berta's experience highlights the importance of informal networks and organizations such as these. Although they may not be branded as worker advocacy, they play a crucial role in information sharing, and individuals may have a reciprocal relationship with the time and energy they give to the group's mission, and the advice and referrals they receive in return.

However, the largest plurality, a quarter of respondents, credited friends and family as their major source of information. This is consistent with the existing literature on the important roles of informal networks in the job market (e.g., Waldinger and Lichter 2003), family dynamics in civic engagement (Bloemraad and Trost 2008), and cultural norms in the process of legal mobilization (Albiston 2005). For example, Jordi, an undocumented Salvadoran immigrant in his twenties worked as a dishwasher and was the victim of massive wage theft.²⁶ Despite working regular 12 hour days, he received a set "salary" that amounted to payment of less than \$5/hour. When I asked Jordi what ultimately led him to come forward, after enduring the arrangement for months, he cited the encouragement of friends. "My friends would tell me (about my rights). I didn't know anything about all that, but I started getting more into it, learning a little more." His brother, also warned him to get another job first to avoid conflict, smart advice that he ultimately heeded. Other workers gained information from extended connections, such as Joel, a twenty-year naturalized citizen and janitor who was fighting to

recover pension funds from his union.²⁷ He turned to friends at church after his shop steward stopped assisting him. “I knew a guy at church, and he told me about his niece’s husband, with whom she had discussed my problem.” Through this connection, Joel learned about how the pension system worked, and the complexity of the issue into which he had stepped, both in terms of the technical process of accruing retirement credit, and the complicated bureaucracy of the union leadership responsible for managing these funds. This friend eventually encouraged him to come to the clinic.

Sometimes it took the repeated encouragement of a variety of contacts and resources to propel a worker to file a claim. For example, Armando is a legal permanent resident and unemployed forklift driver whose wife encouraged him repeatedly to come forward after he was fired, following his lengthy participation in a union-organizing drive.²⁸ His wife gave him the information about the legal aid clinic, and his friends and family repeatedly pushed him to seek help to get his job back. Armando finally decided to visit the clinic after hearing a compelling announcement from a local radio station regarding worker rights. When the legal clinic was unable to help him, another friend referred him to the Mexican Consulate for help, which in turn facilitated a meeting with a private lawyer. By this point, however, he was beyond the six-month statute of limitation.²⁹ Armando now counsels his friends to act right away. “I tell my friends, ‘there’s lots of help out there,’ there’s so much help that sometimes one expects to just show up at our front door . . . but one has to take the initiative, to be positive.” This worker walked away with a sense of individual responsibility for his rights, although his experience reveals a series of structural barriers he faced in realizing them.

Employer Responses to Worker Mobilization

Though that were able to resolve their issues through directly confronting their employer are clearly not captured in our survey, 71 percent of survey respondents reported confronting their employer before visiting the legal aid clinic. For most workers who came forward, their employer's response was not reassuring. Thirty-eight percent report that their complaint was ignored, another 8.1 percent said they were threatened, and 14 percent say that the issue was initially resolved, but then resumed. Among the rest who sought help from the clinic, but nonetheless chose to avoid a confrontation with their employer, only 5.2 percent reported a language barrier as a major reason. Seventeen percent were afraid it would affect their job, and 19 percent said they just "didn't think it would do any good," but nonetheless went on to seek help from the legal clinic where we met.

There is no discernible pattern regarding what type of clinic attendee chose to speak to their employer first. However, about forty percent of workers consistently report that they "received threats for complaining about workplace conditions." All else equal, restaurant workers and those with limited English proficiency also report that their employer "threatened to fire me, or cut my hours, if I complained." Perhaps not surprisingly, these same two categories of workers are more likely to cite "I was afraid it would affect my job" as a driving force for not coming forward. Firing a worker for complaining constitutes a form of illegal retaliation in most cases. However, "at-will" employment provisions allow an employer to fire a noncontract worker for any reason, thus rendering a claim of retaliation extremely difficult to prove (Arnold-Richman 2010). The sole significant driver of whether a worker was still working for the target employer was whether they were a union member.

Workers often delayed coming forward. Fifty-five percent of workers report first experiencing their issue over six months prior; 41 percent had been dealing with the issue for at least a year. Interview data suggest that workers must go through a sometimes lengthy process of trial and error where they identify the abuse, then try a number of strategies to rectify the situation, before finally settling on a formal legal claim that leads them to seek help from the law clinic. Workers also awaited certain thresholds, such as job loss and the need for income, debilitating injury, or ultimately unbearable harassment, before deciding to expend the time and energy to risk a formal claim.

Although the reported level of explicit threats is low, this is not to say that employer threats *can't be* explicit and, in some extreme cases, literally violent. For example, Consuelo described the common fear that an employer would contact immigration authorities in her community. “They (undocumented workers) are scared, because (the employer) threatens to call *la migra*, they threaten that they will beat up their families, they are disgraceful threats.”³⁰ One undocumented landscaper who regularly experienced wage theft similarly described the crystal clear response he received when he attempted to confront his employer for paying his undocumented crew members less than those with a “valid social.” He responded simply, “I’m not going to pay you anything, do what you want.” Although this worker clearly understood his rights as an undocumented worker, as the sole owner of the household, and with his wife Maria recently recovering from a near-fatal car accident and unable to find work, he could not afford to lose his job. “When he threatens us, of course people are scared. His exact words were, ‘there’s the door...clock out.’” Yael, another undocumented landscaper similarly recounted his experiences with an employer he described as racist and exploitative.³¹ “He would simply say that he would fire whoever didn’t like (it).” For both of these undocumented workers, one who

had been fired, and the other who was still working—both found that their undocumented status accentuated their labor market precarity and apprehensive feelings about claims-making. While Yael has found another job and looks back on his firing as proof of his vulnerability, Maria's husband continued to work in despotic conditions and experience this constant retaliation on an ongoing basis.

However, overt employer threats are not necessarily the most common or effective mechanism for worker control. Worker consent is far more efficient and pervasive (Burawoy 1985), often relying on complicated management hierarchies that obfuscate liability and divisions among workers. For example, Susana endured sexual harassment for four months before she was ultimately terminated.³² She and her sister were the only two undocumented employees at this small manufacturing business. "They liked how we worked, so they agreed to look the other way," she explained. They were coached on how to respond in the event of an immigration or IRS audit, and worked for years before the firm won a federal contract, which prompted the mandatory verification of all employees' legal status. Susana was finally terminated, not long after reporting a repetitive stress injury, and after enduring years of indiscretions from her secondary supervisor who would regularly expose and fondle himself to Susana and her sister. "Once he slapped me in the ass, in fact when I was in the middle of reading over my workers' compensation report." After she found a better job, Susana ultimately sought a workers' compensation lawyer for the repetitive stress injury she had, but was not able to prove her manager's sexual harassment sufficiently in order to convince the employers to make changes. She was frustrated that her attorney similarly counseled her that a formal claim would be weak and based on circumstantial evidence.

Retaliation can also go far beyond those basic requirements inscribed in the law. In many cases differential treatment, which is difficult to prove, may have nothing to do with pay, or even direct workplace conditions. For example, I spoke with an older strawberry picker who had become injured and sought assistance with her workers compensation claim.³³ She explained that after alerting her supervisor to her injury, the subcontractor—who also regularly coordinated rides for her crew—suddenly refused to continue to help her. When this middle-aged immigrant recovered from her injury, she had no way to get to work. Since she did not have a car, the simple loss of access to the coordinated system of *riteros* effectively meant she no longer had a job. Nonetheless, the contractor repeatedly told her, that 1) there was work available if she could manage to get there, but 2) that it was not the employer's responsibility to coordinate her ride. In this case, the employer is absolutely right. The law does not require him to provide transportation. Moreover, the ability to show that she is being treated in a discriminatory fashion is nearly impossible given the decentralized and informal nature of this arrangement.

Several other worker relationships bolster employer retaliation efforts, shape claims-making decisions, and complicate lives for workers once they do come forward. The legal requirement that a claim must occur prior to a negative change in the worker's employment conditions or employment status obfuscates the volley that often happens between worker's attempts to confront workplace abuse, and employers' preemptive efforts to limit and manage their complaints. Well-meaning attorneys, limited in their arsenal of tools to protect these precarious workers, would frequently turn workers away, counseling them to return when they had a litigable claim, that is, once they were fired. More commonly, retribution against claimants is veiled, and made more powerful when employers are able to leverage the support of other coworkers. Workers who speak out may be ostracized by their coworkers, prompting significant

discord in collective work environments that rely on cooperation between various posts such as a restaurant kitchen or construction site. Claimants recounted instances where employers intimidate workers who might consider speaking up, while rewarding those who remained compliant. An environment where workers are pit against each other not only deters individual legal mobilization, but also furthers the competitive and dangerous conditions of workplace abuses that threaten worker safety. This “divide and conquer” strategy is well documented in the labor relations scholarship (e.g., Bonacich 1972), however, this broken chains of solidarity can result not only in lost job productivity (and ultimately job loss), but leaves workers with little to back up their claim in the absence of a supportive witness.

For example, Federico, an undocumented forklift driver, described his experience after suffering a major fall while loading shipping containers.³⁴ The injury came on a heels of a previous injury, also the result of operating broken equipment, which rather than fix, the employer simply eliminated from the workflow. “Before I would sometimes work from 8 in the morning to 11 at night, with no additional pay. It was common, we all worked that way. It was not safe, and they would sometimes even scream profanities at us.” Federico’s fall prompted a chain of events that led to his firing. “After that accident, everything changed. . . . Ultimately they did fire us (Federico was one of several injured workers), because they didn’t want to take responsibility for our injuries.” Prior to his injury, Federico had no problem working long hours. “It was hard, but we felt good because we had a job. But everything changes drastically after the accidents.” Federico’s relationship with the owners of the company quickly soured after he reported his injury, and he began receiving threats soon thereafter. “When I would tell them that I was in pain, that I wanted to be paid overtime, they would tell me that if I didn’t leave the office, they would call the police, that I would be fired, and that I should return to work.”

Federico also reports experiencing no problems with his coworkers prior to his injury, who he described as agreeable people with whom he would regularly share lunch. However, their tone quickly changed when they alleged that Federico had fabricated his injury and was harassing the other workers to gain their support. Federico and his fellow injured worker were ultimately denied compensation by a hearing judge. Some of his close coworkers who had initially agreed to support Federico at the hearing, ultimately spoke against him. In sum, Federico's claim was too weak to proceed, given the lack of witness testimony and lack of a paper trail to counter his employer's claims of innocence.

Bureaucracies, Attorneys, and Cracks in the Law

Once a worker has embarked into the labor standards enforcement system, they still face an array of challenges as they navigate the claims bureaucracy. Though this sample does not represent those workers who resolved their claim directly with their employer *or* with the direct help of a government agency, 41 percent of workers surveyed answered that they had “tried going directly to a government agency first.” These levels do not vary significantly by nativity or racial/ethnic identification. However, native-born claimants are also more *experienced* with claims-making; while 23 percent had filed a claim before, this was true for only 15 percent of their foreign-born counterparts.

While the human capital of a low-wage worker does not significantly predict whether a clinic attendee previously sought help from a government agency, other workplace characteristics do seem to matter. First, workers who had been paid in cash (11 percent of claimants) were significantly less likely to seek assistance from a government agency before

visiting the legal aid clinic. While 82 percent of cash workers were undocumented, undocumented status alone does not seem to negatively predict going to a government agency first, even when the variables for cash payment, education, and English abilities are removed from the model. Second, those claimants who have the good fortune to still be employed (only 21 percent of claimants) are—all else equal—also significantly less likely to have gone directly to a government agency prior to the clinic. This reflects the dire circumstances in which legal clinic staff are likely to see clients, and reflects the risk that formally pursuing a claim poses for job security, despite legal protections against retaliation. Lastly, wage and hour claimants (39 percent of the sample) are also more likely than others to go directly to a government agency (such as the state Labor Commissioner or federal Department of Labor) first, suggesting that perhaps other more complex and attorney-dependent arenas of worker rights—such as discrimination (which can require litigation) and workers' compensation claims (which requires dealing with insurers and doctors)—rely more heavily on legal brokering from the beginning stages of claims-making.

Successfully reaching a government agency does not guarantee the opportunity to file a claim, however. Of those workers who reported previously visiting a government agency, 20 percent credit a government agency with telling them about the workers' rights clinics. Although overall, only 12 percent of workers were referred by a government agency, the proportion was even higher for foreign-born respondents (14 versus 7 percent), respondents who were not native speakers (14 versus 6 percent), and the undocumented (18 versus 9 percent). This suggests that legal aid clinics function as important service providers for the government apparatus. Particularly in a time of fiscal restraint, staff at labor standards enforcement agencies in California often have insufficient time and resources to meet claimant demand. They may also

lack linguistic and cultural competency to serve immigrant populations (despite state and federal mandates for language access), and may simply not enjoy the same levels of trust with vulnerable populations (due to lack of information and distrust). Government staff are also limited in the services they are able to provide, and are often prohibited from offering legal advice.

Companies have long developed elaborate mediation protocols for dealing with workplace claims (Edelman 1992), and labor standards enforcement agencies have also turned to mediation in an effort to promote speedy settlements (Lurie 2011; Tilson and Glenn 2011). This shift, while helping to address deep backlogs and lengthy administrative processes, can also disadvantage workers who lack the time or money to push for full restitution. Legal counsel can therefore be an important resource for a claimant. The San Francisco Bay Area has a robust network of labor and employment lawyers, yet labor and employment law is not a lucrative business, and private counsel can be quite costly. Attorneys must choose their cases very carefully, often forgoing clients with high-risk or low-yield cases. High value cases are also harder to prove, very labor intensive, and risky. While some attorneys may work on contingency, many other require an upfront fee. Twenty-four percent of all claimants surveyed had in fact talked at one point to a private lawyer. Among the rest, 55 percent said they “didn’t have the money,” 23 percent said that they “didn’t know where to go,” and 6 percent cite “I don’t speak English very well” as a primary reason. Ten percent of claimants learned about the clinic from another lawyer.

However, after speaking with the law clinic, many of the workers we spoke to discovered that the law did not in fact protect them; this was particularly true for seasonal and subcontracted workers. For example, Consuelo, a 34-year old subcontracted janitor with less than a high school

education, and who had been in the U.S. for over 15 years, described not only the rampant wage theft she experienced, but also what she believed was unjust termination when her boss learned of her pregnancy.³⁵ After requesting minor modifications, she was advised to either terminate the pregnancy or lose her job. She was eventually fired and never paid her final wages. After speaking with an attorney and the California Department of Fair Employment and Housing, Consuelo was ultimately informed that the state had no jurisdiction over her claim, since her place of employment had less than five employees. Other workers similarly recounted the dilemma of working for a subcontracted employer who may have a contract for a much larger company, but as such does not meet the minimum business size for state or federal protection.

Similarly, Benjamin, an undocumented Mexican immigrant who supervised several security guards at local community events, such as weddings and *quinceaneras*, had nowhere to turn when he was repeatedly paid with bad checks. Feeling ethically bound to the other workers, Benjamin paid them and swallowed the loss. Unable to sustain the financial toll this pattern of fraud and debt was taking on him, Benjamin finally decided to come forward and seek assistance from the workers' rights clinic in San Jose, which helped him send a letter to the event hall owner demanding payment, with no response. However, a private attorney clarified to Benjamin that he was indeed not an employee, and thus ineligible for protections against wage theft. As an independent contractor, he had no recourse at the Labor Commissioner and no resources to bring a formal suit. He was referred instead to small claims court, which was an institutional arena that this workers' rights clinic was not able to assist him with.

Workers also recounted significant barriers to garnering the evidentiary proof necessary to prevail during administrative hearings. For example, Reynoldo, an undocumented immigrant from Mexico, worked for a rental company serving commercial kitchens.³⁶ He regularly put in

10 to 15 hour shifts, which under California law requires overtime payments for any time worked over 8 hours. Reynoldo and many of his coworkers were repeatedly not paid for their overtime, which their employer disguised by providing cash payment off the books. After enduring ongoing threats from his employer, Reynoldo finally decided to seek help from the worker's right clinic, which he had heard about years prior after attending an immigrant rights workshop. Reynoldo was told that based on his account, he was owed an estimated \$50,000 in unpaid wages and penalties. Ultimately, however, he settled for \$3,700. A large part of Reynoldo's challenge was convincing his coworkers to corroborate his story. He recounted with some sadness their reluctance. "At first they seem all courageous and say they will support you, but when push comes to shove, no one wants to get involved." Though he understood their fear, Reynoldo was most frustrated by those coworkers who chose to testify directly on his employer's behalf at a Labor Commissioner hearing. Indignant, Reynoldo's employer had in fact gloated that with their support and a private lawyer at his side, he would prevail.

Getting a favorable judgment from a regulatory agency is only half the challenge. Many of the workers I spoke to recounted long claims processes and unpaid judgments. According to a public records act request, in 2012-2013 the California Labor Commissioner reported an average 204 days from the date a worker filed a claim to their actual hearing. During that same time, the agency issued \$84,512,152.27 in hearing awards across the state, however, only collected \$11,285,085.08 (13.4 percent of total judgments).³⁷ Follow-up interviews corroborated stories of employers who declared bankruptcy, shut down, or changed their name. While the state agency has limited authority to issue wage liens, workers were often confused about the delay, particularly when they saw that their former employer continued to operate. Alfredo, an undocumented mechanic and his fellow crew members spoke up against lack of mandated

breaks, unpaid overtime, and eventually termination when they stood up in support of their female coworker who was consistently sexually harassed.³⁸ After bringing the case before the Equal Employment Opportunity Commission, the employer agreed on a payment agreement during the mediation period. However, after only three payments, the employer filed bankruptcy, and the claim was stopped cold. Alfredo vividly recalls his employer's vow to "spend every penny they have on lawyers, rather than pay the workers a dime." He laughed at the irony of his predicament, and the ease with which his employer manipulated the system. Alfredo, the only one among the original group of claimants who holds out hope for justice, continues to await a formal letter from the Equal Employment Opportunity Commission confirming that his file is closed. Until he receives that, he vows to continue fighting.

Conclusion

This article has examined the process of claims-making for a sample of low-wage workers at legal aid clinics in the San Francisco Bay Area. I examine the various ways in which at-will employment and employer sanctions facilitate worker precarity and shape legal mobilization. I have focused especially on the ways in which employer retaliation operates both overtly and implicitly, suggesting a wide discrepancy between what the law admonishes and what actually happens. I confirm that social capital and civic organizations play an important role in connecting workers with their rights, yet information alone is not enough. These findings reaffirm that precarious workers and those who are undocumented face a particularly difficult path to justice. A significant portion of workers attempt to negotiate with their employer before seeking legal counsel, yet those who lack English proficiency, and those in the restaurant

industry (which represents one of the largest and least unionized employers in the private sector) are more likely to have their attempts met with threats. Fear of job loss remains a big hurdle for workers, who are less likely to approach a government agency directly before coming to a law clinic if they are still employed, despite clear formal protections against retaliation.

Retaliation, I also argue, can go beyond those protected rights inscribed in the law. Further research must take a nuanced look at how employer retaliation operates through a variety of actors, and not just the dichotomous relationship between worker and employer. In fact, the looming specter of immigration can be far more powerful, allowing employers to assume a seemingly ignorant position, intentionally or not. Complicated management hierarchies, and in particular subcontracted arrangements, also allow primary employers to look the other way. Complex retaliation schemes often rely on exploiting competition among workers. Thus, worker solidarity is not a given, and co-ethnic solidarity likely no more (Sarathy 2012). Socio-legal scholars must continue to investigate the ways in which high evidentiary requirements and claimant's marginal structural position block their ability to seek restitution. Recent legislative changes in California that explicitly prohibit retaliation on the basis of immigration status are an important step toward recognizing the need for broader protections (National Employment Law Project 2013).³⁹

Despite these challenges and the need for additional claims-making resources, we must also remain aware of the limits to "lawyering" (Gordon 2007), as large segments of the workforce remain poorly protected by existing laws and the timetable of justice can move excruciatingly slow. This research encourages labor and immigration advocates alike to pay attention to the openings that workers have to make decisions throughout the process of claims-making. The limited ability of the labor standards enforcement apparatus to effectively stymie

immigration enforcement efforts against undocumented claimants, renders formal workplace protections hollow. A bureaucratic firewall between immigration enforcement and labor standards enforcement is crucial to protect undocumented workers' privacy and security (Lee 2011; Griffith 2011b). Current tools, such as the U-Visa, are crucial. However, these *post-hoc* mechanisms mean that cautious workers will continue to invoke their own agency when deciding to risk deportation and ultimately job loss. Therefore, more pro-active work on the part of labor standards enforcement agencies operating as watchdogs for the overreach of immigration enforcement is necessary and productive for the goal of improving worker rights. Lastly, these findings reiterate a caution against a universal focus on the challenges of undocumented status, as immigration reform alone will neither end workplace violations (Narro 2013) nor halt future flows of undocumented workers (Bacon 2008). More focus, therefore, should be paid include reevaluating the second-class citizenship of undocumented workers in protections for union organizing, the nonexistent protections for at-will employees, and the misclassification of independent contractors. Future research would do well to adopt a multipronged approach to understanding the fundamental bases of worker precarity. The structures that fuel employers' ability to eschew their concerns must be part of our analyses of worker rights as well.

Notes

1. See, for example National Employment Law Project. 2014. “Immigrant Workers’ Rights and Remedies.”
http://www.nelp.org/content/content_issues/category/immigrant_workers_rights_and_remedies.
2. See for example, “EEOC Reaffirms Commitment to Protecting Undocumented Workers from Discrimination.” <http://www.eeoc.gov/eeoc/newsroom/release/6-28-02.cfm>.
3. It is also important to note that immigration enforcement efforts impact *both* undocumented and documented (and native-born) communities of color. For example, focusing on a group of mostly legal temporary warehouse workers, Allen (2010) recounts the harassment and racial profiling these workers experience on a regular basis from Immigration Customs Enforcement officials in the inland empire of California (40).
4. While some state laws are more generous in this regard, they too are limited. For example, the Department of Fair Employment and Housing only covers establishments with five or more workers, unless the issue involves harassment.
<http://www.dfeh.ca.gov/equalrights101.htm>.
5. In California, the Domestic Worker Bill of Rights (AB241) has now extended overtime protections, meal and rest breaks, and other important protections to this group of previously excluded workers. [http:// www.domesticworkers.org/ca-bill-of-rights](http://www.domesticworkers.org/ca-bill-of-rights).
6. Several states have passed independent contractor reforms, while federal bills such as the Payroll Fraud Prevention Act continue to linger in Congress.

7. The Federal Labor Standards Act currently states, “Covered nonexempt workers are entitled to a minimum wage of not less than \$7.25 an hour.” Currently in California, the minimum wage is \$8, except for the city and county of San Francisco, which is \$10.55, and San Jose, which recently enacted a municipal minimum wage of \$10/hour. California overtime provisions are stricter than the federal standard, requiring any time after 8 hours in a day to be paid at a premium, compared to the 40-hour/week federal minimum.
8. San Francisco is also one of only four cities in the nation to have a city-mandated minimum wage during this study period. In 2012, a group of students from San Jose State University and a coalition of labor advocates launched a successful campaign to enact a \$10.00/hour minimum wage ordinance in San Jose, indexed annually to the cost of living. This ordinance went into effect January 1, 2014, and launched a related successful effort to increase the California minimum wage from \$8.00 to 9.00 in 2014, then \$10.00 in 2016. A current effort is now underway to create a local wage theft enforcement mechanism in Santa Clara County and the City of San Jose, similar to what is currently in place in San Francisco, Los Angeles, and Houston (Gleeson, Taube, and Noss 2014).
9. California Labor Code Section 1171.5 states, “All protections, rights and remedies available under state law . . . are available to all individuals regardless of immigration status.”
10. Each of these clinics is sponsored by a legal aid center that relies on a core staff, as well as several additional volunteer attorneys, law students, and interpreters. None rely on Legal Services Corporation funding, which are federal funds that support most of the legal aid in the U.S. and which also expressly prohibit beneficiary organizations from serving undocumented clients (usually with the exception of domestic violence cases).

11. In order to qualify for services at these legal aid clinics, claimants were required to meet low-income guidelines. While the procedure for each clinic varied, claimants typically meet a volunteer (often a law student) who then works in conjunction with a supervising attorney to provide legal counsel. Both survey respondents and interviewees were provided a modest \$15 gift card to a local grocery store as a token of appreciation for their time and participation in the research. Pseudonyms are used for all references to respondent data.
12. I construct a conservative measure to estimate the undocumented population in this survey. Respondents were asked to identify (at different points in the survey) 1) where they were born, 2) whether they were a citizen of the U.S., and 3) whether they were legal permanent residents. Those individuals who did *not* answer affirmatively to each were classified as undocumented (37 percent), and is very close to the proportion who responded “no” to a final question asking whether they were authorized to work in the U.S. (36 percent).
13. Based on 2005-2009 American Community Survey data for the state of California (U.S. Census Bureau 2012).
14. Workers were also asked to comment on their past work experiences, and specifically whether they had ever been “paid less than you were initially promised,” “paid less than the minimum wage,” “been denied a rest or meal break or had it shortened,” “had problems getting paid at all or on time,” or “been forced to work overtime against your will,” each of which are practices covered under the federal Fair Labor Standards Act and the California Labor Code.

15. Many claims were for multiple issues. The small proportion of workers' compensation claims can be explained by the particular expertise these types of claims required.
Workers were often referred to separate specialty clinics for these claims.
16. "Have you ever, either at this job or at a previous one here in the United States, experienced ANY of the following? . . . Injured on the job, or become ill because of your job."
17. "Have you ever, either at this job or at a previous one here in the United States, experienced ANY of the following? . . . Received verbal abuse or degrading treatment from your employer or co-worker."
18. "Have you ever, either at this job or at a previous one here in the United States, experienced ANY of the following? . . . Received sexual harassment or unwelcomed sexual advances from your employer or co-worker."
19. "Have you ever pursued a workplace claim before today?"
20. "Do you believe that you have ever been treated unjustly at work because *you are an immigrant?*"
21. "Some people say that workers who don't have papers are more targeted for workplace abuse. Do you agree with this statement?"
22. These data provide evidence that the digital divide persists, particularly across immigrant status and English proficiency (Ono and Zavodny 2008). While 73 percent of respondents in this sample are foreign born, only 12 of the 27 internet referrals came from immigrant respondents, only five of whom were undocumented. Eighteen of the internet referrals report that they are native English speakers.
23. Interview, 12/20/11.

24. “Have you tried getting help from *any of the following* for this claim? Select all that apply—Consulate/ Police/Small Claims Court/City representative or program/County representative or program/Day labor center/Church or temple/Any other place-community organization?”
25. Interview, 12/12/11.
26. Interview, 12/12/11.
27. Interview, 1/31/12.
28. Interview, 3/12/12.
29. NLRA Sec 10(b), 29 USC Sec 160(b).
30. Interview, 10/21/11.
31. Interview, 5/26/13.
32. Interview, 10/8/13.
33. Field notes, 10/20/13.
34. Interview, 4/2/12.
35. Interview, 10/21/11.
36. Interview, 1/4/12.
37. Data obtained from the California Department of Industrial and Labor Relations, 3/4/14.
38. Interview, 11/12/13.
39. On 1/1/14, three bills took effect in California that strengthened worker protections against retaliation, including specific protections for immigrant workers (AB 263, AB 524, and SB 666) (National Employment Law Project 2014).
40. Means comparisons and multivariate results discussed here and below are limited to those that are statistically significant.

Table 1

Table 1. Distribution of Interviews and Follow-up Interviews by Nativity and Legal Status

	Survey	Follow-up interviews
All	453	89
Native born	122 (.27)	23 (.26)
Foreign born	331 (.73)	66 (.74)
Foreign born, citizens	89 (.27)	15 (.23)
Foreign born, noncitizen, legal permanent residents	72 (.22)	16 (.24)
Foreign born, undocumented*	170 (.51)	35 (.53)

*See footnote 12

Table 2

Table 2. Distribution of Claimant Characteristics across Clinics (%)^{a,b}

	N	Wage/Hour	Discrim	SexHarass	Unemp	WkrsComp
San Jose	237	.41	.32	.04	.05	.03
San Francisco	97	.25	.15	.06	.13	.03
Oakland	61	.61	.11	.00	.00	.03
Berkeley	58	.33	.14	.02	.14	.03

^aClaim categories are not mutually exclusive; percentages do not sum to 100, residual category is “other” and includes allegations of wrongful termination.

	Latino	Black	API	White	Native born	Undoc immig
San Jose	.81	.02	.08	.05	.18	.45
San Francisco	.31	.21	.22	.21	.47	.09
Oakland	1.00	.00	.00	.00	.05	.69
Berkeley	.34	.28	.12	.21	.52	.21

^bRace categories are not mutually exclusive.

Table 3

Table 3. Multivariate Analysis (Logistic Regression)⁴⁰

A. Claimant Has Ever Experienced Wage and Hour Violation			
<u>Including:</u>			
• Paid less than you were initially promised			
• Paid less than the minimum wage			
• Denied a rest break, or had it shortened			
• Denied a meal break, or had it shortened			
• Had problems getting paid, or been paid late			
• Forced to work overtime against your will			
Predictor	Log odds	SE	P value
Male	.079	.241	.743
Age	-.156	.067	.020
Age Squared	.002	.001	.034
Education: Less than high school	.059	.307	.848
English: Do not speak at all	-.489	.437	.263
Industry: Restaurant	.762	.417	.067
Industry: Construction	1.588	.766	.038
Cash Payment	1.642	.755	.030
Union	-.170	.321	.596
Undocumented	.602	.318	.059
White	1.053	.443	.017
constant	4.368	1.535	.004
N		450	

	All Claimants—Talked to Employer			Wage and Hour Claimants—Talked to Employer		
	Log odds	SE	P value	Log odds	SE	P value
Male	-.015	.220	.944	-.051	.418	.903
Age	-.042	.053	.434	-.039	.099	.696
Age squared	.000	.001	.663	.000	.001	.798
Education: Less than high school	-.273	.263	.298	-.864	.436	.047
English: Do not speak at all	-.119	.368	.747	.129	.533	.808
Industry: Restaurant	-.149	.307	.628	.250	.499	.616
Industry: Construction	.536	.466	.250	.610	.643	.343
Cash payment	.085	.379	.822	-.325	.459	.479
Union	.194	.318	.541	.099	1.143	.931
Undocumented	.352	.276	.202	.022	.493	.964
White	.543	.390	.165	.228	.853	.789
constant	2.077	1.209	.086	2.656	2.070	.199
N		450			175	

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