

Summary of the Day Labor Fairness and Protection Act

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Introduction

Day labor is not a new phenomena in the United States. Historically, employers have relied on day laborers to perform manual labor such as construction work, landscaping and to provide domestic services. More recently, the downturn in the economy has resulted in a growing number of workers turning to day labor as their only viable employment option. Whether seeking work informally on urban and suburban corners or through temporary labor agencies, day laborers continue to make significant contributions to the economy.

Day laborers obtain employment through various means. Some take part in the long tradition of street corner day labor where workers negotiate with employers at designated “shape-up” sites. A growing number of employees are obtaining day labor jobs through temporary employment agencies. These temporary employment agencies dispatch day laborers and other workers to third party employers. Generally, these temporary agencies collect a fee from the third party employer and the day laborer. Whether the day laborer obtains work through a shape-up site or a temporary employment agency, the resulting working conditions are characterized by short term employment, low-wages, frequent non-payment of or illegal deductions from wages and hazardous health and safety violations. The short term nature of day labor and the multiple entities often involved in day labor employment relationships pose significant barriers to enforcement of existing workplace laws.

Despite providing a flexible pool of workers to the benefit of employers, day laborers are commonly subject to egregious workplace exploitation. Day laborers are often assigned to the dangerous tasks shunned by workers with more options. These workers are disproportionately affected by violations of occupational health and safety as they are less likely to receive necessary safety equipment and training to protect them while performing work under hazardous conditions. Exacerbating these problems is the fact that many day laborers often lack access to healthcare, increasing the likelihood that these workers will not seek medical attention. As a result, day laborers face a higher incidence of workplace injuries and fatalities.

Studies and anecdotal evidence also show pervasive wage and hour violations committed by day labor employers and temporary labor agencies. Day labor employers often delay payments of promised wages until the completion of a job. Upon completion, day laborers are commonly left with less than promised compensation or a void check. Other forms of wage abuse include making excessive or illegal deductions from worker’s pay. Unscrupulous employers will charge laborers for check cashing, transportation, meals, and safety equipment. Lack of access to social and legal services that could assist them in enforcing their workplace rights leave few options for day laborers seeking to recover unpaid wages.

NELP supports legislative reforms that recognize the particular vulnerability of day laborers and seeks to proactively assert and protect the workplace rights of day laborers. This Act would be the first Federal law proposed to protect and expand the workplace rights of street corner day laborers

and other temporary employees. The Day Labor Fairness and Protection Act squarely addresses the realities of day laborers and other temporary employees, thus ensuring a safer and more just working environment for all workers.

Key Elements of the Day Labor Fairness and Protection Act

What workers are protected by the Day Labor Fairness and Protection Act?

The Act protects all workers who perform “day labor.” The Act defines “day labor” as work that is:

1. temporary or irregular, and
2. where a day laborer is employed only for the amount of time necessary to complete the assignment for which they were hired.

Professional and clerical workers are excluded from the definition of “day laborer.”

The Act would broadly protect both day laborers who find work at informal or community based shape-up sites *and* workers who find employment through temporary placement agencies. Furthermore, the definition of “day labor” is not limited to construction or landscaping work. For example, a factory worker hired for a temporary job and who is employed only for the amount of time necessary to complete the job would be considered a day laborer under this Act. As written, what triggers protection is that the work performed fits the definition of “day labor” as it is defined in the Act, not how or where the work was obtained.

Which employers are covered by the Act?

The Act places obligations on all “day labor employers” to comply with the requirements of the Act. “Day labor employers” include any entities that directly or indirectly allow a day laborer to work for them. This includes contractors, sub-contractors, temporary placement agencies and third party employers.

Wage and Hour Protections

1. *Wages in parity with full time permanent employees performing similar work*
A day laborer must be paid at a rate no less than that of a full time permanent employee performing substantially equivalent work. In a union regulated industry, this means a day laborer must earn at least the prevailing wage or the union wage rate paid to full time permanent employees performing the same work.
2. *Daily and weekly overtime pay*
Day laborers must be paid one and a half times the hourly rate for each hour over eight hours in one day and for the first eight hours working on seventh consecutive day of work in a workweek. Day laborers will be paid double the hourly rate for each hour over 12 hours in one day and for all hours over eight hours on the seventh consecutive day of work in a workweek.
3. *Minimum daily pay*
A day laborer must be paid for at least 4 hours of work at the regular rate of pay for each day worked.

4. *Call-in Pay and Waiting Time*
If an employer asks a day laborer to report to work and the employer does not appear, the day laborer must be compensated for 4 hours of work at the regular rate of pay. If an employer is late, the day laborer must be paid at the regular rate of pay for the time spent waiting for the employer.
5. *No reductions in promised wage rates*
If an employer and a day laborer agree on a wage rate, the employer may not reduce that rate of pay unless it is re-negotiated with the day laborer. The employer may not reduce or re-negotiate the rate of pay during the day of employment.
6. *Payment Schedule*
If employment lasts less than one week, a day labor service agency or day labor employer must comply with a day laborer's request to be paid at the end of each working day. At the request of the day laborer, a day labor service agency or day labor employer must make weekly or semi-monthly payments. A day labor service agency or day labor employer that makes daily payments must provide written notice to day laborers of their right to request weekly or semi-monthly checks. Day labor service agencies can provide this notice by posting the information in the location where day laborers receive their wages.
8. *Payment by Check and Check Cashing Fees*
If a day labor employer or day labor service agency pays by check, the check must be immediately redeemable. Employers are prohibited from directly or indirectly charging fees for cashing checks.
9. *Payment Upon Termination*
All wages must be paid within 72 hours of termination. Upon termination a day laborer can choose to be paid either at the work site, the day labor site or the day labor service agency.

Day labor Service Agencies

1. *Processing delays*
If a day labor service agency spends more than 30 minutes processing a work assignment, the day labor service agency must pay the day laborer for any additional waiting time at the regular rate of pay.
2. *Requirements for public access areas*
Day labor service agencies must provide adequate seating, restrooms and water in the public access area of the agency. The public access area is where notices required by this Act must be posted.
3. *Prohibition on work restrictions*
Day labor service agencies may not place any restrictions on a day laborer's right to accept permanent work or an employer's right to offer permanent employment to a day laborer.

4. *Itemized wage statements*
At the time of payment, a day labor service agency must give a day laborer an itemized statement listing any deductions, the hours worked and the wage rate for that pay period.
5. *Annual statements*
Day labor service agencies must provide each day laborer with an annual earnings summary no later than February 1st of the following year. At the time of each wage payment, a day labor service agency must notify the day laborer of the availability of an annual earnings summary. This notice can be provided by posting in the public access area.
6. *Overpayment*
A day labor agency may not charge a day laborer a fee for overpayment.

Breaks and Meals

1. *Breaks*
A paid 15 minute break must be provided for each 4 hour period of uninterrupted work.
2. *Meal break*
A 30 minute paid meal break must be provided for every shift longer than 6 hours.
3. *Costs of Meals*
A day labor service agency or day labor employer may not charge a day laborer more than the actual cost of a meal. A deduction for a meal is prohibited where:
 - a day laborer does not consume the meal,
 - the day laborer has no realistic opportunity to obtain meals by other means due to the location of the job site and the time permitted for the meal.Purchase of a meal may not be a condition of employment.

Travel Time

1. *Day laborers must be paid for travel time*
Day laborers must be compensated for travel that is an integral part of the job. In addition, day laborers must be paid at the regular rate of pay for time spent traveling from a day labor site, day labor hiring site or day labor service agency to the work site.

Transportation and Motor Vehicle Safety

1. Unless the day laborer requests otherwise, the employer must provide transportation back to the point of hire at the end of each work day.
2. *Prohibition on transportation fees*
Day labor service agencies, day labor employers and third party employers may not charge a day laborer a fee for transportation to and from the day labor agency to the worksite, to and from the point of hire to the worksite or between worksites.

3. *Transportation liability*
A day labor service agency, day labor employer or any agent of either entity that transports a day laborer to and from the agency or hiring site to the worksite or between worksites is liable for any injury to a day laborer arising from any work related transportation accident.

4. *Motor Vehicle Safety*
Any motor vehicle used to transport day laborers that is owned or operated by a day labor service agency, day labor employer or a contractor or agent of either must:
 - have proof of financial responsibility according to the applicable State laws
 - have secure seats fastened to the vehicle
 - be equipped, if a truck, with a railing or other enclosure on the sides and ends of the truck at least 46 inches above the floor of the truck
 - be equipped with steps, stirrups or a similar device to allow for safe mounting and dismounting of the vehicle.

A day labor service agency or day labor employer may not use any motor vehicles that do not comply with the requirements of this Act to transport day laborers.

5. *Motor Vehicle Inspections*
Motor vehicles used to transport day laborers must pass an inspection by the Department of Labor each year. Motor vehicles used to transport day laborers must display a certification of inspection issued by the Department confirming compliance with the safety requirements of this Act.

Health and Safety

1. Day labor service agencies and day labor employers have a duty to provide a safe and healthful working environment for day laborers.
2. On sites with multiple employers, the following employers can be cited for exposing day laborers to a health hazard:
 - the employer whose day laborers were exposed to the hazard,
 - the employer who actually created the hazard,
 - the employer who was responsible by contract or practice for the safe and healthful conditions of the worksite, and
 - the employer who had the responsibility for actually correcting the hazard.
3. A day labor service agency or day labor employer may not require or permit a day laborer to go or be in employment or place of employment that is not safe or healthful.⁴ *Health and Safety Equipment and Required Tools*
A day labor service agency or day labor employer must provide health and safety equipment and tools for the job required by law or custom at *no cost* to the day laborer. For any other equipment, the day labor service agency and day labor employer may not charge more than the actual market value for the item.

5. A day labor service agency or day laborer must adopt and use adequate methods to render the work and worksite safe.
6. *Health Care Expenses*
If a day laborer is injured while working, unless workers' compensation benefits are available to the day laborer, the day labor service agency and day labor employer are responsible for the health care costs associated with the injury and for all damages flowing from the injury.
7. *Workers' Compensation Benefits*
All day labor service agencies and day labor employers must provide workers' compensation coverage for their day laborers regardless of immigration status for work related injuries.

Protection of the First Amendment Guarantee to Freedom of Expression and Association

1. The Act ensures that day laborers are afforded the full protections of the First Amendment.

Notice Requirements for Day Labor Service Agencies and Day Labor Employers

1. *Notification of Workers' Compensation Benefits*
Day labor service agencies and day labor employers must provide day laborers with the following information on the first day of employment:
 - a statement of the day laborer's right to workers' compensation benefits
 - the day labor service agency and the day labor employer's workers' compensation insurance carrier name and numberThis notice must be provided in English and any other language that is generally used by the workforce serviced by the day labor employer or day labor service agency.
2. *Notification and Consent of Hazardous Work*
A day labor service agency and any day labor employer must inform a day laborer of possible exposure to hazardous chemicals, unsafe working conditions and work that requires the use of safety and protective equipment.

The day labor service agency and day labor employer must obtain the written consent of any day laborer who will be exposed to hazardous materials. The written consent must include:

- a description of the materials the day laborer will be exposed to,
- the possible health and safety consequences of such exposure and
- any specialized training required to safely handle the hazardous materials.

A day labor service agency or day labor employer may not retaliate against a day laborer who refuses to consent to hazardous work due to health and safety concerns.

Notice Requirements for Day Labor Service Agencies

1. *A day labor service agency must post the following in a public area:*

- the name and address of third party employers and the address of the work site,
 - the type of job opportunities available,
 - the wage rate for each job,
 - whether transportation is available, whether the work site is accessible by public transportation, and the approximate commute time to the work site.
2. For each job opportunity posted, a day labor service agency must provide:
 - a detailed description of the work to be performed by the day laborer, including any requirements for special clothing or equipment,
 - the exact address of the work site and a telephone number at which a day laborer can be reached for emergency purposes. If the site is in a rural area, the notice must also provide directions to the work site,
 - the beginning and end time for the job,
 - the overtime rate of pay and
 - information about whether a meal is provided but the day labor service agency, day labor employer or third party employer and the cost of the meal, if any.
 3. The Secretary of Labor must require posting in each day labor service agency a notice of a toll-free phone number for day laborers and the public to file complaints of violations under this Act. The notice must be in English and any other language generally spoken in the locale of the day labor service agency.

Housing

1. A day labor service agency or day labor employer may take a housing allowance towards their wage obligations only if:
 - the lodging is received and used,
 - the lodging is furnished as part of the day laborer's compensation,
 - the day laborer enters a voluntary written agreement to credit the lodging towards the employer's wage obligation,
 - the lodging is available to the day laborer for full time occupancy, and
 - the lodging is adequate and sanitary according to customary standards.

The housing allowance must not bring the day laborers wages below the rate required by this Act.

Retaliation

1. A day labor service agency or day labor employer may not retaliate against any day laborer who:
 - makes a complaint to the employer, appropriate state or federal agencies, co-worker, community organization, in a public hearing or press statement that a right guaranteed under this Act has been violated,
 - institutes a proceeding under or related to this Act, or
 - testifies or prepares to testify in an investigation or proceeding under this Act.

Day labor Service Agency and Day Labor Employer Registration

1. Day labor service agencies and day labor employers must register with the Secretary of Labor and pay a registration fee of no more than \$250.
2. The Secretary and the Department of Labor will have authority to penalize day labor service agencies and day labor employers for violations of the Act.
3. The Secretary and Department of Labor has the authority to suspend or revoke the registration of a day labor service agency or employer for public health and safety concerns or for violations of this Act.
4. The Secretary and Department of Labor must promptly investigate complaints of violations of the Act.
5. The Secretary has the authority to fine day labor service agencies and day labor employers who fail the register. The fines are \$1,000 for a first offense and \$5,000 for a second offense.

Penalties for Violations

1. A person who violates this Act shall penalized \$1,000 for each violation.
2. *Unpaid Wages*
The Secretary or the day laborer (by prevailing in a lawsuit) shall recover the amount in unpaid wages, plus liquidated damages in the amount of unpaid wages for each day that the owed wages are not paid after becoming due up to 30 days.
3. *Health and Safety, Notice and Other Violations*
A day laborer shall be awarded compensatory damages of up to \$500 for each violation.
4. *Punitive damage for retaliation*
If an employer or agent of the employer is found to have retaliated against a day laborer for exercising her rights by calling or threatening to call the INS, the day laborer will be awarded punitive damages.

Enforcing Rights

1. *Right to Sue*
A day laborer may seek to enforce her rights under this Act within 3 years of the final date of employment with the violating employer. This time is tolled during the time that a day laborer does not bring a claim because of a threat by the employer to call the INS or some other enforcement agency.
2. *Attorney's Fees and Costs*
Day laborers who prevail after going to court to enforce their rights will be entitled to attorney's fees and costs.

No Waiver of Rights

1. Any waiver of rights guaranteed under this Act is void.

Recordkeeping Violations

1. If an employer fails to maintain employment records required under this Act or other applicable federal laws, there is a presumption that a reasonable factual presentation by a day laborer of the employment conditions is accurate. The employer must disprove the day laborer's representation by clear and convincing evidence.

Prohibition on Strike Breaking

1. A day labor service agency may not send a day laborer to any place where a strike, lockout or other labor trouble exists.