CONTINUUM OF LABOR EXPLOITATION: Wage Theft, Fraud in Foreign Labor Contracting and Human Trafficking

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Presenters:
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The material presented during today’s webinar session will be available on the Human Trafficking Learning Community.

The session will be recorded and will begin shortly.

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CONTINUUM OF LABOR EXPLOITATION

Wage Theft, Fraud in Foreign Labor Contracting and Human Trafficking

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Have you been working with cases regarding labor exploitation/labor trafficking?
- Yes
- No
KGACLC/SCU – SBCEHT portion of this presentation:

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LABOR EXPLOITATION CONTINUUM

Wage Slaves
Regulatory Non-Compliance
Regulatory Evasion
Wage Theft
Fraud in Foreign Labor Contracting
Human Trafficking
# Wage & Hour Investigation to Labor Exploitation or Labor Trafficking

## Wage & Hour Cases

## Labor Exploitation
- Less pay than promised, withheld pay, deductions
- Below minimum wage
- Denial of pay
- No written earnings statement
- Lack of safe water, toilet
- Hazardous work environment
- No meal breaks

## Intermediate Experiences
- Movement to work controlled
- Physical or verbal abuse
- Employee lives where he/she works
- Visa fraud
- Inequalities between employer and employee
- Financial harm

## Labor Trafficking
- Climate of fear
- Deprivation of basic needs
- Disorienting, demoralizing environment
- Use of violence, threats of violence
- Diminished resistance
- Intimidation and control
- Fraud, deception
- Use or threatened abuse of law
- Debt owed – real or perceived
• Workers’ Compensation Insurance Fraud
  ◦ Have policy but missing payroll (or misreported work or suppressed claims)
    • 2-3-5 felony
  ◦ No policy = misdemeanor
    • 1 year jail, $10k min fine
• Payroll Tax Fraud 2117.5 and 2118.5 UIC
  ◦ Willful failure to report
  ◦ Willfully file false report
• #1 Red Flag = Cash Pay
PC 484/487: Theft of Labor/Wages
- If labor: analyze like dine & ditch
- If paying back from wages: what are consequences for employee who refuses; move up or down the continuum.
  - Felony = >$950
PC 532: Theft by False Pretenses
  - Beware of written agreements
LC 1199: Failure to Pay Minimum Wage
The previously listed codes apply to the State of California. Do you know if your state has labor codes specific to wage theft and labor exploitation?

- Yes, we do!
- No, not that I know of.
- I do not know.
• Labor trafficking involves wage theft or failure to pay wages that are legally owed

• Wage theft or a violation of a law enforced by the Wage and Hour Division alone does not constitute labor trafficking

• To constitute trafficking, the trafficker must exercise such physical or psychological control that the victim does not believe he or she is free to leave
  ◦ e.g., physical harm, physical restraint, threats of harm, abuse of legal process, document retention, debt bondage

Wage Theft Alone is Not Human Trafficking
What Is Wage Theft?

Wage theft is the failure to pay workers as required under the law. It could take the form of:

- Failure to pay minimum wage
- Failure to pay overtime for nonexempt employees
- Forcing workers to work off the clock (after punching out) and not paying for the “off the clock” work, and/or
- Failure to pay any wages at all

Employers will often misclassify employees as exempt or as independent contractor to avoid paying overtime or providing lunch periods, meal breaks and rest breaks.

Also, employers will take unlawful deductions from a worker’s paycheck.
Promissory Fraud (false promises) may occur in a labor trafficking case.

Labor Code 970 (the promissory fraud statute) may also occur in a labor trafficking case.

Promissory Fraud and Labor Code 970 alone do not constitute labor trafficking.

**Promissory Fraud Alone Is Not Human Trafficking**
• Sexual harassment (rape, touching, or words) may occur in a human trafficking case

• National origin harassment or religious harassment may occur in a human trafficking case

• Sexual harassment, national origin harassment, and/or religious harassment alone do not constitute a human trafficking case

Sexual, National Origin, and Religious Harassment and Human Trafficking
Severe forms of human trafficking are:

a) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age; or

b) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. [Emphasis added]
Considerations in Labor Trafficking

- A “climate of fear” that compels labor or service
  - Physical or verbal abuse
  - Poor working and living conditions
  - Denial of adequate rest, breaks, medical care
  - Withholding of pay
  - Threats of harm or threats of deportation
  - Social isolation

- Victim’s “special vulnerabilities”
  - Physical, mental condition
  - Education, socioeconomic status
  - Inequalities between victim and trafficker
  - Unstable immigration status

- Recruitment schemes, fraud, coercion
- There does not need to be physical restraints
- The victim may have initially agreed to perform work
18 U.S. Code §1351

(a) Work Inside the United States.— Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment in the United States by means of materially false or fraudulent pretenses, representations, or promises regarding that employment shall be fined under this title, or imprisoned for not more than 5 years, or both. 

[emphasis added]
(b) Work Outside the United States.— Whoever knowingly and with intent to defraud recruits, solicits, or hires a person outside the United States or causes another person to recruit, solicit, or hire a person outside the United States, or attempts to do so, for purposes of employment performed on a United States Government contract performed outside the United States, or on a United States military installation or mission outside the United States, or other property or premises outside the United States owned or controlled by the United States Government, by means of materially false or fraudulent pretenses, representations, or promises regarding that employment, shall be fined under this title, or imprisoned for not more than 5 years, or both. [emphasis added]
Have you dealt with fraud in foreign labor contracting with victims from countries other than the Philippines? If so, where?
• What visas are you seeing used in cases of fraud in foreign labor contracting?
  ◦ H-1B
  ◦ H-2A
  ◦ H-2B
  ◦ B-1
  ◦ E-2
  ◦ Other
Human Trafficking

Recruiting: through fraud

- But also through coercion and force
- Fraud can go to employment or other false promises
- Harboring, transporting, providing, or obtaining

Fraud in Foreign Labor Contracting

Recruiting: through materially false or fraudulent pretenses, representations, or promises regarding that employment

- Fraud regarding employment
- No mention of coercion or force

HUMAN TRAFFICKING vs. FFLC
Human Trafficking
• Present in United States or territory
  o American Samoa or the Commonwealth of the Northern Mariana Islands
• On account of the trafficking
• Note: U.S. Embassies and military bases are U.S. land

Fraud in Foreign Labor Contracting
• Contracting for work inside or outside of the United States
• If outside
  • for purposes of employment through contract with U.S. gov’t; military installation; mission; on property owned or controlled by U.S. gov’t

HUMAN TRAFFICKING VS. FFLC
Human Trafficking

For purposes of:
- Involuntary servitude
- Debt bondage
- Peonage
- Slavery

Debts

Threats
- physical restraint, serious harm, abuse of legal process

Force

Fraud in Foreign Labor Contracting

- Recruit, solicit, or hire
- For purposes of employment
- By means of materially false or fraudulent pretenses, representations, or promises
- Does not need threats, force, or indebtedness

HUMAN TRAFFICKING VS. FFLC
U.S. Department of Labor Wage and Hour Division

Expands Support of Victims of Human Trafficking and Other Crimes
Have you worked with the Department of Labor for any previous or current cases dealing with labor exploitation/labor trafficking?

- Yes
- No
Industries for Labor Trafficking, Labor-Related Criminal Activity, Exploitation

- Domestic work
- Residential home care
- Restaurants
- Agriculture
- Construction
- Exploitation of H-1B, H-2B, H-2A workers
• Detection
  ◦ Of labor trafficking, labor-related crimes in the course of a WHD investigation
• Referrals
  ◦ To criminal and civil law enforcement partners
• Back Wages
  ◦ Calculations for securing restitution
• Human Trafficking Task Forces, ACTeams
• U Visa and T Visa Certifications

**Wage and Hour Division’s Role in Combating Labor Trafficking & Labor-Related Crimes**
U Visa Qualifying Criminal Activity

- Abduction
- Abusive Sexual Contact
- Blackmail
- Domestic Violence
- Extortion
- False Imprisonment
- Female Genital Mutilation
- Felonious Assault
- Fraud in Foreign Labor Contracting
- Hostage
- Incest
- Involuntary Servitude
- Kidnapping
- Manslaughter
- Murder
- Obstruction of Justice
- Peonage
- Perjury
- Prostitution
- Rape
- Sexual Assault
- Sexual Exploitation
- Slave Trade
- Stalking
- Torture
- Trafficking
- Witness Tampering
- Unlawful Criminal Restraint
- Other Related Crimes
U.S. Department of Labor
Wage and Hour Division’s
U and T Visa Certification Process
Wage and Hour Division Eligibility Requirements

**T Visa**
- Allegation of a severe form of trafficking in persons
- The alleged trafficking arises in the context of a work environment or an employment relationship
- There is a related, credible allegation of a violation of a law WHD enforces related to the work environment or employment relationship

**U Visa**
- Allegation of one of the 8 QCAs for which WHD will consider for certification
- The alleged QCA arises in the context of a work environment or an employment relationship
- There is a credible allegation of a violation of a law WHD enforces related to the work environment or employment relationship
Process Overview

How do U visa and T visa certification requests originate?

- Petitioner or advocate/attorney contacts WHD
- QCAs and/or trafficking are detected during the course of, or after, a WHD investigation
Initial Actions

Regional Coordinator – Workplace Crimes makes preliminary determination whether to recommend certification based on:

- Interview with petitioner
- Any supplemental information provided by petitioner or advocate on behalf of petitioner
- Any information, if available, during the course of a related WHD investigation
Final Determination

- Regional Coordinator – Workplace Crimes makes a final determination regarding recommendation.

- If recommend certification, provide recommendation to the WHD Regional Administrator to certify.
Case Examples
For Qualifying Criminal Activity and Trafficking in Persons
Questions?

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