

RECOMMENDATION A: STRENGTHEN STATE AGENCY PROGRAMS

Improve the ability of all State of California agencies responsible for working conditions to protect the safety and health of immigrant workers.

- A-1. Establish and meet linguistic capacity goals.** This recommendation applies to the new Labor and Workforce Development Agency (LWDA) and to other branches of the state government, such as the Department of Health Services (DHS), that have some responsibility for working conditions. [LWDA includes, among others, the Division of Occupational Safety and Health (DOSH), the Division of Labor Standards Enforcement (DLSE), and the Division of Workers' Compensation (DWC), all within the Department of Industrial Relations (DIR). See Appendix 5.]

These agencies are out of compliance with the Dymally-Alatorre Bilingual Services Act (Government Code Sections 7290-7299.8), which requires state agencies that are in contact with "a substantial number of non-English-speaking people" to evaluate and meet the linguistic needs of the public they serve. This Act is a starting point for improving access to the information and services provided by these agencies, as it requires that agencies provide materials in non-English languages and employ sufficient numbers of qualified bilingual persons in public contact positions. Therefore, these agencies should immediately develop and implement plans to meet this mandate, as well as broader requirements as proposed in 2002 in AB 2837 and SB 987 (see Appendix 2). The plans should include the following:

- A-1-a. Hire more bilingual and bicultural inspectors.** DOSH and DLSE should employ sufficient numbers of qualified bilingual and bicultural inspectors and office staff in public-contact positions to ensure that the same level of service is available to non-English-speaking workers as to English-speaking workers. The lack of bilingual inspectors severely limits a non-English-speaking worker's right to participate in the inspection process. Although DOSH is pilot-testing a telephone translation service, this is clearly inferior to having bilingual inspectors, at least in the most common languages encountered in the field.

DOSH and DLSE must receive funding to hire more staff and must have a plan for recruiting, hiring, training, and retaining qualified bilingual inspectors and other public contact staff. Hiring this additional staff will also help mitigate the severe staffing shortage discussed in Recommendation A-5, below. The Department of Public Administration should assist in creating job titles and pay scales to allow effective recruitment of bilingual staff.

Prior to hiring sufficient numbers of bilingual staff, DOSH and DLSE should develop an interim plan that identifies current bilingual personnel within each geographic region and arranges for sharing of resources between offices, as needed to cover the major languages appropriate to each office.

A-1-b. Train and recruit bilingual health and safety professionals. DOSH should work with universities and others to recruit bilingual industrial hygienists and other occupational safety and health professionals, and support their training through stipends and assistance with graduate school tuition.

A-1-c. Develop culturally and linguistically appropriate educational methods and materials. Immigrant workers need to have access to the same information currently available to English-speaking workers. State agencies should develop culturally and linguistically appropriate strategies for producing and disseminating information to immigrant workers. To identify the best strategies, the agencies should work with organizations that have experience doing outreach and education in immigrant communities (For example, see Recommendation A-2).

Strategies might include: translating selected written materials (such as forms, applications, notices); adapting other written materials taking literacy levels into account; and developing new communication tools, such as videos, hotlines, and media spots, that may be better vehicles for reaching immigrant workers. Prior to developing new materials, the agencies should assess what is already available. Materials and other informational resources should be distributed in appropriate communities and posted on the Web.

A-2. Create a multilingual advisory committee for the new Labor and Workforce Development Agency. The agency should establish a committee representing immigrant communities and organizations to oversee the coordination and development of information and services for immigrant workers. The committee would be involved in planning an effective outreach strategy, designing and implementing educational efforts, and helping the new agency prepare annual progress reports in this area.

A-3. Improve inspectors' ability to involve immigrant workers in the inspection process. Staff of the new Labor and Workforce Development Agency should participate in a training program to improve the ability of inspectors to approach and talk with non-English-speaking workers in the workplace. It is important for inspectors to have a true understanding of the conditions these workers experience and of their sense of vulnerability within the workplace, as well as of the cultural and linguistic barriers that could be at play. Inspectors who are successful in involving immigrant workers in the inspection process should share their strategies with others.

A-4. Require that health and safety information provided by employers be available in non-English languages. The Cal/OSHA standard requiring every employer to develop and implement an injury and illness prevention program (Title 8, California Code of Regulations, section 3203) mandates that communication about health and safety matters be "in a form readily understandable by all affected employees." DOSH inspectors should be directed, through DOSH policies and procedures, to inquire about possible language barriers and to cite employers for violations of this standard if training and

communication on health and safety matters is not provided in appropriate non-English languages.

A-5. Direct more enforcement efforts to high-risk immigrant workplaces.

A-5-a. Increase targeted inspections. DOSH is severely understaffed, with well under the bare minimum number of inspectors (238) required by the negotiated federal benchmark. This understaffing results in little inspection activity that is not complaint driven. Because immigrant workers are least likely to file complaints, the immigrant sector of the workforce is disproportionately affected. In revitalizing targeted inspections and determining which industries to target, the agency should investigate the use of additional criteria beyond workers' compensation statistics, which are used currently to identify high-hazard industries. These greatly underestimate the incidence of injuries and illnesses among immigrant workers, because many do not apply for compensation.

A-5-b. Create partnerships with community-based organizations (CBOs), and treat complaints filed by CBOs as formal complaints. Community-based organizations (CBOs) can play a critical role in assisting workers, in a culturally and linguistically appropriate manner, in exercising their legal rights. Immigrant workers may be more likely to report hazards to a trusted source in their own community than go directly to a governmental agency. (See also Recommendation C-1.)

Through pilot partnerships with the new labor agency, CBOs could conduct outreach, provide training, develop materials, and assist in representing workers in filing complaints with DOSH, DLSE, and other agencies. The agencies should treat complaints filed by CBOs as formal complaints, triggering an on-site investigation, and should involve the CBOs in any follow-up that results. (In Illinois, federal OSHA has worked with community groups to develop an advocacy program that allows low-wage and immigrant workers to file complaints through an organization called the Chicago Area Workers' Rights Initiative.)

A-5-c. Create partnerships with local enforcement agencies to encourage them to report hazardous conditions to DOSH. On a pilot basis, in several communities, DOSH should enter into partnerships with local enforcement agencies, including fire departments, county health inspectors, and others, to report hazardous conditions to DOSH, especially regarding "informal" workplaces that are often overlooked. Where workers are unlikely to know about DOSH or are afraid to report hazards or file complaints, this may be the only possible "trigger" for inspecting some of the most hazardous worksites.

In San Francisco, for example, DOSH participates in a special group (Coordinated Enforcement Agency Task Force) that was established to coordinate responses by multiple state and local agencies to problems involving hazardous materials.

Similarly, discussions are underway in Alameda County to bring together representatives from DOSH and local agencies, to better coordinate their respective responses.

- A-5-d. Coordinate enforcement efforts to protect farmworkers.** The agricultural industry is unusual in that two different agencies enforce laws to protect the health and safety of farmworkers. County Agricultural Commissioners, within the Department of Pesticide Regulation, enforce the laws governing exposure to pesticides. DOSH, within the Department of Industrial Relations, enforces all other laws pertaining to farmworker safety and health. These two agencies should share information about site-specific problems and coordinate their enforcement efforts.
- A-6. Protect whistleblowers.** It is illegal for an employer to retaliate against workers who exercise their rights to report workplace injuries, illnesses, and unsafe conditions to management and to file complaints with Cal/OSHA. California, however, has a poor record in protecting whistleblowers who exercise these rights. Although workers who are discriminated against for exercising these rights can file complaints with DLSE, there is no aggressive program to investigate these complaints. This especially impacts immigrant workers, who feel particularly vulnerable to retaliation for addressing health and safety concerns. DLSE should take immediate steps to improve the training and supervision of its investigators. A plan for improving investigation of discrimination complaints should include hiring of additional bilingual investigators. For workers who exercise their rights, there must be full protection from discrimination based on immigration status.
- A-7. Create an Office of Immigrant Affairs (OIA) within LWDA.** The person heading the OIA should have a position equivalent to Deputy Under Secretary, and the main responsibilities of OIA would be to advise the Governor and Secretary of Labor on issues affecting immigrant workers, make recommendations on internal procedures and policies that will improve conditions for immigrants, and act as a liaison between working immigrant communities and LWDA. Objectives A1-A6 should be carried out under the supervision and oversight of a newly created OIA.

RECOMMENDATION B: SUPPORT WORKPLACE EFFORTS

Support workplace efforts to improve health and safety conditions in high-hazard jobs where large numbers of immigrant workers are employed.

- B-1. Disseminate information about existing solutions to reduce or eliminate serious hazards.** The key industries that employ immigrants in California are agriculture, manufacturing, construction, and personal service. The Department of Health Services (DHS) should convene a committee to identify effective engineering controls and other methods that can reduce or eliminate the most serious hazards faced by immigrant workers in these key industries. Plans should be developed to promote these methods and disseminate information on them to employers, unions, and other interested parties.

For example, fall protection campaigns have been successful in other parts of the country and should be implemented in California. In garment manufacturing, community-based efforts in the San Francisco Bay Area have identified a low-cost workstation that can reduce ergonomic injuries; additional funding is needed to disseminate information about this engineering solution. Similarly, in agriculture, it is known that "run-overs" by motor tractor and other equipment are a significant cause of death among farmworkers and that a simple lockout mechanism to prevent idling vehicles from moving would largely solve the problem. The committee should review available research findings about effective solutions, and should collect information from employers and trade associations about "best practices" that have successfully reduced hazards in occupations where immigrant workers are typically employed.

- B-2. Provide incentives for employers.** The committee (described in Recommendation B-1) should identify available resources to help employers implement the suggested solutions. Particular emphasis should be placed on assisting small employers, such as through grants programs. (The State of Ohio offers matching grants of up to \$40,000 to businesses that will use the funds to reduce or eliminate the risk of cumulative trauma disorders in the workplace. The State of Oregon previously offered grants of up to \$150,000 to employers who would use the funds to develop solutions to workplace health and safety problems or design a process or project to solve a problem.) Other incentives might include, but are not limited to, insurance rebates, tax credits, and loans. In exploring possible incentives, there should be an examination of existing incentive systems that encourage safer workplaces. Any incentive program should be carefully evaluated to ensure that it is effective and does not discourage reporting of injuries.

- B-3. Support research on new workplace solutions.** Where effective solutions are not known, engineering research and intervention effectiveness studies should be conducted. A California Occupational Research Agenda should be established to set priorities and fund practical research, with emphasis placed on research that will demonstrably improve health and safety conditions for immigrant workers. In agriculture and construction, for example, solutions to ergonomic hazards need to be developed and tested. Research results should be disseminated to employers, unions and other interested parties.

B-4. Train and assist employers. Governmental agencies, trade associations, and workers' compensation insurers should develop and implement outreach efforts to provide appropriate training and assistance to enable employers of immigrants to establish effective injury and illness prevention programs. Often employers of immigrants are immigrants themselves. Small employers and non-English-speaking employers in particular may need assistance in developing good programs and may need training on their roles and responsibilities under the law.

The Cal/OSHA Consultation Service should give priority to employers of immigrant workers in high-hazard industries, and should have multilingual capacity to assist non-English-speaking employers. Moreover, Consultation should assess employers' needs with respect to multilingual materials and meet the needs that are identified. Consultation should also disseminate examples of how employers can successfully integrate a multilingual workforce into their health and safety programs, such as through providing translation at all meetings.

The Labor and Workforce Development Agency should explore methods to disseminate information about employers' obligations and resources available to them, possibly utilizing the business license process. One possible venue to reach employers in the construction industry, for example, is through the Contractors State License Board, which licenses and regulates contractors in California. At a local level, employers could receive information and assistance through partnerships that include employer associations, community-based organizations (CBOs), unions, Certified Unified Program Agencies (CUPAs), governmental agencies, and insurers. CBOs can also be directly involved in proactive efforts to do outreach to employers in their communities. Funding should be made available to test local pilot projects to support these partnerships.

B-5. Encourage unions to provide education to employers and workers. Unions can play a key role in employer and employee education, especially in industries like the building trades where there are joint labor-management training programs. Unions can also develop means to improve immigrants' employment opportunities, such as encouraging and supporting immigrants to enter apprenticeships programs.

RECOMMENDATION C: PROMOTE LOCAL COMMUNITY ACTION

Enhance the ability of local communities to take a more active role in protecting and assisting immigrant workers.

- C-1. Provide training and assistance to workers through community-based organizations (CBOs) and unions.** One of the most effective means of delivering information to immigrant workers is through organizations that they know and trust. CBOs, non-profit service organizations, and unions should be funded to carry out training programs for employers and workers, in their own languages, addressing hazard recognition and control as well as legal rights and benefits. These organizations can also expand outreach efforts to reach immigrant workers through other trusted community organizations, such as churches, and develop broader community programs to identify high-risk workplaces and gather more information on working conditions. Moreover, these organizations can be involved in partnerships with Cal/OSHA to report hazards and in advocating for workers to achieve improvements in the workplace (See Recommendation A-5).

Funding criteria should be established based on input from these organizations regarding which outreach and education methods work well in the different immigrant communities, and where resources are needed. These efforts should be well documented and evaluated, in order to identify best practices and promote successes at a broader level.

- C-2. Identify and collaborate with existing economic development and job training programs.** Many public and/or nonprofit programs provide a range of employment-related services to low-income immigrant workers. These include: city programs funded by the U.S. Department of Housing and Urban Development through its Community Development Block Grant program; One-Stop Career Centers and other resources and services funded by the federal Workforce Investment Act; and resources and services of the California Work Opportunity and Responsibility to Kids (CalWORKs) program. These work and community programs should be identified and called upon to help train immigrant workers and assist in efforts to improve health and safety conditions in workplaces.
- C-3. Develop local media campaigns.** The ethnic media have been a useful vehicle to reach immigrants around other public health and immigrant rights issues. Many governmental agencies and other organizations use radio, television and print media to publicize events, educate the community, and build community support for an issue. The Department of Health Services' Immunization Branch has developed an interesting media campaign that uses culturally-appropriate messages to promote immunizations in immigrant communities. A similar approach should be undertaken with respect to occupational health, both to increase awareness of these issues and their impact on immigrant communities, and to teach immigrants about their health and safety rights. Moreover, a broader media campaign should highlight the contributions that immigrants make to the

state's economy, as well as the benefits of investing in prevention of occupational injuries and illnesses.

C-4. Explore possible funding mechanisms to support outreach and education activities.

Possible funders for community-based educational programs include private foundations, state and federal agencies, and state and federal legislative appropriations. There is a need to educate private funders on occupational health issues, and to work with them to link occupational health to the broader health issues that impact immigrant communities.

A potential model for funding educational efforts is the capacity-building grant program sponsored by federal OSHA. This program covers a broad range of activities such as outreach, education, curriculum and materials development, consultation, and resource development and offers funding for multi-year projects.

C-4.a. Release special state funds allocated for worker training. One specific source of funding for training programs targeting immigrant workers is the Workers' Occupational Safety and Health Education Fund enacted as part of workers' compensation legislation in 2002. (See Labor Code section 6345.7.) This fund is earmarked for establishing and maintaining a statewide worker safety and health training and education program. This program would involve developing a health and safety curriculum and delivering trainings to workers on injury and illness prevention, through a network of training providers. Workers who do not speak English as their first language are one of the specific target groups of this legislation, as are industries on the "high-hazard" list, where many immigrants are employed. In Fall 2002, however, Governor Davis prohibited spending of monies from this fund. The Governor should immediately release monies from the fund, which exists as a special account in the State Treasury.

C-5. Improve immigrants' access to medical care at public, community, and private health care facilities. Many immigrant workers who are injured on the job do not receive medical care in the workers' compensation system but instead seek care on their own. However, community clinics, county hospitals, and private health care facilities often decline to provide full services to workers with job injuries. In some cases, this may be due to difficulty in complying with medical-legal reporting requirements in the workers' compensation system and with complicated procedures for seeking reimbursement from workers' compensation insurers. Insurers may also deny claims or refuse to pay for some services. Furthermore, health care providers may not provide adequate treatment due to an inability to recognize the work-related causes of an injury or illness, or due to an inability to communicate with non-English-speaking workers.

Methods should be explored for training and assisting clinics, hospitals, and other health care facilities in understanding workers' compensation reporting requirements, obtaining reimbursement for services, and improving linguistic and cultural access for non-English-speaking patients. In addition, health care providers should be trained to look for and diagnose possible work-related causes of injuries, and to render appropriate treatment.

Community-based clinics and public clinics, often the principal providers in immigrant communities, should be funded to carry out educational programs for immigrants on occupational health. Joint projects should be developed with the California Primary Care Association, the California State Association of Counties, and the California Association of Public Hospitals to raise awareness among community and county clinics about the occupational health issues impacting immigrants in their communities, and enable them to include occupational health in the health education programs they provide. These associations could also assist in publicizing the efforts of clinics which are successfully implementing programs for immigrants.

At the local level, employers should be given information about the resources offered by primary care clinics in their area.

- C-6. Expand the role of county health departments.** County health departments can play a strong role in enforcement and referrals as well as in conducting outreach and education programs for immigrant communities (see Recommendation A-5). Inspectors from the Certified Unified Program Agencies (CUPAs) and other local agencies should be involved in partnerships to deliver information to employers. For example, DHS worked with hazardous materials inspectors to disseminate a health hazard advisory on n-Hexane to auto repair shops across the state. The advisory contained information on pollution prevention and worker health and safety, thus meeting the goals of both agencies. DHS should develop joint projects with county health departments to help them identify resources available and resources they would need to address occupational health as one of the public health issues that affects their communities.

RECOMMENDATION D: INVOLVE IMMIGRANT WORKERS

Involve immigrant workers in exercising their safety and workplace rights.

D-1. Support workers who participate in health and safety programs and exercise their rights.

D-1-a. Provide training. Train immigrant workers, through labor and community-based organizations, in recognition and control of hazards, legal rights, and resources. Train-the-trainer programs can also be effective in enabling workers to teach other workers. Any training efforts should involve linguistically and culturally appropriate strategies. (See also Recommendations A-1-c, A-2, A-4 and C-1, B-5.)

D-1-b. Remove the threat of deportation. Immigrant workers have been threatened with deportation in retaliation for exercising their rights and reporting hazards. Legal and policy strategies to overcome this obstacle should be explored and developed. Efforts to improve whistleblower protection in California should take into account that immigrants are particularly vulnerable to retaliation because of their immigration status. (See also Recommendation A-6.)

D-1-c. Require employers to involve workers in their safety programs. Workers can take an active role in workplace injury and illness prevention through a health and safety committee or other means. Successful worker involvement will require comprehensive training and full protection against discrimination for all worker representatives participating in these programs. It will also be necessary to specify the representatives' roles, how they will be selected, and the amount of release time and other resources that must be provided to them.

D-1-d. Learn more about the barriers immigrant workers face. Study the obstacles to advocating for health and safety changes in the workplace, and explore specific solutions to address these obstacles.

D-2. Involve workers in policy activities. Organizations should provide opportunities for workers to directly influence public policy efforts.

D-2-a. Enable workers to provide testimony at public hearings. Hearings should be held in a variety of settings, and workers should testify about hazardous conditions, especially in the "informal" or "underground" California economy.

RECOMMENDATION E: IMPROVE DATA COLLECTION

Develop data collection methods that can be used to support responsive policies and programs.

E-1. Determine the extent of underreporting. DOSH requires employers to record on Form 300 work-related injuries and illnesses that result in death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, loss of consciousness, or diagnosis of a significant injury or illness by a physician or other licensed health care professional. Small businesses with 10 or fewer employees are exempt from these recordkeeping requirements. Employers are also required to report work-related injuries to their workers' compensation insurers (or to another department within the company if the employer is self-insured).

Workers and employers, however, often fail to report injuries in both of these recordkeeping systems, due to lack of knowledge, financial concerns, fear of discrimination or retaliation, and other obstacles. Immigrant workers in particular often do not want to report injuries because of fear of repercussions.

One or more studies should be funded to explore the extent of underreporting of injuries and illnesses among immigrant workers, particularly in the "informal" economy. These could build upon findings of an ongoing UC San Francisco research project that is studying barriers to occupational injury and illness treatment and prevention services to low-wage workers in California.

E-2. Develop improved reporting systems. Researchers, labor organizations, and agencies in other states may already have addressed some of the problems of underreporting and begun to develop alternative reporting systems.¹ Efforts should be made to identify and partner with these concerned parties to create a pilot program to test alternative, community-based reporting systems (e.g., through community clinics, emergency rooms, community-based organizations, county health departments, or unions). DHS should provide technical support to those organizations seeking to pilot test new data collection methods, particularly in a community-based setting.

¹ See, for example, the list of references in Azaroff L, Levenstein C, and Wegman D, "Occupational Injury and Illness Surveillance: Conceptual Filters Explain Underreporting," *American Journal of Public Health*, 92:1421-1429 (2002).

RECOMMENDATION F: TAKE LEGISLATIVE ACTION

Educate policymakers and develop legislation to meet immigrant workers' health and safety crisis.

- F-1. Hold briefings with legislators and staff.** Some of the recommendations in this report require changes in public policy and new legislation. Meetings should be arranged with legislators, their staff and other policy makers to present the scope of the problem and explain these recommendations.
- F-2. Hold statewide legislative hearings.** Present testimony from immigrant workers and their employers about the difficulties faced in addressing health and safety issues, and elicit ideas for solutions from them and others. After one year, follow-up hearings should be held to assess the state's progress in protecting the health and safety of immigrant workers.
- F-3. Introduce legislation where needed to make changes in public policy, and monitor policy implementation.** Worker advocates, immigrant advocates, labor, employers, and others should collaborate to develop legislation that is protective of immigrant workers. (See also Recommendation A-6.)
- F-3-a. Close gaps in workers' compensation coverage and occupational safety and health laws.** Many temporary and part-time residential jobs that are commonly held by immigrant workers, such as day labor and childcare, are excluded from workers' compensation coverage. Many of these workers do not work enough hours or earn enough money from the same homeowner to qualify for workers' compensation benefits. (See Labor Code sections 3352(h) and 3715(b).) In addition, Cal/OSHA inspectors often avoid citing homeowners who act as employers. As a result, many immigrant workers face hazards at work without the protection of Cal/OSHA or the care and assistance provided by workers' compensation in case of injury.

RECOMMENDATION G: COORDINATE EFFORTS

Create a system to coordinate statewide efforts to prevent job-related injuries and illnesses among immigrant workers.

- G-1. Create a resource network to assist with outreach, educational and policy efforts.** Part of the network's function should be to seek opportunities to provide educational materials, technical assistance, and support to organizations, workers, agencies, employer associations and others who want to conduct health and safety programs with immigrant workers. Moreover, the network should emphasize the dissemination of concrete tools (such as sample radio spots and training guides) and promote as models those organizations that are successfully reaching immigrant workers. A coordinated network will help bring together the different parties for collaborative educational and policy efforts that can have a significant impact on protecting the health and safety of immigrant workers.
- G-2. Provide a clearinghouse of multilingual resource materials.** There is a need for a clearinghouse to collect examples of successful education and outreach strategies and multilingual educational resources on health and safety issues that impact immigrants. This clearinghouse should provide online listings of available materials and links to organizations that produce them. Part of this work should be to identify gaps and develop new materials where they are needed. A review process should be created to evaluate and determine which materials and other resources to include.