



Principles of Co-enforcement for CLASP Sick Days Enforcement Convening September 26, 2017

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Strategic Enforcement

Targeting investigations *where evidence shows labor law violations are greatest—that is, in industries where workers are most likely to be mistakenly or deliberately cheated out of their wages, and where they are least likely to speak up and report such violations*

Strategic enforcement=Co-enforcement

Unions, worker centers, community organizations and high road firms in relationship with inspectors, helping to patrol their labor markets for unfair competition so that government can investigate and swiftly punish businesses engaged in unethical and illegal practices

Those with the most information and greatest incentives partner with government to enforce the law.

Co-enforcement

For strategic enforcement to fulfill its promise, workers, worker organizations and high road firms must play a central role

It is not just about there not being enough inspectors, although that is undoubtedly the case. **Workers, worker and community organizations and firms will always know things that government won't.**

Design Principles for Co-Enforcement



#1 Recognize and leverage the unique capabilities of state and society... **“non-substitutability”**

Regulators:

- Power to investigate
- Conduct on-site inspection
- Demand information
- Power to punish: fines, suspensions, close down firms
- Know complexities of the laws
- Enforce regulations where worker organizations are weak
- Ability to identify retaliation against complainants/informants and provide protection through heightened enforcement presence
- Legitimate worker organizations' campaigns
- Ability to empower organizations

Non-substitutable Capabilities

Workers:

- Tacit Knowledge of the work process
- Information about what the employer is doing
- Experience of the work conditions and changes in employer behavior over time
- Relationships with other workers
- Presence at the worksite every day

Non-substitutable Capabilities

Worker and Community Organizations:

(NOTE: Organizational capacity varies significantly)

- Communities of interest among dispersed labor force
- Trust of Workers/Relationships with workers
- Organizing capacity
- Access to information
- Language capacity
- Availability beyond 9-5
- Sources of expertise on industries and employer schemes
- Ability to build cases, expand complainants
- Ability to cast issue in moral terms and mobilize political support for agencies
- Countervailing power to employers
- Enduring presence to ensure compliance

Non-substitutable capabilities: **High Road Firms**

- Power to establish a set of best practices at their own firms regarding wages, working conditions, benefits and scheduling
- Power to use their buying power to require these practices of firms throughout their supply chains backed up by strong market consequences for violators.
- Power to join with like-minded businesses to advocate for high road practices in their sectors
- Power to strengthen enforcement of minimum standards through working with government agencies and worker organizations as well as
- Power to finance private monitoring and watch dog organizations to patrol labor markets for unfair competition.

#2 Routinize the flow of information and resources across the state-society divide



- Information Sharing
- Formalized roles
- Repeat Interactions
- Resources

Anybody remember these two?



#3 Prioritization of the Relationship, Recognition of Needs of Each Party, Clear Communication and Decision-making Processes

- ***Collaborative Governance*** focuses on the actual processes through which public agencies work with non-state stakeholders to make or implement public policy or manage public programs and assets.
- CG emphasizes decision-making processes that are formal, consensus-oriented and deliberative.
- While projects are initiated by government, they include non-state actors from the very beginning, are formally organized and imbue all participants with decision-making power and real responsibility for policy outcomes.

Collaborative Governance and Community Regulation: (Ansell and Gash, O'Rourke)

- Success depends upon strong relationships between state agencies and workers, worker organizations and high-road firms.
- Trust, adaptation, accountability and communication are key to these relationships.
- Critical for the parties to recognize the “starting conditions” of the collaboration, including power differentials; to understand what incentives to participation exist or do not exist, and to acknowledge what may have happened in the past that has either created antagonism or paved the way toward cooperation.

Recognizing the Needs of Each Party

Agencies

- Bringing good leads and preparing solid cases
- Preserving confidentiality and respecting process
- Administrative accountability
- Recognizing political constraints
- Not being publicly targeted

Organizations

- Preserving trust of workers is paramount even at expense of cases
- Information about cases are central to preserving credibility with workers
- Practical and financially sustainable contract
- Reasonable reporting requirements
- Integrated into broader program work

Contrasting Co-enforcement Implementation

Thinner

- Contract for door to door canvassing only
- Distribution restricted to agency material
- Limited information sharing
- No role during investigation and settlement processes
- Short term contracts for very specific tasks, small amounts, excessive reporting
- Limited communication

Thicker

- Broader, longer term contract for outreach, education, training and investigatory support
- Outreach allows for integration of organization's program
- Agency looks to share information as much as possible
- Agreement on a theory of deterrence
- Forum for thinking creatively and strategizing together

Put time and resources into structuring and facilitating the collaboration

- In rare cases, negotiations take place organically without assistance, but in most cases, CG has not been possible without facilitative leadership on both sides, with leaders who bring stakeholders together, set and maintain clear ground rules, build trust, facilitate dialogue explore mutual gains and work together in a collaborative spirit
- How can you put a set of protocols in place and foster relationships for ongoing collaboration?

4. Political Support to Create and Defend Enforcement and Collaboration

- **Business often pushes back against regulation by trying to discredit the regulator**
- **Co-enforcement requires strong ongoing external and internal political support within the state and within the organizations**

Example: California Labor Commissioner

- Targeting sectors rife with wage theft including agriculture, janitorial, residential care facilities, carwash, restaurant, garment, construction
- Investigators used to conduct randomized sweeps, identifying their targets through the yellow pages and internet searches, they now work with community-based organizations that, because of their relationships with vulnerable workers in at-risk sectors, know where the violations are occurring and how they are masked
- The organizations are helping to bridge the trust and information gap between workers and law enforcement, uncovering major cases of wage theft and safety violations and vastly increasing the number of violations identified, claims filed and wages collected

Labor Commissioner Julie Su

“One of the best ways we have established for finding violations is to work with community-based organizations who already have the trust of workers, speak the language of workers, understand how violations occur and are often masked, and are willing to collaborate with us by giving us leads and helping to bridge the trust gap between workers and law enforcement.”

Recommendations for Agencies:

- Developing a collective “Logic of Deterrence”
- Strategic enforcement: targeting high violation sectors...choose a sector and try it
- Working “up the chain” to the most powerful entities in the employment relationship...holding Joint Employers Liable
- Intake that does not require worker to know the specific statute that has been violated
- Triage of complaints
- Allow Third Party Complaints and for worker to designate an organization as their representative for information-sharing on complaint form
- Investigations permitted with or without complaints

Recommendations continued

- Co-enforcement: building trust, sharing and accepting information, involving key organizations in education, training and investigations, funding when possible
- Strongest Fines and Penalties
- Powerful collections strategies:
 - Tying Enforcement to Licensing
 - Requiring Bonding from businesses in high violation sectors
 - Getting to the top of the industrial food chain and holding them liable
 - Filing Liens on Assets, Garnishing Wages, Revoking Licenses for unpaid final orders, Contract Debarment, no bidding on new contracts until final order paid in full

Recommendations continued

- Stipulating future employment practices in Settlement Agreements
- Aggressively publicizing large financial settlements: targeted publication to get to the industry you want to reach
- Compliance Monitoring
- Non-retaliation w rebuttable presumption if adverse action occurs within 90 days, Reinstatement and High Penalties
- Looking favorably on organizations that are working to improve conditions in the labor market because organized sectors result in increased labor law compliance: unions, worker centers, hiring halls, employer associations