

The POWER Act

Protect Our Workers from Exploitation and Retaliation Act

JUNE 2011

On June 14, 2011, Sen. Robert Menendez (D-NJ) and Reps. George Miller (D-CA) and Judy Chu (D-CA) introduced the Protect Our Workers from Exploitation and Retaliation (POWER) Act, which is designed to provide important labor protections for some of our country's most vulnerable workers—immigrants—and contains vital safeguards against retaliation by employers.

All too often, employers of workers who complain about illegal working conditions either retaliate or threaten to retaliate against them based on the workers' immigration status. Some workers are too afraid of retaliation to confront their employer about illegal conditions. The result is workplaces where illegal employment practices flourish—creating poor working conditions for all workers.

By mandating changes in how the Department of Homeland Security (DHS) conducts worksite immigration enforcement and by creating new protections for workers, POWER would help ensure that enforcement of federal immigration law does not undermine workers' basic job-related rights. The legislation marks a vital step forward and will help create safe and just workplaces for all workers.

POWER's Key Provisions

- **U-Visas for victims of retaliation.** Workers may receive a U-visa if they are involved in a workplace claim and reasonably fear or have actually been threatened with force, physical restraint, serious harm, or other abuses. To qualify, a worker must have suffered substantial abuse or harm from the serious labor violation, or must show that he or she would suffer extreme hardship if removed from the U.S. In addition, the worker must cooperate with a federal, state or local prosecutor, judge, or investigating agency.
- **Stay of removal and employment authorization.** Workers who have filed workplace claims or who are material witnesses in a workplace claim may receive a stay of removal and employment authorization until the workplace claim is resolved. This would allow

workers to more effectively claim their labor rights and would allow the U.S. Department of Labor (DOL) to effectively prosecute employers who break the law.

- **Worksite enforcement.** In certain situations, DHS *would be required to ensure* that workers arrested or detained as part of worksite immigration enforcement are not removed from the U.S. before the appropriate investigating agency (1) is notified and (2) has a chance to interview these workers.

POWER's Importance

- **Supports workers' ability to vindicate their labor rights.** POWER's provisions will help ensure that workers involved in labor disputes will not be deported without an opportunity to speak with workplace enforcement agents, such as DOL or Equal Employment Opportunity Commission investigators.
- **Lessens the incentives for employers to use workplace raids as means to avoid compliance with labor laws.** Without these provisions, employers have an incentive to use DHS as a tool to thwart labor laws. Currently, an employer that does not want to follow basic provisions of the law can use DHS enforcement — or the threat of DHS enforcement—to quash workers' attempts to vindicate their rights.
- **Allows workplace enforcement agencies to effectively serve immigrant workers.** POWER provides that investigators and attorneys at workplace enforcement agencies have ample opportunity to interview workers who are victims of labor violations. Without this provision, investigators and attorneys cannot fully vindicate the rights of immigrant workers, particularly if those workers are removed from the U.S. before investigators can speak with them.
- **Promotes efficiency of DHS.** While providing protections against retaliation for workers, POWER also would provide DHS with clear guidance in what could otherwise be a bureaucratic tangle. It would reduce the incentives that drive retaliation-based raids and allow the agency to act on other, more pressing matters.

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