



**WORKER
RIGHTS
CONSORTIUM**

EFFECTIVE WORKER INTERVIEW TECHNIQUES

**Prepared for the California Division of
Labor Standards Enforcement (DLSE).**

July 2012

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**Julie A. Su**

California Labor Commissioner
Division of Labor Standards Enforcement

July 2012

Dear Field Enforcement Team,

I believe deeply in what we do and in all of you, and I am committed to bringing in the best trainers to help you do the best job you can every time you are in the field. We are a law enforcement agency tasked with protecting the state's workers. One of our biggest challenges is uncovering violations that employers don't want us to find in workplaces where workers may or may not know their rights and are often reluctant to talk to us, and where documents have been created in anticipation of our investigations that show something other than the reality of what is going on in the workplace.

This is why I am particularly excited about the trainings we had in May and June 2012 conducted by the Worker Rights Consortium (WRC). WRC has been conducting in-depth investigations to uncover labor law violations in factories in California and around the globe since 2000. Some of you may remember in the 1990s that growing attention to garment industry sweatshops led to a powerful movement by university students demanding that clothes and other goods with their university's name and logo be made in humane working conditions. The Worker Rights Consortium was founded to assist universities to ensure that goods bearing the schools' names were not made by exploited workers. It is the only organization of its kind, having pioneered a uniquely effective model for factory investigations that combines independence from corporate interests, highly skilled investigators, and meaningful partnerships with organizations on the ground. They are now also the monitor for the Cities of Los Angeles and San Francisco to ensure compliance with local anti-sweatshop ordinances.

I believe that their model is instructive for us. I think more effective investigations, particularly in workplaces where employers have developed sophisticated mechanisms for covering up underpayment of workers and use the threat of retaliation to keep workers silent, are critical to our success. Labor Code section 90 grants us "free access to all places of labor." But "access" does not guarantee a successful investigation. In fact, many times, it is the investigatory work done *off-site* and away from the employer that is critical to detecting violations. I would like to see us utilize these techniques to gain worker trust so they will speak with us, to conduct more effective worker interviews and incorporate these strategies into our investigations.

During the trainings, all of you shared your expertise, which included stories about the difficulty of gaining worker confidence and of overcoming workers' fears, the barriers to gathering accurate information during on-site interviews and the near impossibility of spending enough time to ask questions that would get at wage violations. Several of you also echoed one another in saying that when you passed out business cards and invited workers to call, the rate of workers contacting us was extremely low, estimated to be less than 5% of workers we meet during on-site inspections. What can we do to overcome these challenges?

This was the focus of the Effective Worker Interview training. Each of the four WRC trainers are expert in creative, strategic, and smart techniques to do effective, in-depth investigations. Their impressive bios are part of these materials. These bios and the case studies from WRC speak for themselves. Our four trainers collectively have five decades of experience doing investigations and worker interviews in factories on just about every continent. I worked with them to develop a training that is specifically tailored for us as a state law enforcement agency and to challenges we face in California. This manual is for you and is meant to be a tool for you to utilize. As always, I welcome your feedback.

Thank you again to the Worker Rights Consortium and to all of you for your dedication to ensuring that the labor law protections guaranteed to all in California are meaningful and real.

Very truly yours,

A handwritten signature in black ink, appearing to read "Julie A. Su". The signature is fluid and cursive, with a long horizontal stroke at the end.

Julie A. Su

Introduction

About this Manual

This manual was commissioned by Commissioner Julie Su as part of a training program for DLSE deputies on skills and strategies for effective worker interviews, which included one-day training sessions attended by deputies in Sacramento, Oakland, Los Angeles and San Diego in May 2012. This manual, like the May 2012 trainings, was developed for the DLSE by the Worker Rights Consortium (WRC) in conjunction with the University of California Berkeley Center for Labor Research and Education (UC Berkeley Labor Center).

This brief manual offers strategies and practical tips for carrying out effective interviews with workers, including how to:

- Make initial contact with workers and arrange interviews in locations in which workers feel free to speak openly and honestly about conditions in their workplace, including wage-and-hour violations.
- Overcome the barriers that often stand in the way of conducting effective interviews, including fear of retaliation, lack of trust, lack of motivation, and problems communicating with workers.
- Gather accurate and detailed information from workers through interviews that can be used in wage-and-hour enforcement.

This manual incorporates both the materials developed by the WRC for the May 2012 trainings and input received from DLSE deputies and other personnel who participated in these sessions.

The Worker Rights Consortium (WRC)

The WRC, which prepared this manual, is an independent nonprofit labor rights monitoring organization whose purpose is to combat sweatshop violations and protect the rights of workers who make apparel and other products, particularly those that bear the names and logos of universities and colleges or are purchased by state and local governments.

The WRC conducts independent in-depth investigations and issues public reports on factories around the globe that produce for major U.S. apparel brands, and aids workers at these factories in their efforts to end labor abuses and defend their workplace rights. More than 180 college and universities in the United States, Canada and the United Kingdom are affiliated with the WRC, including all University of California campuses. The WRC is also the official factory monitoring agent for the cities of Los Angeles and San Francisco under those cities' "sweatshop-free" procurement ordinances.

The WRC was founded in 2000 to assist universities with the enforcement of the labor rights codes of conduct that schools have adopted to protect the rights of workers producing apparel and other goods bearing their names and logos. In addition to its work for the cities of Los Angeles and San Francisco, the WRC also serves as a factory monitor for the Commonwealth of Pennsylvania, and the Catholic District School Board of Ontario, Canada, and has acted as a court-appointed monitor for the Los Angeles County Superior Court.

The WRC has investigated labor rights violations in Bangladesh, Cambodia, China, Dominican Republic, El Salvador, Guatemala, Haiti, Honduras, India, Indonesia, Kenya, Malaysia, Mexico, Nicaragua, Peru, Philippines, Puerto Rico, Sri Lanka, Swaziland, Thailand, Turkey, and the United States. The WRC's investigative methodology emphasizes two key strategies for uncovering and documenting labor rights violations:

- *"Offsite Interviews" with Workers.* WRC investigations rely heavily on interviews with workers because they are typically the persons most knowledgeable about, and most directly affected by, labor rights violations. The WRC conducts most of its interviews with workers away from the worksite ("offsite interviews"), in locations where workers feel secure and comfortable speaking with Investigators; and



- *Contacting Workers through “Community Partners.”* To contact and arrange interviews with workers, the WRC works in partnership with persons and/or organizations in the local community which are already known to, and trusted by, the workers whom the WRC seeks to interview.

Using these strategies, the WRC seeks to conduct “*High Impact Investigations*” – investigations that result in significant remediation of past violations and sustainable improvements in day-to-day conditions for workers within a given firm, region or industry.

To view a brief video introduction to the WRC and our work go to: <http://workersrights.weebly.com/>. Examples of cases in which the WRC has recovered significant wages or other monetary compensation owed to apparel factory workers can be found in Appendix A of this Manual.

Wage-and-Hour Compliance in California

DLSE deputies are charged with the crucially important responsibility of enforcing California’s wage and hour laws. Violations of these laws deny much-needed and hard-earned income to low-wage workers and their families and let dishonest employers undercut honest businesses. Ultimately, our communities pay the cost for such law-breaking through lost tax revenue and consumer spending.

Unfortunately, violations of wage-and-hour laws are pervasive in some parts of our state’s economy. Consider the following findings of a major study by UCLA researchers published in 2010, based on a survey of workers in a range of low wage industries in Los Angeles:¹

- Almost 30 percent of the workers surveyed had been paid less than the minimum wage in the work week preceding the survey. 63.3 percent of workers were underpaid by more than \$1.00 per hour.
- More than three-fourths (79.2 percent) of workers surveyed who had performed more than forty hours of work in the prior week for a single employer were not paid the legally required overtime rate by their employers.
- 71.2 percent of workers surveyed who performed work before and/or after their regular shifts in the prior week did not receive any pay at all for such “off-the-clock” work.
- More than three-fourths (80.3 percent) of workers surveyed who were legally entitled to a meal break experienced a meal break violation in the previous week.
- 81.7 percent of workers surveyed who were eligible for rest breaks were denied these breaks either entirely or in part during the previous work week.

On average, victims of underpayment lose 15% of their income.² Cumulatively, in Los Angeles alone wage theft deprives workers of more than \$26.2 million per week in earned in-

¹ Ruth Milkman, Ana Luz González, and Victor Narro, *Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers*, 53 (UCLA Institute for Research on Labor and Employment: 2010), <http://www.irle.ucla.edu/events/2010/pdf/LAwagetheft.pdf>.

² Id. at 50 (finding that the average worker in the sample lost \$51 out of average weekly earnings of \$339).

come.³ These figures point to an urgent need for the state to use its enforcement resources as efficiently and effectively as possible to enforce its wage-and-hour laws.

The Role of Worker Interviews in Wage-and-Hour Enforcement

Interviewing employees about their working conditions is a crucial element of wage-and-hour enforcement. While an investigation of wage-and-hour violations may involve multiple elements, from review of an employer's records to visual surveillance of the workplace, no part of an investigation is more important than gathering information from workers – those most directly affected by wage-and-hour violations – about the conditions under which they work.

Many of the most common violations of California's wage-and-hour laws can only be documented through credible worker testimony. For instance, off-the-clock work, by definition, does not appear in the employer's payroll or timekeeping records; it can only be found by speaking with workers. Similarly, violations of workers' rights to meal breaks and rest breaks can typically only be documented through worker testimony. A company's failure to reimburse workers for work-related expenses – uniforms, tools, equipment, and certain travel costs – also may not be evident from company documents.

Often, employer records only tell part of the story about the company's pay practices; worker interviews can fill in important information that may not be found in company files. For example, a company's records may reflect that it is paying workers a wage rate at or above the legal minimum for straight time work and time and a half for overtime. However, the same records may not accurately reflect the total number of hours the employee actually works, so violations of minimum wage and/or overtime requirements may still be present. Worker testimony may

be the only way to determine the total hours employees work and the true amounts they are legally owed.

Finally, employer records sometimes are falsified, making violations difficult to identify or confirm from a review of written evidence alone. Workers are usually the best source of information about the day-to-day conditions at their jobsites. They may even have better information about these conditions than managers or owners who may not be onsite every day.

Challenges to Effective Worker Interviewing

Despite the central role worker interviews can, and should, play in wage-and-hour compliance, they can be difficult to do in an effective and efficient manner. Workers are often afraid to speak candidly about the practices of their employer because they fear retaliation. They may not trust the wage-and-hour Investigator, believing that cooperation with "the government" could harm them with respect to their immigration status or tax issues.

Workers also may lack motivation, believing that a positive result from assisting an investigation is too far-off and uncertain when compared to the likelihood of negative consequences for them and their families from cooperating with Investigators. Finally, communication issues – including not only the inability of Investigators and workers to speak the same language, but also challenges communicating about technical subjects in the same language – can pose obstacles.

All of these factors can hamper the ability of Investigators to effectively interview workers. The purpose of this manual is to help DLSE deputies overcome these challenges and conduct effective worker interviews as a part of wage-and-hour investigations that have a significant positive impact for workers, communities and the industry in California.

³ Id. at 53.

Strategies for Contacting Workers

Success in attempting to interview workers as part of an investigation is often determined well before the wage-and-hour Investigators even starts speaking with the first worker. Whether or not a worker is willing to speak candidly about conditions in her workplace depends above all else on how and where the Investigator arranges to interview the worker. This section reviews strategies and best practices for making contact with workers and arranging interviews so that workers feel free to speak openly and honestly about conditions at their jobs.

Location Matters: Interviewing Workers Onsite vs. Offsite

A basic challenge in conducting effective worker interviews for wage-and-hour enforcement results from the fact that the place where it is easiest to “find” workers to interview – at their jobs – is also the location where interviews are least likely to be effective in uncovering wage-and-hour violations, because workers are unlikely to feel comfortable speaking openly about this subject.

The reasons why conducting interviews with workers at their jobs (“onsite”) might appear to be advantageous are clear:

- Interviews may be easier to schedule because the Investigator will know the employer’s address and may know its business hours.
- It is easy to locate workers to interview because they are at the workplace, and interviews can often be conducted during the Investigator’s regular work hours.
- The Investigator can see and confirm the physical details of conditions that workers report – the locations of time clocks, work stations and break-rooms.
- Documents and records can be reviewed and interviews can be conducted in the same general location, making it easier to crosscheck information received from workers.

But . . . these advantages don’t mean much if workers are not willing to speak candidly about the employer’s labor practices.

There are many more reasons why trying to interview workers about wage-and-hour violations when they are at work is usually an ineffective strategy:

- Workers are much more likely to be fearful of retaliation by the employer and/or distrustful of the Investigator in this setting – and not be forthcoming with information.
- Workers may associate the Investigator with the employer or with other government agencies – and not believe that the interview is being conducted for their benefit. This may poison future attempts to gain the trust of workers at that business.
- Workers can be “coached” or threatened by employers to provide false or partial information – and not provide accurate information.
- Employers may be able to identify which workers provided information about violations – and threaten or retaliate against those workers.
- Employees who are on break-time, or on work-time but paid by piece rates or subject to production quotas, may not want to spend that time speaking to the Investigator.
- And even without these problems, there is rarely enough time to conduct meaningful interviews with employees who are at work.

For these reasons, a much better practice is to interview workers away from their jobs (“off-site”), in places where they feel comfortable speaking openly and honestly about conditions at their jobs.

What Workers Say...

Gina Cano and Mirna Chavarria (their real names) are garment workers who live in Honduras. Both have worked for many years at factories in Honduras that make garments for export by well-known U.S. clothing brands.

Recently, the WRC interviewed them about their experiences being interviewed about their working conditions both at their jobs and away from the factory, and asked them to compare the two kinds of interviews. Here's what they told us:

Gina said:

"When an interview happens inside our workplace we feel pressured and think that we are being recorded and that we will lose our jobs. The company knows who is being interviewed. If the worker says something negative in the interview the managers know and the worker will lose her job."

The days that [outside people] come in to inspect the plant are well known [to the company in advance] . . . Everything is ready . . . The working environment is good, but this doesn't show what life is really like inside the factory.

Sometimes we don't want to speak about what is [really] happening at work because the day before the visit the managers tell us ... that we have to say that everything is okay, that we are treated well, and that the salaries are good.

The workers are scared and know that they have to speak favorably about the company. If they don't, they might lose their jobs."



Mirna said:

"One time workers were being interviewed [in the factory] and the company called in specific workers to participate. The company told the workers exactly how to respond and what questions they would be asked.

The employer never wants the workers to damage the company's image. So they look for workers who are on their side or a person that will go along with them. Those are the workers they look for to say good things, things that are favorable about the company.

Even though the information isn't true, the worker goes along with this. It might be that the company is offering the worker something in exchange. But the employer will never let workers who might speak out about what is really happening [in the factory] participate in such an interview.

Sometimes workers are afraid and think that if they say something that is unfavorable to the company they could be fired or there could be other retaliation. [In these cases], workers would prefer not to even be interviewed.

[Workers may even think that] if you say something against the company then the company may close and you will be out of work. . . . People are made to feel afraid so that they will only say good things [about the conditions in the factory]. Even though that isn't really what is happening.

It is much better if the interview with the worker can happen at an organization that is protecting workers' rights. If I am interviewed inside the plant, I will be nervous, I will be afraid. But if I am outside the workplace, and especially at a workers' center, then I will feel a lot of support. I will be able to speak freely about what is happening at the company. It isn't the same if the interview happens at work."



Strategies For Arranging Offsite Interviews

Interviewing workers away from their jobs avoids many of the problems related to onsite interviews. The wage-and-hour Investigators can conduct the interview in a location that the worker has chosen, where she feels most comfortable and free to speak openly and honestly about conditions at her job.

The main challenges associated with offsite interviews are contacting the workers and arranging the interviews. There are four main strategies for contacting workers and arranging interviews outside of the workplace:

1. **Surveillance.** The Investigator looks for workers outside the workplace, for example at a nearby bus stop.
2. **Cold Calling.** The Investigator obtains a roster of employees from the employer and then calls the workers on the list by telephone or visits their homes.
3. **Arranging Interviews through Other Workers.** Workers help the Investigator to make contact with other workers. These work-

ers may include former employees, past complainants, workers employed by other firms at same worksite or workers who are employed by the same company at a different worksite.

4. **Arranging Interviews through “Community Partners.”** The Investigator makes contact with workers with the help of other persons or organizations in the community – for example unions, worker centers, community groups, churches, and attorneys.

While each of these strategies for making contact with workers may be useful in certain circumstances, **the most effective and efficient** way to contact workers and arrange interviews is: (4) **Arranging Interviews through “Community Partners.”**

Below is a discussion of the “pros” and “cons” of each of these strategies for arranging offsite interviews along with a bottom-line assessment of their value.

What Is a “Community Partner”?

A Community Partner is any person or organization that is willing and able to help you make contact with workers who are aware of and/or may be experiencing wage-and-hour violations at their jobs. Community partners may include labor unions, worker centers, other state and local government agencies, law firms and legal service organizations, churches, and other nonprofit organizations.



1. Surveillance

What is it? With this approach the Investigator observes the target worksite and attempts to contact and interview workers at outside locations – bus stops, convenience stores, in parking lots, etc. – where employees go before or after work.

Pros:

- If supervisors or co-workers are not nearby, the worker may be more willing to talk.
- Workers may appreciate being able to talk anonymously, and may be more forthcoming.
- It is usually easy to identify who is employed at the target worksite – by watching for persons leaving at standard shift-change times and/or wearing uniforms or work clothes.
- The Investigator may be able to get the worker's contact information in order to schedule a later offsite meeting or phone interview.
- By observing the arrival and departure times of employees, the Investigator can obtain information about the hours they work without interviewing workers or alerting the employer.
- Observations of workers' arrival and departure times can be used to crosscheck information about working hours that is gained from employees, employers, and/or company records.

Cons:

- The worker may be suspicious of being approached by an unknown person.
- The worker may be in a hurry to get home or run errands.
- Access to workers may be very limited by time (i.e. while they wait for the bus) or in an inconvenient place (i.e. the company parking lot).
- Other co-workers and/or supervisors may be present or appear during the interview, which might make the worker nervous about sharing information.
- Investigators have to research the exact place and times when workers will be present – at bus stops, in convenience stores, etc. – and this can be time consuming.

Bottom-line Assessment: Surveillance of the workplace can sometimes lead to interviews with workers, and, in some cases, may be the only option available for reaching workers away from their jobs. But . . . this strategy requires the Investigator to be very skillful (and/or lucky) in quickly making contact and developing rapport with workers. This approach can also be time-intensive, inefficient, and unreliable in its results.

2. Cold Calling

What is it? In this approach, the Investigator obtains a list of telephone numbers and/or home addresses from an employer, and then attempts to contact workers by phone or in-person using this list.

Pros:

- If the Investigator obtains a full list of employees, then the Investigator can draw from the full pool of workers as possible contacts.
- After the Investigator makes an initial contact with the worker by phone or in person, the worker can choose a time and place to meet with the Investigator where the worker is comfortable talking.

Cons:

- A “cold call” from an Investigator whom the worker does not know might make the workers suspicious or fearful.
- The worker may refuse to meet or talk with the Investigator or may make an appointment and then fail to show up.
- A worker may not believe the Investigator is really working for the DLSE, but might think the employer is attempting to secretly identify “disloyal” workers.
- The worker must be contacted when she is not at work, which may also be outside of the Investigator’s working hours.
- Once the Investigator requests a list of employees from the employer, the employer may start to “coach” employees to give false information or coerce them not to talk to the Investigator.

Bottom-line Assessment: This approach also tends to be unreliable and inefficient. Contacting employees by phone works best when the worker is expecting the phone call and prepared to be helpful – for example, after a co-worker or “Community Partner” has already asked the employee to speak with the Investigator and the employee has agreed. Cold calls to workers tend to be highly inefficient, with a very low rate of workers answering the phone or returning calls.

3. Arranging Interviews through Other Workers

What is it? This strategy involves existing worker contacts helping the wage-and-hour Investigator to contact and arrange to interview other workers from the target worksite at any offsite location where workers are willing to meet – a coffee shop, a worker’s home, etc. The workers who assist the Investigator may be anyone who knows current employees at the target worksite – a former employee, a current employee of the same employer at a different worksite, an employee of a different firm who is working at the same jobsite, etc.

Pros:

- The worker may be more relaxed and open with information because the interview has been arranged by a person that she already knows and trusts.
- The worker may be less pressed for time so the Investigator may be able to interview the worker for a longer period of time.
- The interview takes place at a location the worker has chosen, so she will be more relaxed, rather than fearful that a co-worker or the employer may find out about the interview.
- The worker may feel that her problem has been recognized as important – as demonstrated by the Investigator’s willingness to meet the employee at the place of the worker’s choice – so the employee may be more willing to help the Investigator.
- Meeting the worker at an offsite location makes it easier to ensure the confidentiality of the interview and to explain to the worker the legal protections against retaliation and the process for bringing a complaint.
- When the interview has been scheduled outside of her working hours, the employee is less likely to be pressed for time, which may allow more time for the Investigator to build rapport with the worker, overcome her fears and motivate her to share information. As a result, the worker is more likely to speak honestly and freely about conditions at the workplace.
- When the interview is held in an offsite location, it may be easier for the Investigator to take notes, speak through an interpreter, and discuss and review the technical details of violations.

- After the Investigator has conducted initial interviews with workers from the target worksite, other workers may be able to help arrange follow-up interviews with the same or different workers to confirm, crosscheck and/or obtain more information.
- When the interview is conducted outside of working hours and in an offsite location, there may be greater opportunity to develop a plan with employees for following-up on the interview – by collecting documents and/or other information, making contacts with other workers, etc.

Cons:

- Interviews must often be scheduled during the evening or weekend when employees are not at work (exception: employees who work at night or in the evening often can be interviewed during regular business hours).
- Scheduling interviews requires coordination between the worker(s) and the Investigator.
- Interviewing workers in their home or other place of their choice may require additional travel time.
- Contacts made through other workers may not be “representative” of the larger workforce. For example, a worker may not have contact with employees who work on other shifts, are located in other departments, etc.

Bottom-line Assessment: This approach often results in high quality interviews – having someone whom the worker already knows and trusts arrange the meeting often means that workers will be much more open and forthcoming with information. However, the amount of time and effort required to coordinate with workers to arrange such meetings limits the efficiency of this approach.

4. Arranging Interviews through “Community Partners”

What is it? This strategy involves Community Partners arranging for the Investigator to interview workers from the target worksite at the Community Partner’s office or any other location where workers are willing to be interviewed, such as a coffee shop, etc.

Pros:

- Community Partners know workers and can arrange and schedule interviews for the Investigator.
- Workers may feel more accountable to Community Partners to keep interview appointments.
- Community Partners can educate workers about their legal rights and help workers distinguish wage-and-hour violations from other workplace complaints.
- Community Partners can help workers prepare for an interview with the Investigator by helping workers gather and organize pay stubs and other records, review work schedules, and identify key issues to discuss.
- Workers may be more relaxed and forthcoming with information because the interviews have been arranged by persons whom the workers already trust, and are being held in settings the workers have chosen and in which they feel comfortable.
- Holding an interview in a private offsite location makes it easier to ensure the confidentiality of the interview and to explain to the worker the legal protections against retaliation and the process for bringing a complaint.
- Community Partners may already be familiar with the workplace from talking with other workers and can help confirm the accuracy of the information the worker provides in the interview.

- When an interview is held offsite and has been scheduled through Community Partners, workers are less likely to be pressed for time. This allows more time for the Investigator to build rapport with the workers, overcome their fears and motivate them to share information. As a result, the workers are more likely to speak freely and honestly about conditions at the workplace.
- It is easier for the Investigator to take notes, speak through an interpreter, and discuss and review the technical details of a violation when an interview is held offsite.
- Community Partners can help identify particular worksites in a given industry or area where violations are particularly widespread or serious.
- After the Investigator has conducted initial interviews with workers from a given worksite, Community Partners often can help arrange follow-up interviews or interviews with other workers, in order to confirm, crosscheck and/or get additional information about violations that have been identified.
- Community Partners can help follow-up on initial interviews with workers in other ways, including by collecting additional information and/or documents from workers, making new contacts with other workers, etc.

Cons:

- Offsite Interviews often need to be scheduled in evenings or on weekends when employees are not working (exception: employees who work night or evening shifts often can be interviewed during regular business hours).
- Contacts made through Community Partners may not be “representative” of the larger workforce. For example, Community Partners may not have contacts with employees on all shifts or in all departments at a target worksite, etc.
- Making contacts through Community Partners may limit the scope of the investigation to those worksites where the Community Partner has contacts. However, Community Partners typically have on-the-ground information about which employers are committing the most egregious violations in a community, so those worksites may be the best targets for DLSE enforcement.
- Community Partners may be interested in and attuned to certain kinds of violations, but may miss or skip over others when educating workers and preparing them for the interview.

Bottom-line Assessment: This approach offers the most efficient and most effective strategy for arranging productive interviews with workers. Community Partners are able to not only introduce Investigators to workers, but also to arrange meetings and maintain contact with the workers as the investigation moves forward.

Do's and Don'ts for Making Contacts with Workers

Here are a few “do's and don'ts” to keep in mind when contacting workers for an interview, whether at the worksite or at an offsite location:

DO ...

- **DO** let the worker know who you are and why you want to conduct the interview. Be sure to give the worker your contact information before ending the conversation.
- **DO** approach workers in an informal, respectful and polite manner as this will help make them feel more comfortable and more willing to share information.
- **DO** explain to the worker being interviewed why providing information about her working conditions can benefit, and is important to improving conditions of all workers at this worksite and throughout the industry.
- Whenever possible, **DO** contact workers through persons or organizations they already know and trust.
- If you conduct interviews onsite, **DO** talk to enough workers so that the employer cannot easily identify who was the source of specific information.
- If you conduct interviews onsite, **DO** ask the employer for a complete list of workers and then randomly select workers from this list for interviews.

DON'T ...

- If you plan to conduct onsite interviews, **DON'T** let the employer know in advance that you will be coming to the worksite.
- **DON'T** ask supervisors to introduce you to, or allow them to select, the workers that you interview.
- **DON'T** single out workers to interview in a way that is evident to the supervisor.
- **DON'T** try to speak to a worker offsite when coworkers are watching or listening, unless the worker indicates he is comfortable with the other workers being present.
- **DON'T** give the worker an impression that you are “inspecting” her by asking her for identification or seeming to interrogate her.
- **DON'T** ask questions in a way that indicates you doubt the worker's honesty, even if the conditions or treatment the worker describes seem extreme. The WRC has found cases in the United States where employees were required to work back-to-back shifts for up to thirty-six hours, and where employees were threatened with violence against their families if they complained about not being paid overtime.

Barriers to Effective Worker Interviews and Tools to Overcome Them

When a wage-and-hour Investigator first makes contact with a worker to conduct an interview, pre-existing barriers may make it difficult for the Investigator to obtain the worker's cooperation. In order to overcome these barriers, it is important to identify them and understand their sources.

Barriers to effective interviewing may be broken down into four basic categories:

A. Fear of Retaliation

1. Sources of Fear

- Workers may fear retaliation by their employer for cooperating with Investigators.

Workers can experience, and may fear, many kinds of retaliation by employers: Being fired or laid-off, having their hours cut or being given less desirable shifts or jobs; being blacklisted among other employers in their industry; being threatened with deportation due to their immigration status; being sued by their employer or other legal consequences; and being threatened with physical violence against themselves and/or their families.

- Workers may have many reasons to fear retaliation:

They may have actually been threatened or retaliated against by this employer or a previous one; they may know or know of other workers who were retaliated against at this or another job; or they may fear retaliation simply because of the power their employer has over them, including the power to take away their primary source of income.

2. Tools for Overcoming Fear

Choose the Right Location for the Interview:

- Choose a location for the interview where workers feel safe. Meeting workers for the first time at the jobsite may increase workers' fear, because workers may worry that the employer will see them talking to the Investigator, or that a co-worker will report this. This problem can be avoided by conducting interviews away from the worksite

at a location where the worker feels comfortable – for example, at the offices of Community Partner, a restaurant, or another offsite location.

- Allow workers to choose the interview location. While some workers may be comfortable coming to your office, others may find this setting intimidating.

Provide Workers with Reassurance and Education:

- Inform workers of the laws protecting them from retaliation and educate them on their basic workplace rights. It is important to be honest about the limits of legal protection against retaliation. But even letting workers know that these rights exist can bolster their confidence.
- Explain that employees' immigration status is not a subject that your agency looks at or investigates.
- Provide your contact information and let the worker know that you can be contacted and will respond if the employee has any problems related to the interview.

Acknowledge Workers' Fear and Let Them Control the Interview:

- Acknowledge that the worker may be fearful and that this is understandable.
- Ask the worker's permission before taking notes or recording an interview.
- Do not ask the worker for personal information or contact information until after you have established a rapport with the worker – preferably at the end of the interview.

Explain Your Role and the Purpose of the Interview:

- Explain as clearly and simply as possible what agency you work for and what you will do with any information the worker gives you. Do not use jargon or include unnecessary technical details that will confuse workers.
- Explain what your role is. Let workers know your job is only to enforce laws that protect their working conditions and their wages.
- Explain what your role is not. The Labor Commissioner has said that it is absolutely appropriate for you to tell workers that your investigation will not involve enforcing immigration laws.
- Explain that you do not work for or answer to the employer. Make clear that you are not there because the employer called you; or to investigate anything that the workers may have done.

Collaborate with Community Partners:

- Arrange interviews with workers through unions, worker centers, community groups, churches, and other organizations that workers already know and trust.

B. Lack of Trust

1. Sources of Mistrust

Workers may not trust the Investigator.

- Workers may fear involvement with the government because of their immigration status, tax issues, or their past experiences with government in their home countries.

Workers may see the Investigator as siding with the employer.

- This is a particular problem when conducting onsite interviews, especially if workers are introduced to the Investigator by the employer or see the Investigator associating with the management.

2. Tools for Gaining Trust

Show Respect and Connect with Workers:

- Be respectful and make a personal connection. The seeds of trust are respect and rapport. They can be established more easily if you:
- Make an informal personal connection (small talk) with workers before asking detailed questions about their working conditions.
- Make eye-contact to let the worker know you are interested and listening to what they are saying.
- Show a personal interest in workers and how their working conditions affect their lives both in and outside the workplace.
- Do not interrupt the interview with other phone calls or tasks of your own, unless there is an emergency.

Don't Prejudge Workers or the Information They Provide:

- Don't openly question or challenge the statements made by interviewees or their co-workers, even if you have doubts. The WRC recently worked on a case in California where employees worked three back-to-back twelve hour shifts. When employees talk about their working conditions, do not assume that the conditions they describe are impossible, unlikely or exaggerated.
- Let workers present their version of the facts first. You can always crosscheck their information with other workers or ask follow-up questions afterwards.
- Don't make negative generalizations about workers from a particular background, or in a particular occupation.

Give Workers Control Over the Interview:

- Ask the worker's permission before taking notes or recording an interview.
- Do not ask for personal information or contact information until after you have established a rapport with the worker —preferably at the end of the interview.



- Let workers choose a location for the interview where they feel comfortable and secure – for example, at a Community Partner’s office, their church, or a cafe.
- Arrange interviews through Community Partners that workers already know and trust.
- Try to avoid meeting workers for the first time at the worksite, where they may see you as an agent of the employer.

Be Responsive and Reliable:

- Be sure to return calls and follow through on inquiries from workers or Community Partners who are assisting them. Trust is built through long-term connections with workers and Community Partners and by establishing a track record of responsiveness and follow-through.

C. Lack of Motivation

1. Causes of Lack of Motivation to Assist Investigator

Workers may not believe that they will benefit from providing information:

- Employees may not believe that it is possible to win compensation for prior violations or correct ongoing problems.
- Workers may believe any investigation will take too long to have any results.
- Workers may believe that the investigation will cause the company to lose business or shut down, causing them to lose their jobs.

Workers may believe that it is impossible to prevail against their employer:

- Employees may not think that they will be believed if the information they provide is disputed by their employer, especially if the relevant records have been falsified.
- Workers may think that the employer can influence the Investigator or the agency and affect the outcome of the investigation.

2. Tools for Motivating Workers to Assist Investigator

Collaborate with Community Partners that Can Motivate Workers:

- Collaborate with unions, worker centers, community groups, churches, and other organizations that can encourage workers to speak up for their rights.

Give Workers the Big Picture:

- Explain to workers how their testimony can help improve conditions from workers at their jobs and in their industry. Educate workers about their rights – simply knowing they have legal rights can help motivate workers who are used to being mistreated and disrespected to stand up to their employer.

Encourage Solidarity:

- Appeal to workers’ mutual self-interest in improving conditions for both themselves and their coworkers.
- Encourage workers to stick together in asserting their rights. Feelings of loyalty to coworkers and greater security in numbers can be powerful motivators.

D. Miscommunication

1. What Causes Miscommunication?

Investigators and workers may not speak the same language.

- The situation may be made worse if Investigators: (a) do not speak the language fluently but still try to “get by;” (b) fail to assess whether the workers really understand what the Investigator is saying; or (c) rely on interpreters chosen by and/or related to the employer.

Even workers and Investigators who speak the same language may have difficulties communicating.

- If Investigators use jargon, or do not ask questions clearly and directly, workers may not understand their questions.
- Differences in non-verbal communication may also lead to misunderstandings – in some countries people shake their head to say “yes,” in others, they shake their head to say “no.”

Workers may be too distracted to discuss their working conditions in detail.

- An interview may be taking place at a time that conflicts with a worker’s ability to carry out responsibilities at work or at home.

2. Tools for Clear Communication

Seek reliable interpretation whenever necessary.

- Don’t “wing-it” and reach conclusions concerning facts or technical issues based on a conversation in a language you can’t speak well.

- When working with interpreters make sure they have the necessary vocabulary for discussing workplace issues – in both your language and the worker’s native language.

Avoid Jargon and Focus on the Facts:

- Ask about specific factual details—e.g., “What time do you leave your home to go to work?”, “What time do you arrive?” and “What time do you punch in?”
- Avoid jargon or legal terms. Even well-known legal terms, such as “minimum wage,” may lead to miscommunication if workers do not fully understand the law. For example, workers may not know what the current minimum wage rate is or may not know that they must be paid for certain hours (such as time spent waiting at the employer’s direction).
- Don’t ask questions with “yes or no” answers. Instead ask for facts—e.g., ask “How much are you paid?” not “Are you paid the minimum wage?”

Double-Check Your Understanding:

- Review and repeat factual details to ensure that you are clearly understanding workers’ testimony – e.g., “You told me you punched the time-clock at seven o’clock that morning. Is that right?”

Collaborate with Community Partners

- Groups that provide resources to specific immigrant communities may be able to help with interpretation in less widely spoken languages.

Techniques for Effective Interviewing

Setting the Stage for an Effective Interview

Effective interviewing begins before you start asking workers questions about their working conditions. First, take the steps necessary to set the stage for an effective interview.

Prepare in Advance

- Have a plan for the interview. Decide the goal for the interview in advance based on where it is taking place and how much time is available. For example, an interview at a bus stop may only be long enough to get a worker's contact information, but an interview at a coffee shop may provide enough time to review an employee's work schedule and discuss technical issues.
- If you need to interview workers at their workplace, have a plan for how to deal with the employer and how to approach workers from the moment you walk in the door. Be cordial, but not overly friendly with managers and supervisors, as this may make the workers think you are "with" the employer. As discussed elsewhere, however, many workers are still likely to be less comfortable and more fearful if you interview them onsite than if you speak with them away from their jobs.
- Try to determine as soon as possible whether you will need assistance with interpretation. Don't try to "wing-it" if you and the workers can't communicate clearly and easily.
- Whenever possible, interview workers individually. You will obtain more reliable information if individual workers confirm information out of earshot of other workers, than if workers provide answers in a group setting.
- Rather than using a scripted questionnaire, prepare a list of key issues to cover in the interview, focusing on common violations in the industry in question (see below).
- Be prepared to take notes. But before writing anything down, ask the worker's permission.

Establish a Rapport with the Worker

- Introduce yourself to the worker and spend a few moments before the interview begins "breaking the ice" and making a personal connection. Friendly small talk can help workers think of you as a person like them and not as someone "from the government" of whom they perhaps should be afraid.
- Some easy topics to talk about are sports teams, family, food, how the worker travelled to the site of the interview, and questions about their work which do not involve wage-and-hour violations – for example, how they do their jobs or use a particular piece of equipment, or a particular product or service that the company makes or provides.
- Some topics to avoid are those that may give the impression that it is the worker, rather than the employer, that is being investigated:
 - Do not ask questions that may appear to focus on a worker's immigration status such as "Where are you from?", "When did you come to this country?", "How did you come here?" or "Do you have a driver's license?"
 - Until you have established a rapport with the worker, avoid asking questions that request personal information like "What is your last name" or "Where do you live?" You can always ask for the worker's phone number and full name at the end of the interview.
 - Meet workers in-person. Make eye contact and focus on the person, not on your list of questions or your notepad.

Explain Your Role

- Explain that you work for the Division of Labor Standards Enforcement and that your job is to ensure that workers are paid all of the wages legally due to them and that the employer follows the laws concerning wages and working hours.

- Explain the nature of the inspection or investigation you are carrying out and what you will do with the information you gather.

Provide the Worker with Reassurance

- Make clear that your only role is to enforce wage and hour protections for workers and that it is not your job to enforce immigration laws, tax laws, or any other laws as they relate to employees.
- Make clear that you do not work for or answer to the employer.

Motivate the Worker to Share Information

- Validate to workers that they have a right to the wages and working conditions that they are legally due and that it is wrong if these are being denied to them.
- Let workers know that you recognize that their work – whatever it is – has value and takes effort, and that they deserve to receive the pay and the rest time they have legally earned.
- Let workers know that their employer can be required to compensate workers if the legal rights have been violated – even if the violations took place in the past and/or the workers have not previously raised the issue with the employer.
- Explain how your investigation can result in improvements at the worksite and benefit workers – not just in terms of back-wages but also better conditions for all workers in the future.

Asking Effective Interview Questions

Having (a) established a basic rapport with the worker, (b) explained what your role is and is not, (c) provided reassurances to overcome common fears, and (d) motivated the worker to provide information, you are now ready to begin asking the worker for information. Here is a basic approach to asking questions that will identify wage-and-hour violations at the employee's workplace.

Prepare an Interview Topic List

For this part of the interview, we recommend preparing, in advance, industry-specific Inter-

view Topic Lists, listing the types of information needed to identify common violations in the industry in question (based on past DLSE experience and the expertise of Community Partners who know the industry).

For some industries, like building services and construction, industry-specific lists of questions may have already been distributed to you. Where an industry-specific list of questions does not exist already, use your own knowledge of the industry, its structure and common violations to make your own list.

These lists should not be used as formal “scripts” of questions to read. Instead, use these lists flexibly, as reminders of issues to explore and key pieces of information to gather, so that by the end of the interview all the key topics have been covered.

A Basic Outline for an Effective Interview

A. Start With Easy Background Questions:

- Begin by asking basic, easy-to-answer background questions, such as the worker's job, duties, and how long she has been employed by the company.
- Next, ask how the worker is paid (check, cash, direct deposit, a combination of these), how frequently she is paid, and the amount she is paid.
- Find out the name of the company that pays the worker, the name of the company at whose worksite she physically works (which can be a different firm), and who supervises or provides instructions to the worker.
- Be aware of any potential joint employment situations (where the firm that supervises the worker and/or directly benefits from her work is not the firm that pays her).

B. Ask About Issues/Problems:

- Ask the worker if there are any problems she has noticed or concerns that she has regarding the way she or other workers at the company are paid or provided with rest time. Ask if there are company practices regarding wage payment and working hours that she thinks need to be improved or changed. Many workers do not know when employer practices are violat-



ing the law, but if the worker you are interviewing is aware of any legal violations, it is valuable to know this right away. If the interview is being conducted offsite with the assistance of a Community Partner, it is more likely that the worker is aware of potential violations and is prepared to discuss them since the worker may have already raised these issues and been informed of her legal rights.

Practice Tip: Workers will often talk about employer practices which are not illegal – such as managers playing favorites among workers or acting rudely to employees. In such circumstances, give the worker a brief opportunity to describe the problem and show sympathy for the employee’s situation. Then ask the worker if you can ask about other topics. An uncaring or dismissive attitude toward these issues may make workers think that you won’t care about their wage-and-hour problems either. It is worth spending some time hearing workers out on these issues, so that they are willing to tell you about the problems where you really can help.

C. Probe for Common Industry Violations:

Ask questions to determine whether the employer may be committing some of the wage-and-hour violations that are common in her industry. As discussed, the particular issues will depend on the industry and the employee’s

work schedule. The following is a list of some issues to cover.

Off-the-Clock Work (Before Clocking-In):

Does the worker ever perform any work for the benefit of the employer *before* clocking-in?⁴ Such work may include attending pre-shift meetings, opening up the establishment, turning on equipment, preparing work materials, donning protective gear, and cleaning up work areas. What kind of work does she do? How many minutes of work does the employee perform before clocking-in? How frequently does she perform such work? For how long (years or months) has the worker performed such work before clocking-in? Is the worker compensated in any way for this work and if so at what rate? Ask questions to determine whether supervisors or managers were aware or should have been aware that the worker was performing this off-the-clock work. Is the worker required by management, for example, to prepare work materials before she is allowed to clock-in?

30-Minute Meal Periods: If the worker’s shift is five hours or longer, is the worker able to take a full 30-minute meal break during her shift?⁵ If not, why not? Has the worker ever been interrupted by management or required to perform work tasks during her meal break? Has a supervisor or man-

⁴ Under California law, workers must be compensated for all “hours worked,” which include any “time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Wage Order No. 14-80; *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 995 P.2d 139 (2000).

⁵ CA Labor Code §§ 512, 226.7 and applicable IWC Wage Orders.

ager ever instructed the worker not to take her full 30-minute meal break or otherwise discouraged the worker from taking such a break? Are the employee's duties such that she cannot practically leave to take a meal break because no one will be able to cover her work? Is it for any other reason impossible for the worker to take a lunch break and still complete the work assigned to her? How often has the worker missed full meal breaks as a result of these impediments? Since what date has this been happening? With respect to each potential type of interference with meal breaks, be sure to gather details about what work employees have performed during meal periods and what they have been told by members of management, when, and by which managers.

10-Minute Rest Breaks: Is the employee able to take a minimum 10-minute rest break for every four hours she works?⁶ How many minutes long is each break? How is the length of the break, from beginning to end, measured (i.e. when the worker stops working or when she gets to the break area)? If the worker takes less than two 10-minute breaks during an 8-hour shift, is the worker's supervisor or manager aware of this (and, if so, how does the worker know the supervisor is aware)? Has a supervisor or manager ever instructed the worker not to take a 10-minute break or otherwise discouraged him/her from taking a break? Are the employee's duties such that she cannot practically leave to take a rest break because no one will be able to cover her work area? Is it in practical terms impossible for the worker to take a lunch break and still complete the work assigned to her during her shift? How often has the worker missed full 10-minute rest breaks as a result of these impediments? For how long has this practice occurred? Is the worker ever required to clock out for 10-minute breaks? As in other areas, be sure to gather details with respect to what has occurred, what statements have been made, when, and by whom.

Off-the-Clock Work (After Clocking-Out): Does the worker ever perform work for the benefit of the employer after clocking-out? Such work may include finishing incomplete assignments, cleaning up work areas, shutting down equipment, closing and locking up the establishment, changing out of protective gear, and running work-related errands. What type of work does the employee perform after clocking-out? For how many minutes does the employee typically work after clocking-out? How frequently does the worker perform such work? Since what date has the worker performed such off-the-clock work? Ask questions to determine whether supervisors or managers were aware or should have been aware that the worker has been performing this work and whether any manager has ever instructed the employee to work after clocking-out.

Overtime Compensation: Is the employee paid at least 1.5 times her regular wage for all work after eight hours in a single day and double wages after twelve hours of work?⁷ Is the employee paid time-and-a-half for each hour over forty in a week, the first eight hours on the seventh consecutive day of work and double-time after eight hours on the seventh consecutive day of work? The most straightforward way to assess compliance in this area is simply to ask the worker what wage rate she is paid after eight hours of work. For comparison's sake, also divide the total amount the employee is paid (as reported by the worker and ideally corroborated by paystubs or other records) by her total number of hours worked (again as reported by the worker and ideally corroborated by written records) to assess compliance with overtime and minimum wage requirements.

Unreimbursed Work-Related Expenses / Unlawful Deductions: Is the worker ever required to incur expenses in order to perform her job that are not reimbursed by the employer?⁸ Expenses where reim-

⁶ CA Labor Code § 226.7 and applicable IWC Wage Orders. Specifically, workers are entitled to "10 minutes rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012).

⁷ CA Labor Code §§ 1198, 1194.

⁸ CA Labor Code § 2802.

bursement is normally required, and deductions are normally unlawful, include the purchase of uniforms, tools, equipment, as well as work-related cell phone use and transportation during the workday (apart from travel to and from work). What specific expenses has the worker incurred? Are these expenses necessary to perform her work? With what frequency has the worker incurred these expenses? How much money has the worker spent each week and each month on these expenses? Has a supervisor or manager instructed the worker to incur such expenses? Ask similar questions to identify potential unlawful deductions to assess their frequency.

Practice Tip: Walk Through the Employee’s Workday

One effective approach to identifying violations is to ask questions that walk the worker through a typical day. For example, ask: “On a typical Monday, what time do you arrive at the worksite? Who is there when you arrive? After you arrive, what is the first thing that you do? When do you clock in? Do you clock yourself in?”

Then, proceed by discussing the rest of the employee’s workday, asking about what meal and rest breaks the worker is allowed to take, how long the breaks are, what she does during the breaks, and whether breaks are ever interrupted by requests to perform work.

Then ask questions about the end the workday by finding out what time the worker clocks-out and whether the worker is ever asked to clean-up or perform other tasks after clocking-out.

After reviewing a typical workday, find out if the employee’s working hours vary throughout the week. You can do this by going through the days of the week and asking if each day follows the same pattern as Monday. Ask also about how long the schedule the worker described has been in effect.

Similarly, in investigating a retaliation case, or other cases involving particular incidents, walk through each incident from start to fin-

ish in detail, asking “What happened next?” or “What was said next?” These questions should give you a detailed account of where the worker was, what happened and when, who else was present, and what those present said and did.

Other Common Violations:

- **Misappropriation of Tips:** Under California law, tips are the property of employees.⁹ In restaurants and other settings where tips are customary, employers or managers may not appropriate any portion of tips provided by customers. If the worker is compensated partly through tips, find out what the process is for collecting and distributing tips, probing for whether the employer has taken any portion of the tips.
- **Documentation of Wage Payments and Deductions:** California law requires that all workers receive documentation of their earnings and any deductions made by the employer.¹⁰ Ask what documentation, if any, workers are provided for their earnings and deductions.
- **Workers Compensation:** In the area of workers compensation, find out if the worker or her coworkers have suffered work-related injuries and what happened to the injured worker.

Practice Tip: Phrase Questions Broadly When Probing for Common Violations

When probing for common violations, don’t just ask about the worker’s own experience. Instead, ask questions about the workplace in the broadest possible way:

- If [X] has ever happened at the workplace, not just whether [X] is occurring now.
- If [X] has happened to anyone at the workplace, not just to the worker herself.
- When interviewing an employee of a company with multiple worksites, if the employee has heard of [X] occurring anywhere in the company, not just at the employee’s own worksite.

⁹ CA Labor Code § 351.
¹⁰ CA Labor Code § 226.

- When interviewing a worker who is employed at a worksite where there are employees of multiple companies, if the worker has heard of [X] happening to anyone working at the worksite, not just to the worker's fellow employees.

much the worker is actually paid and what the worker's actual hours were.

- **Do**, if you are speaking with a worker from another country and/or using an interpreter, make sure that the terms you or the interpreter are using have the same meaning in the worker's native country. Words like "dues" and "social security" mean different things in different countries.

Some Do's and Don'ts for Effective Interviewing

- **Don't** put workers on the defensive by seeming to interrogate them or question their honesty.

Let the worker present her version of the facts – there will be time later to ask follow-up questions, or crosscheck information.

Even if working conditions sound extreme to you, the workers' description of them still may be accurate. The WRC recently monitored a factory in Los Angeles where workers had been working up to 36 hours in a row – three back-to-back twelve hour shifts.

- **Do** be an active listener. Sometimes workers do not know that their employer is violating their legal rights. If a worker says something that indicates a possible violation, even if the worker does not identify it as a problem, let the worker finish talking, but then ask follow-up questions about that issue.
- **Do**, if a worker doesn't seem to understand a question you have asked:

Rephrase the question to get at the same issue using different words.

Explain why you are asking the question.

Give an example of the type of violation you are asking about – workers may be able to confirm whether or not the same thing is happening at their worksite.

- **Do** avoid using jargon or legal terms:
Don't make references to laws or regulations unless you explain what they are or what they mean.

Don't ask if a worker is paid the "minimum wage" or "how many weekly overtime hours" she works. Instead, find out how

Setting the Stage for Follow-up:

How you end an interview can be as important to the success of your investigation as the interview itself. An effective interview ends by setting the stage for future follow-up with the worker by the Investigator.

a. Exchange Contact Information

- Wait until the end of the interview to ask for the worker's contact information and let the worker know that you are asking for it so that you can follow up with the worker.
- Give the worker your contact information and assure her that it is fine to call you for any reason following the interview.

b. Ask for Help Getting Pay Records and Other Written Evidence

Wait also for the end of the interview to ask the worker if she can help you by providing corroborating written evidence, such as pay stubs or contemporaneous diaries. Asking workers for such records in the middle of the interview can make the worker feel that you do not believe what she is saying or that it is she, rather than the employer, who is being investigated.

c. Ask for Help Contacting Other Workers

Ask the worker if she can help you contact other workers she knows either at her jobsite or other jobsites that you are investigating where she knows employees.

d. Ask the Worker to Keep a Written Record of Violations

Ask the worker to keep an ongoing record of violations that occur in the workplace – to write-down the dates, times, facts, and who is involved.

Using Worker Interviews to Conduct High-Impact Investigations

High-impact investigations are investigations that make maximum use of limited budget, staff time and other resources to assist large numbers of workers and create sustainable improvements in legal compliance at a specific company or in a specific industry over time. High-impact investigations result in changes in company practices, payment of back wages and/or other remedies for substantial numbers of workers, and lead to positive ripple effects that encourage compliance in the broader industry or geographic area.

Conducting high-impact investigations requires understanding how an industry does business. These investigations are focused on key employers in the industry and other companies whose business decisions determine the working conditions of the employees of other firms that are their vendors, subcontractors, and service providers. Because high-impact investigations require remaining in contact with a significant number of workers over an extended period of time, they rely heavily on cooperation with Community Partners that have and/or can maintain such networks of worker contacts.

Here are some key elements of a high-impact investigation:

Cooperation with Community Partners

Just as police are more effective when they work in partnership with community organizations, labor standards enforcement agencies can use community partnerships to carry out effective investigations. Strong community partnerships are helpful in all aspects of an effective investigation – from identifying workplaces where significant wage-and-hour violations are present, to making contact with workers at these workplaces, and receiving timely notice of when workers are being retaliated against by employers.

Worker Education and Motivation

One reason why violations of wage-and-hour laws, and other labor and employment standards, are so widespread is that workers are unaware that their legal rights are being violated, feel powerless to change the situation, and fear retaliation if they speak out. Unless such barriers are overcome, workers will not give detailed information to Investigators, put their name on witness statements, or file complaints against unscrupulous employers. The WRC has found that the most efficient and effective strategy for educating and motivating workers is to partner with community organizations that already do this work every day.

Documentation by Workers of Ongoing Violations

Keeping diaries or calendars of working hours and wages is one of the most effective ways for workers to prove that compensation is legally owed to them, yet very few workers whose rights are violated keep such records. A key strategy for building a high impact investigation is to teach workers how to keep such records consistently and accurately, as this makes it possible to calculate how much the employer owes its workers. Doing this successfully, however, requires maintaining contact with multiple workers whom can be shown how to do this (and will, in turn, teach their coworkers). Community Partners can play a crucial role in such a strategy by organizing meetings with workers, providing education on record-keeping, and following-up to make sure workers maintain these records. It is possible for Investigators to do this work themselves – but working with Community Partners makes it easier to do this more efficiently and consistently on a larger scale and over a longer period of time.

Ongoing Communication with a Network of Workers

It is nearly impossible to build a high-impact investigation through a brief onsite inspection of a workplace. Just as with a criminal investigation, building a high impact investigation takes time – usually weeks and often months.

In this process, workers are the Investigator's "eyes and ears" on the inside of the workplace. If important developments occur, the Investigator needs to know about them right away.

The Investigator also needs to maintain regular contact with workers, to make sure they are keeping records of violations, and so that they can put the Investigator in touch with other workers to interview. In any workplace, the most valuable contacts for maintaining a network of employees are "leaders" – workers whom other employees already look to for direction. Community Partners may already have relationships with such workplace leaders, and can introduce Investigators to them.

Expanded Scope of Impact

Investigations have their greatest impact when they benefit not only the employees of a single firm at a single workplace, but also workers employed at the firm's other worksites, other employers operating at the same worksite, or other firms in the same industry. Workers and Community Partners are often the best source for the contacts that are needed to expand the scope of an investigation. Employees often have worked for the same firm at multiple workplaces or for multiple employers in the same industry, and/or may have friends or relatives who have done the same. Community Partners often have contacts across multiple workplaces and employers in a given industry as well.

Strategic Timing

An investigation's impact will depend in large part on its timing relative to the business cycle of the employer and the industry. In seasonal industries, overtime violations may be severe during certain periods of the year, but non-existent during others. In industries where workers are hired only for the duration of a specific project, workers may be more willing to bring complaints after the end of the project when the risk or impact of retaliation may be smaller. In industries where employers rely on just a few customers, who pay them after orders are shipped, employers may be more willing to compensate workers after they have been paid by those customers. Workers and Community Partners who are in regular contact with workers can be a good source of information to determine when an investigation of a given employer will have the greatest impact and best chance of success.

1. Back-Pay and Reinstatement for Russell Athletic Workers in Honduras

In 2009, the WRC received a complaint alleging that the U.S. garment company, Russell Athletic, which is a subsidiary of Fruit of the Loom, had closed its factory in Choloma, Honduras in retaliation for the factory's workers having organized a union, a violation of international labor standards and university codes of conduct. To investigate this allegation, the WRC conducted offsite interviews with 55 workers and documented 101 incidents where company managers made threats, predictions or other statements relating the compa-

ny's decision to close the factory in retaliation for the workers' decision to form a trade union.

After the WRC released its report to universities, the universities pressured Russell and Fruit of the Loom to accept a sweeping remediation plan including the reopening of the factory, reemployment of the 1,200 affected workers and a payment of \$2.5 million to these workers in compensation for lost earnings.

A short video on this case can be found here: <http://workersrights.weebly.com/russell.html>.

StarTribune.com

by Alan Scher Zagier
November 18, 2009

After widespread and prolonged student protests at U.S. universities, sports apparel maker Russell Athletic says it will open a new factory in Honduras and rehire ousted union workers as part of an agreement with a group that monitors labor conditions abroad for colleges.

Student pressure over concerns about Russell Athletic's labor practices had prompted nearly 100 colleges and universities to drop licensing deals with the company that allowed it to print clothing with colleges' names, logos and mascots.

"This is huge," said Jack Mahoney, a recent Georgetown University graduate and organizer for United Students Against Sweatshops. "We've had a number of smaller victories, but this is the first time we know of that somebody has reversed a company's decision."

The factory will reopen in Choloma and be called Jerzees Nuevo Dia, which means "new day" in Spanish. The Atlanta-based clothing maker has agreed to rehire 1,200 former workers and abide by collective bargaining agreements at all of its Honduran factories.

The moves are part of an agreement dated Nov. 14 between Russell Athletic and the Worker Rights Consortium. A spokesman for Russell and its parent company, Fruit of the Loom Inc., said the company "looks forward" to enacting the pact, which was released publicly this week.

The agreement is "intended to foster workers rights in Honduras and establish a harmonious and cooperative labor-management relationship," the announcement reads.

Russell Athletic Shifts Course on Honduran Workers after Pressure from Anti-Sweatshop Groups

Russell had previously said it closed the factory in October 2008 due to falling demand for the fleece sewn there. The company said it picked the union plant in Choloma because it had a month-to-month lease and cost \$2 million less to close than the non-union alternative.

Columbia University was among the schools that dropped its licensing agreement with Russell in response to student activists. A school official said the company's shift will prompt Columbia to reconsider its decision. "This was a great step in the right direction," said Honey Sue Fishman, executive director of business services.

The Worker Rights Consortium, a group that monitors labor conditions abroad for colleges, has said Russell spent two years trying to intimidate workers who tried to unionize before closing the factory. The consortium's executive director, Scott Nova, called Russell's reversal a "gigantic breakthrough for labor rights in the region." He expects the move to have a ripple effect for labor relations in Honduras and other countries where American companies locate manufacturing plants.

"It's a toehold that people have been trying to get for a decade," he said.

College students first began protesting working conditions at overseas garment factories in the late 1990s, saying the schools had a moral obligation to closely monitor how T-shirts and other sports wear with athletic logos were made.

At some schools, including the University of North Carolina in Chapel Hill, students held sit-ins outside administrative offices.



The New York Times

By Steven Greenhouse
February 24, 2009

The University of Michigan announced on Monday that it was ending its apparel licensing agreement with the Russell Corporation, becoming the 12th university to do so in response to the company's decision to close a unionized factory in Honduras.

University of Michigan officials said an agreement under which Russell made T-shirts, sweat-shirts and fleeces with university logos would end as of March 31 because Russell had violated the university's code of conduct calling on licensees to guarantee the basic rights of workers.

Michigan joined Columbia, Cornell, Duke, Georgetown, Purdue, Rutgers and several other universities that curtailed agreements with Russell, a subsidiary of Fruit of the Loom, which is owned by Berkshire Hathaway.

On Jan. 31, Russell closed Jerzees de Honduras plant, where 750 of the 1,800 employees had joined a union, and the management and the union were in a contract dispute.

The Worker Rights Consortium, a factory monitoring group sponsored by 185 universities, condemned the closing, saying it had been done partly because of antiunion animus. Another monitoring group, the Fair Labor Association, also found labor violations.

In a report issued Feb. 16, Russell said the closing was the result of "economic considerations and was not caused by the presence of the union at the factory."

John Shivel, senior vice president for marketing, advertising and communications at Fruit of the Loom, said the company could not grant an interview about the universities' decisions.

Kelly Cunningham, a University of Michigan spokeswoman, said the school ended Russell's license on the recommendation of the university president's Advisory Committee on Labor Standards and Human Rights.

Michigan is the Latest University to End a Licensing Deal with an Apparel Maker

"The committee found that the company had not respected the employees' right to association and had not adhered to the company's own standards of conduct," Ms. Cunningham said. "We do not feel that continuing the license is appropriate."

Scott Nova, executive director of the Worker Rights Consortium, said, "Over a period of two years, Russell engaged in the systematic abuse of the associational rights of its workers in Honduras, thereby gravely and repeatedly violating the universities' codes of conduct."

His consortium, an independent labor rights monitoring group, and the Fair Labor Association had previously found that Russell's Honduras operation improperly fired 145 union supporters in 2007. After numerous universities and student groups protested, the company reinstated the workers, paid back wages and granted union recognition.

The consortium also found that factory supervisors had harassed and intimidated union supporters and had denied union officials and government inspectors access to the plant.

"This is a toxic company," said Leigh Wedenoja, a University of Michigan senior who is a member of the president's advisory committee as well as Students Organizing for Labor and Economic Equality. "We feel that if the university is serious about encouraging human rights, then we could not keep Russell as a licensee."

Last Friday, Cornell announced it was ending its agreement with Russell. A University spokesman, Mike Powers, said "Cornell is committed to respecting the rights of workers around the world, and we expect the companies that are licensed to produce Cornell apparel to share that commitment."

The company vowed to improve its compliance and enhance what it called its "overall corporate social responsibility process," includes having third-party monitors inspect factories.

2. Severance Pay for Workers at Nike Supplier Factories in Honduras

In January 2009, WRC received complaints from a union in Honduras about two factories supplying Nike that had closed suddenly without paying workers earned wages and severance benefits that are legally required under Honduran law. An in-depth investigation by the WRC, including interviews with former factory employees, confirmed that the factories' failure to make these payments had violated the legal rights of 1,445 workers.

Both factories supplied garments to Nike but Nike claimed to have done very little business with either. With help from a union that was assisting the factory's former employees, the WRC conducted extensive offsite worker interviews and other research on the factories' production for Nike and eventually concluded that Nike's orders had accounted for more than 90% of their overall production in the period immediately prior to the factories' closure. In response to university pressure, Nike ultimately agreed to contribute US \$1.54 million to a fund to make workers whole.



The New York Times

by Steven Greenhouse, July 26, 2010

Facing pressure from universities and student groups, the apparel maker Nike announced on Monday that it would pay \$1.54 million to help 1,800 workers in Honduras who lost their jobs when two subcontractors closed their factories.

Nike agreed to the payment after several universities and a nationwide group, United Students Against Sweatshops, pressed it to pay some \$2 million in severance that the two subcontractors had failed to pay.

The University of Wisconsin, Madison terminated its licensing agreement with Nike over the Honduran dispute, and Cornell warned that it would do the same unless Nike resolved the matter.

A Nike spokeswoman, Kate Meyers, said on Monday that the \$1.54 million was for "a worker relief fund" and was not for severance. Nike also agreed to provide vocational training and finance health coverage for workers laid off by the two subcontractors.

"This may be a watershed moment," Scott Nova, executive director of the Worker Rights Consortium, a group of 186 universities that monitors factories that make college-logo apparel, said. "Up until now, major apparel brands have steadfastly refused to take any direct financial responsibility for the obligations to the workers in their contractors' factories. Now the most high-profile sports apparel firm has done just that."

The agreement is the latest involving overseas apparel factories in which an image-conscious brand like Nike shows its sensitivity – advocates might say vulnerability – to campaigns led by college students who often pressure universities to stand up to producers of college-logo apparel over workers' rights.

Nike issued a statement in conjunction with a Honduran labor federation, Central General de Trabajadores, saying it had "reached an agreement to help improve the lives of workers affected" by the plant closings. As part of the deal with the labor group, Nike pledged that other factories it used in Honduras would give priority to hiring workers laid off by the two subcontractors.

"We were trying genuinely to find a way in which we can help set up a program that would be meaningful to workers on the ground," Ms. Meyers said.

The dispute began in January 2009, when Hugger and Vision Tex – two subcontractors that made T-shirts and sweatshirts for Nike in Honduras – closed their plants. After the workers complained, the Workers Rights Consortium gave more than 100 American universities a report it did finding that the subcontractors had failed to pay more than \$2 million in severance owed under Honduran law.

United Students Against Sweatshops mounted a pressure campaign, holding protests at dozens of Niketown stores and Nike retailers. The campaign adopted the slogan "Just Pay It."

At Cornell, 1,100 students petitioned the university to end its contracts with Nike. Thirty student

Pressured, Nike to Help Workers in Honduras

groups, the student newspaper and the University Assembly also endorsed that idea.

Mr. Nova of the Workers Rights Consortium said Nike at first claimed that the two subcontractors were not making college-logo apparel. On April 20, the company issued a statement saying it was disappointed that the subcontractors had not paid the severance, but added, "It remains Nike's position that factories which directly employ workers are responsible for ensuring that their employees receive their correct entitlements, and as such Nike will not be paying severance to workers that were employed by Hugger and Vision Tex."

Alex Bores, president of the United Students Against Sweatshops chapter at Cornell, argued that it was only fair for Nike to make good on its subcontractors' obligations.

"Nike plays a key role in setting up the worldwide apparel system that its contractors and subcontractors work in," Mr. Bores said. "Nike plays factory against factory, causing them to shave a penny here and a penny there, creating an ultra-competitive environment that drives down wages and gives factory owners virtually no choice but to disrespect workers' basic rights."

United Students Against Sweatshops estimated that Nike's total payments, including those for health coverage and training, would exceed \$2 million.

Even with Monday's agreement, Ms. Meyers said her company would stick to its position that contractors and subcontractors were responsible for obligations like severance pay.

Workers' rights groups say that while many brands boast that they are complying with codes of conduct to protect workers, the brands at the same time balk at assuming responsibilities when contractors' violate their obligations to their workers.

Jane L. Collins, a University of Wisconsin sociology professor who is on the school's licensing committee, which called on the university to end its licensing agreement with Nike, said, "If apparel companies can't take responsibility for the factories where they have contracts, they can't claim to be adhering to a code of conduct."

Officials at several universities had warned Nike that unless it settled the dispute, it would face larger protests once the fall semester began.

Last November, the student movement against sweatshops got Russell Athletic to agree to rehire 1,200 workers in Honduras who lost their jobs when the company closed their factory soon after the workers had unionized. The students had persuaded 100 universities to sever or suspend their licensing agreements with Russell.

Explaining Monday's agreement, Jack Mahoney, national organizer for United Students Against Sweatshops, said, "After we got over 100 universities to boycott Russell, Nike understood the university pressure would not simply go away."

3. Minimum Wage and Back-Pay for Workers in India Producing for Wal-Mart and Other Brands

After conducting interviews in 2010 with workers from a factory in Bangalore, India, that was producing university logo apparel, the WRC learned that nearly every garment factory in this major industrial area was failing to pay the legal minimum wage.

While the government of the state had raised the minimum wage in 2009, garment factories were openly refusing to implement the increase. Close to 100,000 workers at as many as 400 plants supplying garments to international apparel brands, including adidas, Gap,

H&M, J.C. Penney, Levis, Nike and Walmart had been underpaid for nearly twelve months.

With help from a local garment workers union, the WRC conducted interviews with, and collected pay statements from, workers from Bangalore's largest factories, showing the size and scope of violations of minimum wage. The WRC's documentation and exposure of the violations led to the workers receiving the raises to which they were legally-entitled and a payment of US\$ 6 million in back-pay compensation.

SUPPLY MANAGEMENT

Questions over Labor Standards at Wal-Mart's Indian Suppliers

by Jake Kanter
March 15, 2010

A number of Wal-Mart's suppliers in India have refused to pay staff the minimum wage, a report has found.

Research by campaign group Wake-Up Wal-Mart found that factories in Bangalore producing clothes for the US retail giant and other firms have failed to pay 125,000 workers the correct minimum wage after it was increased a year ago.

The group said the suppliers owed staff more than one month's wages and that the entire Bangalore apparel workforce was owed more than \$10 million (£6.7 million).

A Wal-Mart spokesman said the company was already working with the Worker Rights Consortium to address issues in factories highlighted in the report, and added that the factories supplying Wal-Mart also provided goods to many other retailers.

The company's supplier standards state that vendors must "fully comply with all applicable national and/or local laws", including those on labour standards.

But in a statement Wake Up Wal-Mart accused the company of a publicity campaign. "Any ethical

standards programme that Wal-Mart has talked up is clearly just public relations and doesn't reflect [its] business practices. We call on Wal-Mart to ensure that the workers in the Bangalore factories where its products are produced are immediately paid the back-wages they are owed."

The Wal-Mart spokesman said: "We expect our suppliers to meet our standards for suppliers and maintain one of the largest ethical standard operations in the world to ensure compliance, conducting more than 11,500 audits a year and training more than 14,000 supplier and factory managers."

He said its rigorous ethical standards programme "aggressively deals" with any allegations of improper conditions at suppliers' factories.

This study follows a report by China Labour Watch, which found evidence of "inhumane overtime systems", an "elaborate system to cheat Wal-Mart audits" and pay packets "below the minimum wage" at two of the retailer's Chinese suppliers.

4. 1. Reporting Pay and “Stand-by” Pay for Garment Workers in South L.A. Factory

In July 2009, the Los Angeles City Attorney brought suit against Seventeen, Inc., an apparel factory in South Los Angeles for unfair business practices, including serious wage and hour violations. The lawsuit alleged that Seventeen, Inc. was requiring its employees to work 12-hour shifts, sometimes two or three consecutively, for a period of six days each week and without paying overtime compensation.

As part of a stipulated judgment settling the case, the factory agreed to monitoring of its compliance with state labor laws for a peri-

od of one year. The WRC was selected as the court-appointed monitor, and partnered with local researchers from a local nonprofit organization, the L.A. Wage Justice Center, to conduct outreach to and interview workers in order to monitor the factory’s compliance with the settlement. The WRC’s investigation uncovered additional wage-and-hour violations not remedied by the original lawsuit, including reporting-time pay violations and unpaid compensable standby time. Seventeen, Inc. agreed to provide workers the additional back-pay that they were owed.

Los Angeles Times

South L.A. Garment Factory Workers to Get Back Pay and Overtime in Settlement

City lawyers had alleged that Seventeen Inc. falsified time and payroll records and required 12-hour shifts without extra pay or breaks. The owner also agreed to have a monitor oversee operations.

By Richard Winton
September 02, 2010

Workers at a suspected sweatshop in South Los Angeles will receive back pay and overtime, and an independent monitor will scrutinize the factory’s activities in a settlement reached Wednesday between the owners and the city attorney’s office. City Atty. Carmen Trutanich’s office sued the company’s owner-operator for allegedly failing to pay employees overtime and maintaining sweatshop conditions in the garment factory.

The settlement will bring long-overdue compensation for unpaid overtime to employees and will require an independent monitor at the factory to oversee compliance with workplace laws, city attorneys said.

The owners agreed to pay for an independent monitor, the first time a domestic garment

manufacturer has consented to do so, said Assistant City Atty. Jim Colbert.

The lawsuit filed in July 2009 alleged that Seventeen Inc. and its predecessor, Q&I Inc., along with their owners and operators, required employees to work 12-hour shifts, sometimes two or three shifts in a row, six days a week without overtime pay or rest breaks.

City lawyers alleged the company falsified time and payroll records to conceal the underpayment of wages.

The suit alleged hazardous and unhealthy workplace conditions, including unsanitary bathrooms without working plumbing or clean water, cockroach and rodent infestation and exposure to harmful chemicals and fine fabric dust during the production of garments.

The lawsuit also alleged that access to exits was often blocked by debris, and exits were locked at night, leaving night-shift workers with no way to exit the property in case of emergency.

Jeremy Blasi

Jeremy Blasi has more than ten years of professional experience investigating and working to remedy labor rights violations in the U.S. and abroad. As Director of Investigations for the Worker Rights Consortium (WRC), he coordinated investigations of labor rights violations in garment factories in Mexico, Guatemala, El Salvador, Nicaragua, Honduras, Dominican Republic, Kenya, Swaziland, Turkey, Thailand, Bangladesh, and the U.S, resulting in payment of more than \$5 million in illegally withheld compensation and the reinstatement of over a thousand workers who had been unlawfully terminated. Raised in Los Angeles, Jeremy graduated summa cum laude from U.C. Berkeley. He is presently a senior consultant to the WRC and is completing a J.D. at Georgetown University Law Center.

Benjamin Hensler

Benjamin Hensler is the Deputy Director and General Counsel of the Worker Rights Consortium. He has more than twenty years' experience investigating violations of labor rights across the United States and around the world. He has coordinated investigations of sweatshop conditions, including wage-and-hour violations, in garment factories in nearly twenty countries in Asia, Africa, Latin America, and Eastern Europe. In the United States, he has researched and documented overtime claims by nurses in Florida, race and sex discrimination claims by textile and distribution workers in Georgia and North Carolina, and unfair labor practice claims by nursing home workers in Massachusetts and Pennsylvania. He is a J.D. graduate of Yale Law School and has worked for the U.S. Court of Appeals for the Ninth Circuit in San Francisco. Raised in Los Angeles, he now lives in Albany, CA.

Tara Mathur

Tara Mathur has worked as the Central America Regional Representative for the Worker Rights Consortium since 2006. Previously based in El Salvador, she has investigated, and worked to remediate, labor rights violations at garment factories throughout the region, including in Mexico, El Salvador, Guatemala, Honduras and Nicaragua. Her responsibilities also include building and maintaining relationships with organizations that provide support to workers throughout Central America and Mexico. Prior to joining the WRC, she worked for a nonprofit organization that builds relationships between local communities in the United States and El Salvador, and as a freelance translator and interpreter. She now lives in Kansas and continues to work with the WRC and other labor rights organizations.

Matthew Sirolly

For the past nine years, Matthew Sirolly has helped workers in California fight wage and hour violations, litigating hundreds of claims in the state courts to correct these abuses. He is currently Director of the Wage Justice Center, a Los Angeles based nonprofit organization devoted to enforcing wage rights for low-income workers. In 2010 the Wage Justice Center partnered with the Worker Rights Consortium to assist the WRC in its role as court-appointed monitor of conditions at a Los Angeles garment factory, where the Center's Investigators discovered numerous undetected labor violations through worker interviews, and obtained back-pay for employees. In 2007, Mr. Sirolly was awarded the Echoing Green Fellowship, which supports the work of innovative new nonprofits and "social entrepreneurs." He is a graduate of the University of Southern California Gould School of Law where he received the Shattuck leadership award.