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# Exploring the Complaints and Compliance Gap under U.S. Workplace Policies

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### **Abstract**

Limitations in investigation resources and the often politicized environment surrounding regulatory decisions have led government agencies to rely on worker complaints to enforce workplace policies. Focusing on two critical U.S. workplace statutes, the Fair Labor Standards Act and the Occupational Safety and Health Act, we examine the relationship between worker complaints and underlying compliance with standards. Although we find a high degree of variability across industries in terms of the complaint rate, underlying compliance conditions explain a relatively small percentage of overall complaint activity, which suggests that a number of other factors mediate the relation between deleterious workplace conditions and the likelihood that a worker will complain. Our findings therefore raise questions about how well regulatory agencies apply investigation resources given their reliance on complaints, a problem that intensifies as resources allocated to workplace protection decrease over time.

### **The Importance of Complaining**

The statutory framework embodied in most federal workplace policies implies that government agencies dispatch inspectors to factories, construction sites, and service establishments in order to ensure that employers com-

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ply with promulgated standards. There is, however, considerable divergence between the enforcement implied in statutes and enforcement as carried out in practice. The Occupational Safety and Health Administration's inspection force has never exceeded 1,500 individuals and currently hovers around 1,100. Long-term budget restrictions have reduced the number of investigators at the Wage and Hour Division (WHD)—the agency within the Department of Labor that enforces overtime, minimum wage, and child labor standards—by 14 percent between 1974 and 2004 despite the fact that the estimated number of workers covered by statutes administered by the WHD *grew* by 55 percent over the same period (Bernhardt and McGrath 2005). Agencies therefore lack the capacity to oversee even a small percentage of the estimated 7 million workplaces covered by federal workplace laws.

Given the very limited resources, enforcement activity relies on complaints lodged by workers themselves. For example, in 2005 complaint inspections constituted about 78 percent of all investigations undertaken by the WHD. This represented a substantial increase in the proportion of complaints over time, which represented about 70 percent of all inspections in the mid-1990s. If we care about the adequacy of workplace laws in protecting workers, we must therefore pay close attention to the question of who complains under workplace policies. This raises, in turn, a number of subsidiary questions: How frequently do workers complain in the first place? How does this vary across different statutes and between different types of workplaces? How related are complaints to underlying conditions at work? What other characteristics determine who complains and who does not? In short, what drives complaints, and what does this mean for improving protections for workers, particularly those in greatest need of protection?

This paper examines these issues by focusing on complaint activity across two of the most important U.S. statutes regulating workplace conditions: the Fair Labor Standards Act (FLSA), which sets minimum wage levels and overtime compensation requirements and restricts child labor; and the Occupational Safety and Health Act (OSHA), which regulates safety and health conditions in most private sector establishments. If worker complaints track underlying workplace conditions—where more dangerous workplaces or greater employer noncompliance with workplace standards give rise to more complaints—a system reliant on complaints may effectively move limited resources to those workplaces most in need of attention. On the other hand, if other factors mediate the relation between deleterious workplace conditions and the likelihood of complaining, we have reason to worry about the adequacy of the regulatory system in applying resources where they are most needed. This problem intensifies as the total amount of money and number of people allocated to workplace protection decreases over time.

## **Measuring Complaint and Compliance under FLSA and OSHA**

There is little reason to believe that workers uniformly exercise rights granted to them under labor policies (Yaniv 1994, Weil 2005). The willingness of an employee to exercise his or her right to complain can be expected to depend on the perceived benefits versus costs of exercising that right from the perspective of an individual worker. The benefits arising from filing a complaint relate to the anticipated impact of workplace policies on the outcome of concern to the worker. For example, initiating an OSHA inspection potentially improves working conditions by diminishing or removing the risk of an injury or illness. The greater the level of perceived risk faced by workers, the more likely they are presumably to initiate an inspection. Similarly, the greater the divergence between the wages paid to a worker and the wages he or she is entitled to under the law (for example, premium pay required for overtime), the more likely a worker is to exercise rights to initiate actions under the FLSA.

Balanced against these benefits are the costs associated with filing a complaint. First, workers must acquire information on current conditions as well as the legally permissible level of those conditions. In addition, workers face significant costs arising from potential employer retaliation (the economic losses associated with retaliatory reassignment or, in the extreme, being fired) as well as the potential cost of job loss arising from the chance that compliance will force a firm to (legally) reduce employment (Yaniv 1994).

Industry-level complaint rates for both OSHA and FLSA should reflect both the benefits and costs of complaining across the set of workers in a given industry. If costs are relatively consistent (and modest) across industries, then complaint rates should reflect relative levels of underlying problems facing workers. If the costs of filing complaints diverge significantly across different types of workers or workplaces within an industry, then complaint rates may not be so closely related to the underlying level of compliance. To examine these associations, we generate industry-level estimates of complaint rates and corresponding estimates of underlying compliance.

### *FLSA Data*

All investigative and administrative activities undertaken by the Wage and Hour Division of the U.S. Department of Labor are electronically stored in the Wage and Hour Investigative Support and Reporting Database (WHISARD). We used WHISARD data to create a direct measure of the number of complaints received by WHD. Although WHISARD provides the universe of complaint-based investigations undertaken by the agency, it still underestimates the true tendency of workers to lodge a complaint because of some prescreening that occurs at the time calls come into WHD district offices.

The number of complaints for each detailed industry is divided by employment for that industry to generate a complaint rate, defined as the number of complaint cases per 100,000 workers.

We generated a measure of FLSA noncompliance using the Current Population Survey (CPS), a household survey conducted by the Census Bureau, and focused specifically on overtime noncompliance. We constructed this measure by estimating the number of workers in each detailed industry who were covered by overtime provisions of the law but failed to receive overtime compensation for which they were entitled. After excluding workers exempted from the overtime provisions of the FLSA because of the industry and/or occupation in which they work, we estimated the number of workers paid in violation of overtime provisions as those who reported that they (1) usually work more than forty hours a week at their primary job; and (2) usually do not receive overtime pay at their primary job.<sup>1</sup> This CPS-based measure has been used in a variety of studies of overtime compliance to measure the prevalence of wage and hour violations across industries (see, for example, Ehrenberg and Schumann 1982; Trejo 1991, 1997).

### *OSHA Data*

OSHA's Integrated Management Information System (IMIS) contains the complete records of all federal and state workplace inspections conducted by OSHA, including whether an investigation was instigated by a worker complaint. Our measure for the number of complaint inspections by detailed industry category is derived from IMIS. As with WHD, this measure underestimates the tendency of workers to lodge a complaint given the presence of some pre-screening at the intake stage. Complaint rates under OSHA were calculated in a similar fashion as described above for FLSA.

We used Bureau of Labor Statistics injuries and illness measures to provide an industry-level measure of compliance. In order to focus on more serious workplace problems, we used the lost workday injury rate, which includes only injuries and illnesses that result in lost workdays, job transfers, or restrictions, for our measure of underlying conditions.

## **Relating Complaints and Compliance under FLSA and OSHA**

### *Overall Complaint Rates*

Table 1 presents the total number of FLSA and OSHA complaint cases and the associated complaint rates (complaints deflated by employment and measured as complaints per 100,000 workers) between 2001 and 2004. Overall, complaint rates under both statutes is extremely low. Under FLSA, although an average of about 29,000 workers complained each year between 2001 and 2004, when deflated by the total number of workers this amounts to an aver-

TABLE 1  
Overall Complaint Rates, WHD and OSHA, 2001 to 2004

	2001	2002	2003	2004	2001–2004 Average
WHD Complaint Cases	28,477	29,879	29,299	28,283	28,985
WHD Complaint Rate	24.5	25.9	24.8	23.7	24.7
OSHA Complaint Cases	20,257	20,680	19,726	19,750	20.103
OSHA Complaint Rate	17.4	17.9	16.7	16.5	17.1

age of less than 25 complaint cases for every 100,000 workers. The rate was even lower for OSHA over the same period, averaging 17 complaints for every 100,000 workers.

These overall averages, however, mask a high degree of variation in complaint rates across industries. Under FLSA rates vary between industries with the highest and lowest rates by a factor of almost 200: The number of complaints per 100,000 workers was 195 for gas stations (the industry with the highest rate) versus only 1.1 complaints per 100,000 workers in elementary and secondary schools. Variation in complaint rates is only somewhat smaller under OSHA, where the complaint rate varies from a high of 122 complaints per 100,000 workers for the fabricated metal products manufacturing industry to 1 per 100,000 workers among religious organizations.

#### *How Far Do Workers Need to be Pushed Before Complaining?*

An alternative way to think about the relationship between complaints and compliance is to consider the number of FLSA violations or workplace injuries that are associated with one complaint—that is, how many violations does it appear to take to trigger one employee complaint for an industry? Because we calculate underlying violation and injury rates independently of the agencies' investigative records, we can calculate the ratio of total violations for an industry (based on CPS), or total injuries and illnesses leading to lost workdays (BLS), to the number of complaint cases pursued. The ratio of overtime violations (or lost workday injuries) per complaint case provides an index of the size of the gap between complaints and compliance, where a lower ratio implies that workers are more vocal about problems and a higher ratio implies greater reticence to file complaints. Table 2 presents the estimated number of violations or injuries associated with a complaint case.

Table 2 portrays an extremely large gap between the incidence of complaints and the incidence of underlying violations under both FLSA and OSHA. On average, there were 130 employees paid in violation of FLSA overtime provisions for every one complaint case concluded by WHD (see upper panel of table 2). Particularly high rates of FLSA overtime violations

TABLE 2  
 Estimated Number of Violations Associated with a Complaint Case:  
 FLSA and OSHA

FLSA Overtime Violations Associated with One Complaint Case*	<i>For every complaint case conducted, number of employees in workforce paid in violation of overtime</i>
<i>Average across all industries</i>	130
<i>Highest violations relative to complaint cases</i>	
Electric, gas, and not specified utilities	954
Fabricated structural metal products manufacturing	806
Meat products manufacturing	702
Elementary and secondary schools	654
Savings institutions, including credit unions	636
<i>Lowest violations relative to complaint cases</i>	
Hotels and motels	50
Detective and protective services	44
Personnel supply services (i.e., employment agencies)	30
Automotive rental and leasing, without drivers	31
Gasoline service stations	8
Estimated Number of Injuries / Illnesses Associated with One OSHA Complaint*	<i>For every complaint case conducted, number of injuries / illnesses for total workforce</i>
<i>Average across all industries</i>	119
<i>Highest violations relative to complaint cases</i>	
Nursing and personal care facilities	661
Child day care and family child care homes	573
Air transportation	559
Savings institutions, including credit unions	529
Department stores	499
<i>Lowest violations relative to complaint cases</i>	
Construction	51
Beauty and barber shops	41
Industrial and miscellaneous chemicals manufacturing	40
Automotive repair and related services	33
Elementary and secondary schools	16

\*Of those industries with at least 250,000 workers

appear to be present for industries like metal fabrication and meat processing, where over 800 and 700 (respectively) violations occur for each complaint lodged. For industries like hotels and motels, the ratio is lower; about 50 violations are estimated to occur for each complaint recorded.

Under OSHA the gaps are as striking (and perhaps more surprising given that worker safety is involved). About 120 injuries occur for every complaint

that OSHA pursues (see the lower panel of table 2). Once again, the overall average masks the significant level of interindustry variation. For nursing and personal care facilities, there were over 660 employees affected by a lost workday injury for each complaint lodged in the study period, and there were 500 injury cases for every one formal complaint in the department store sector. Other sectors have a lower threshold for complaints, although it is still striking that in a dangerous industry like construction, there are more than 50 cases of injuries/illnesses resulting in lost workdays for each complaint inspection conducted by OSHA.

### *Relating Complaints and Compliance*

WHD and OSHA rely heavily on incoming complaints to guide enforcement activities—investigators will be led to workplaces that need regulatory attention to the extent that complaints accurately reflect the underlying conditions. Ideally, regulators would like to assume two things: (1) that the workers who are complaining are voicing legitimate grievances and representing them accurately (in other words, that employees working under lawful conditions are *not* complaining); and (2) that workers who are experiencing violations will complain.

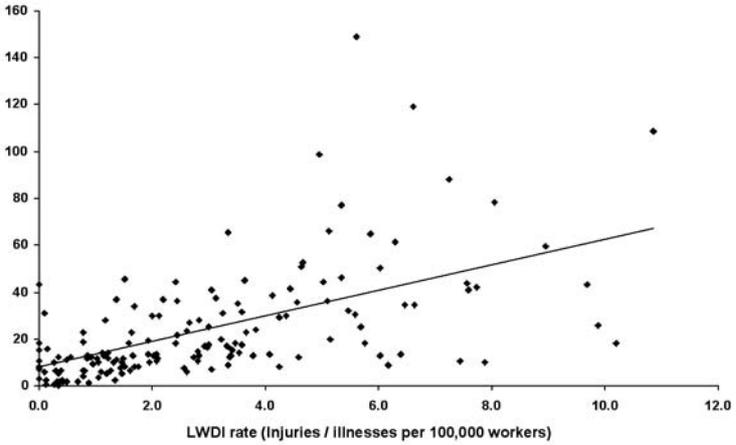
We find evidence of only limited overlap between industries with the highest FLSA complaint rates and the highest estimated rates of overtime violations. In fact, in only one instance does an industry appear among the top ten industries in terms of both complaint rates and violations of the overtime provisions of FLSA (the industry being automotive repair services at number six among complaints and number two in terms of underlying compliance). Under OSHA the industries with highest complaint activity are found in the manufacturing sector (including construction). However, in only two instances—sawmills/millwork (number two in complaint levels and number three in terms of overall injuries) and miscellaneous fabricated metals (number one in complaints and number three in injury rate)—is there overlap among the top ten industries in terms of OSHA complaints and injury rates.

There is greater overlap across those industries with *lowest* levels of complaints and the underlying conditions present in them. Four of the industries with lowest complaint rates under FLSA also have among the lowest estimated levels of noncompliance. For OSHA, five of those industries with lowest levels of complaints also have lowest injury rates (banking; accounting, auditing, and bookkeeping; security and commodity companies; legal services; and religious organizations). Industries with relatively fewer problems tend to have lower complaint rates.

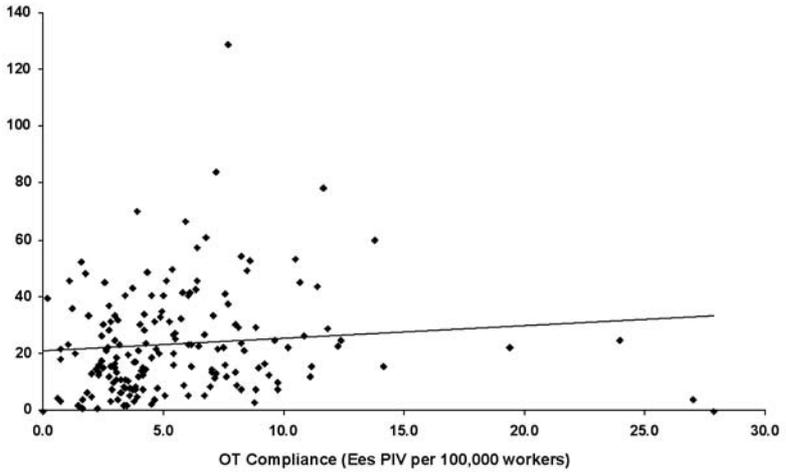
When all of the industries in our dataset are examined, evidence of overlap between complaints and compliance is mixed. Figure 1 plots complaints at the

FIGURE 1

OSHA Complaint Rates versus LWD Injuries, 2002



FLSA Complaint Rates versus OT Non-Compliance, 2002



industry level against the underlying measures of compliance for all industries in the sample. The upper panel indicates a somewhat positive relationship between the lost workday injury rate and OSHA complaint rates. On the other hand, the lower panel depicting this relationship under FLSA indicates little association between these factors.

### *Regression Estimates of Complaint Rates*

We can use a straightforward regression approach to assess the relationship between underlying workplace conditions and observed complaint rates. Table 3 presents the results of employment-weighted OLS regressions for both FLSA and OSHA. Industry-level complaint rates are used as the dependent variables. The associated compliance measure for that industry (estimated noncompliance with overtime provisions of FLSA and lost workday injuries for OSHA) is used as the key independent variable. We also report two other variants of these OLS estimates that include the complaint rate for the other agency (that is, FLSA for OSHA and vice versa) as control variables. Finally, we employ a lagged approach, with compliance levels in 2001 as a predictor for observed complaint rates in 2002, to account for delays between underlying conditions and complaint activity.

The results indicate that at the industry level, OSHA violations are positively and significantly associated with OSHA complaints—that is, higher complaint rates for an industry are associated statistically with higher workplace injury rates in that industry. The control for WHD complaints is also positively (and in one case significantly) related to OSHA complaint rates, implying that industries with higher rates of FLSA complaints also have higher rates of OSHA complaints, holding constant underlying injury rates. This suggests that in addition to underlying violations, there are other factors related to either the workplace or workers themselves that might be driving complaints, a topic taken up in the next section.

The magnitude of the complaint/compliance relationship under OSHA is fairly modest. Given the mean levels of complaint and injury rates, the coefficients in the OSHA regressions imply that a 10 percent increase in an industry's injury rates would be associated with about a 5 percent increase in its complaint rate. A significant percentage of the variability in observed worker complaints is unexplained: the adjusted  $R^2$  indicates that underlying violations (workplace injuries and illnesses) account for between 25 and 29 percent of the variability in OSHA complaint rates. Controlling for wage and hour complaints in the OSHA complaint rate model does little to increase explanatory power.

Underlying levels of FLSA overtime noncompliance are positively related to WHD complaint rates. However, the magnitude of the estimated relation is much smaller than that found for OSHA, and the relation is not statistically

TABLE 3  
Determinants of Complaint Rates, OSHA and WHD, 2001 and 2002

	<i>OSHA Complaint Rates</i>					
	<i>2001</i>		<i>2002</i>		<i>2002 Lagged<sup>2</sup></i>	
	<i>(1)</i>	<i>(2)</i>	<i>(1)</i>	<i>(2)</i>	<i>(1)</i>	<i>(2)</i>
OSHA Noncompliance Rate <sup>1</sup>	0.005** (0.0006)	0.005** (0.0006)	0.005** (0.0007)	0.005** (0.0007)	0.005** (0.0007)	0.005** (0.0007)
WHD Complaint Rate		0.077 (0.0670)		0.119° (0.0664)		0.107 (0.0708)
Constant	0.006** (0.0019)	0.005** (0.0022)	0.007** (0.0020)	0.005* (0.0024)	0.007** (0.0020)	0.005** (0.0023)
R <sup>2</sup>	0.2864	0.2878	0.2545	0.2646	0.2601	0.2651
N	164	164	162	162	164	164

Note: Weighted OLS regressions, using estimated employment for each detailed industry group. Estimated standard errors in parentheses.

<sup>1</sup> = BLS lost work time injuries or illnesses per 100 workers.

<sup>2</sup> = Using 2001 data for control variables.

\* 0.05 confidence level \*\*0.01 confidence level

	<i>WHD Complaint Rates</i>					
	<i>2001</i>		<i>2002</i>		<i>2002 Lagged<sup>2</sup></i>	
	<i>(1)</i>	<i>(2)</i>	<i>(1)</i>	<i>(2)</i>	<i>(1)</i>	<i>(2)</i>
FLSA Overtime Noncompliance Rate <sup>1</sup>	0.0008 (0.0006)	0.0005 (0.0007)	0.0006 (0.0005)	0.0002 (0.0005)	0.001 (0.0006)	0.0007 (0.0007)
OSHA complaint rate		0.1557° (0.0912)		0.1959** (0.0913)		0.1500 (0.0949)
Constant	.0184** (0.0035)	0.0174** (0.0036)	0.0204** (0.0032)	0.0188** (0.0032)	0.0183** (0.0037)	0.0172** (0.0038)
Adjusted R <sup>2</sup>	0.0046	0.207	0.0023	0.0263	0.0091	0.0233
N	165	161	165	161	165	161

Note: Weighted OLS regressions, using estimated employment for each detailed industry group. Estimated standard errors in parentheses.

<sup>1</sup> = Workers paid in violation of overtime per 100 workers covered by overtime provisions of the FLSA.

<sup>2</sup> = Using 2001 data for control variables.

\*0.05 confidence level \*\*0.01 confidence level

significant in any of the regressions. Interestingly, the only variable that does show a significant and positive relation is the level of OSHA complaints for that industry. A very small percentage of overall variance in the complaint rate is explained by underlying compliance with overtime provisions (well below 10 percent). The adjusted R<sup>2</sup> changes little with the inclusion of complaint rates under OSHA or by the use of a lagged structure for the regression.

Taken as a whole, the regressions suggest a limited relationship between FLSA complaint rates and underlying levels of compliance. There is a much stronger and significant relationship between complaints and compliance for OSHA. Finally, the regression results indicate that complaint activity under one workplace statute is associated with complaint activity for the other statute. These findings suggest that other factors—in addition to underlying levels of violations—must be driving the varied industry-level complaint rates found above.

### **Explaining the Divergence between Complaints and Compliance**

There are many different reasons to believe that the “objective” state of workplace conditions may not be fully perceived by an individual worker. The well-known literature on cognitive errors provides ample evidence of the myriad difficulties people have in accurately assessing risks associated with workplace safety and health (see, for example, Kahnemann and Tversky 1979, Sunstein 2005). For example, individuals tend to dramatically overestimate the probability of risks when they feel little control over bad outcomes (for example, risks associated with flying) and dramatically underestimate risks when they perceive themselves to be in control (for example, risks associated with driving cars).

Second, in choosing to exercise rights workers may face costs significant enough to preclude them from complaining. The presence of a significant cost of instigating a complaint has been used to explain the underreporting of crime to the police (e.g., Myers 1980; Lott and Roberts 1989). Significant costs arising in the workplace context include (a) obtaining information regarding the existence of basic worker rights as well as the standards to which employers are held accountable<sup>2</sup>; (b) gathering information on the current state of workplace conditions—especially problematic when the risks are as complex as in the case of safety and health failures (Viscusi and O’Connor 1984; Viscusi 1991; Fagotto and Fung 2003); and (c) learning specific details concerning how the law is administered (for example, the procedures for initiating a complaint inspection).

In addition to information-related costs, workers face significant costs associated with retaliatory reassignments, schedule changes, or in the extreme, the possibility of being fired. A number of studies suggest that, despite explicit retaliation protections under various labor laws, being fired is widely perceived to be a consequence of exercising certain workplace rights (AFL-CIO 2005, Compa 2003). Public law groups and other organizations representing low-wage workers note that many employee complaints related to minimum wage

and/or overtime under FLSA are filed *after* a worker has been fired by an employer, often for other causes (thereby lowering the cost of complaining at that point).<sup>3</sup>

Finally, a violation of one workplace standard typically affects many workers and is often associated with violations of other standards, which may or may not directly affect the worker who triggered the inspection. An employee's exercise of workplace rights, therefore, conveys positive benefits to others who have not chosen to complain themselves. If this is the case, an enforcement system focused on individuals exercising rights may lead to far fewer benefits than would be socially desirable (Weil 2005).

### **Complaints and Compliance: Implications for Workplace Enforcement**

A large number of federal and state workplace policies depend on worker complaints as a trigger for enforcement activity. This paper makes clear the problems arising from a regulatory policy so dependent on complaints. The nature of the benefits and costs preclude many workers from exercising their rights in the first place, resulting in a modest level of complaint activity. Many different factors related to perceptions of benefits and costs of complaints (and in particular the high costs associated with lodging complaints) may undermine the connection between bad conditions and complaining about them. As a result, silence should not be confused with compliance.

A body of empirical studies demonstrates that workers are more likely to exercise rights when they have an agent that assists them in use of those rights (Weil 2005). In most cases, that has meant a union. The contrary case also follows: workers that feel vulnerable to exploitation are less likely to use their rights. These include immigrant workers, those with less education or fewer skills, and those in smaller workplaces or in sectors prone to a high degree of informal work arrangements.

Workplace regulatory policy must focus on workplaces where big problems exist but also where workers are unlikely to complain because of barriers they face. Enforcement policies that take both the underlying likelihood of problems and the capacity of workers to trigger enforcement into account have the potential of appreciably increasing the regulatory bang for the enforcement buck. A corollary to the above complaint problem arises in the largely non-unionized private sector workplace. Absent the presence of third-party representatives, workers face substantial impediments to effectively exercising their rights. Two implications naturally follow. First, public policies that increase the ability of workers to organize have the secondary effect of improving the implementation of workplace policies like OSHA. The implication

is that legislative initiatives that would make it easier for workers to choose unions would also positively affect the implementation of broader workplace policy.

Second, improving the effectiveness of workplace regulation requires convincing more workers in non-union settings to exercise their rights. The likelihood of workers exercising their rights depends on both the benefits and the risks of doing so. Future debates regarding the adequacy of workplace regulation should therefore pay far greater attention to enhancing exercising of rights by changing perceived benefits and costs through governmental or third-party organizational interventions.

## Notes

1. We use overtime violations as our measure for compliance for two main reasons: (1) the vast majority of wage and hour violations and back wages assessed stem from employers' failure to properly pay overtime (vs. minimum wage); and (2) the universe of workers covered by the overtime provisions is substantially different from that covered by the minimum wage and child labor provisions, making ratios of violations to all FLSA-covered workers problematic.

2. This is a recurring problem in workplace regulation. The decline in the "take up" rate for unemployment insurance has been partly ascribed to the lack of information to workers about their access to unemployment benefits (Wandner and Skinner 2000). Freeman and Rogers (1999) present evidence indicating pervasive worker misunderstanding of basic rights under employment laws. Even the most basic information about workplace rights is sometimes not understood. A survey conducted by researchers at the Brennan Center for Justice based at the New York University Law School found that only 18 percent of workers surveyed in low-income neighborhoods were aware of the correct level of the minimum wage in New York in 2006 (Brennan Center for Justice 2006).

3. The contact between workers and legal organizations in these cases often arises because the worker, seeking some recourse after being fired, finds that he or she has no legal recourse to allow reinstatement. However, in the course of those discussions, other regulatory violations (minimum wage, overtime) are discovered.

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