

Louisiana Guestworker Health and Safety a Necessary Component of Health Equity: Lessons From the COVID-19 Pandemic

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Abstract

Guestworkers are a critical labor component of many industries considered essential to U.S. infrastructure. Despite their essential role in the U.S. labor force, guestworkers are vulnerable to exploitative labor practices. The COVID-19 pandemic compounded guestworkers' vulnerability to include a lack of public health protective measures in addition to longstanding labor abuses. The pandemic has created greater public health awareness about structural determinants of health inequities, such as unsafe and exploitative working conditions. As public health increases its focus on social and structural determinants of health, it can contribute to improved labor conditions for guestworkers. This article highlights guestworkers' experiences in Louisiana's crawfish industry to demonstrate the marginalized role of guestworker labor in a major Louisiana industry. This article also examines local public health approaches that can bring attention and resources to labor issues.

Keywords

guestworkers, labor rights, public health, COVID-19, crawfish

Introduction

The COVID-19 pandemic aimed a spotlight on social and labor conditions of essential workers in the United States (U.S.). The U.S. Cyber and Infrastructure Security Administration defines essential workers as those who work in one of sixteen essential sectors such as health care & public health, communications, food & agriculture, and energy.¹ These workers represent between 34 and 43 percent of the total U.S. work force.² A large subset of these essential workers are foreign workers hired through the H-2 guestworker program overseen by the Department of Labor (DOL). Guestworkers are foreign laborers with temporary permission to work in the U.S. Guestworkers' labor is critical to many industries including the food and agriculture industry where they maintain the system by working in fields, packing houses, warehouses, and processing plants. To prevent disruptions to the food system during the pandemic, the U.S. Department of Homeland Security temporarily extended the length of time guestworker visa holders were permitted to remain in the U.S. This was done to "protect the nation's food supply chain and lessen impacts from the COVID-19 public health emergency."³ These changes lead to a record number of visas issued in a single month (as high as 31 thousand in April 2020) and demonstrated the

dependence of the U.S. food system on deportable, low-wage, and immigrant workers.⁴

The exploitative labor conditions of the guestworker program are well documented and range from wage theft and health and safety violations to coercion.^{5,6} The program re-enforces unequal power imbalances by requiring a guest worker to be dependent on a single employer in order to maintain a valid visa. As a result, guestworkers have limited means to enforce their legal rights. Despite documented abuses, there has been minimal reform.⁶ The COVID-19 pandemic further amplified guestworkers' vulnerability to include lack of basic health and safety precautions to protect against COVID-19 exposure and transmission.

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An unexpected byproduct of the COVID-19 pandemic is increased public awareness about the connection between work and health. The pandemic revealed the ways that precarious, exploitative, and unsafe work conditions increased the potential for worker exposure to COVID-19.⁷ Neither Federal OSHA (Occupational Safety and Health Administration) nor the OSHA state plans (in those states where they are present), have responded adequately to this increasingly recognized need. State public health departments can fill the gap by expanding into activities that address labor standards and worker health.

This article highlights guestworkers' experiences in Louisiana's crawfish industry to demonstrate the marginalized role of guestworker labor in a major Louisiana industry, and to highlight local public health approaches that can promote worker rights and well-being. The article draws upon examples of workers' experiences across the spectrum of labor abuse, ranging from worker mistreatment and non-payment of wages to workplace safety hazards and labor trafficking. This is done intentionally to demonstrate the breadth of challenges facing workers and to highlight opportunities for public health interventions.

Guestworker Program

The H-2 Guestworker program provides foreign, unskilled, and temporary labor to many U.S. industries. The guestworker program includes agricultural workers (H-2A) and non-agricultural workers (H-2B). In 2019, approximately 258 thousand H-2A guestworkers and 150 thousand H-2B guestworkers were awarded work visas in the U.S.^{8,9} The program was established and intended for employers to recruit foreign laborers in cases when local workers were unable to fill labor demands. Over time, some employers have utilized guestworker visas to employ laborers with lower wages and lower expectations of labor conditions.

Many guestworker abuses are due to flaws in the program that tie a guestworker to a single employer as a condition of the work visa. This arrangement can deter workers from reporting exploitative or harmful work conditions for fear of losing their lawful immigration status.¹⁰ As many guestworkers rely on their employers to sponsor them for work visas year after year, they fear that speaking out or reporting on workplace conditions will cause their employer to blacklist them and jeopardize future employment.⁶

Because guestworkers are bound to a single employer and have limited legal rights, they are at-risk of mistreatment. Labor violations consistently reported by workers include wage theft, verbal abuse and harassment, coercion, sexual harassment, unsanitary living conditions, hazardous or unsafe working conditions, and human trafficking.^{5,6} In some cases, employers misled workers or violated contracts regarding wages, benefits or hours worked. Between 2015 and 2017, the National Human Trafficking Hotline identified almost 600 guestworkers who were victims of labor

trafficking.¹¹ The most common forms of control traffickers used to exploit guestworkers were economics, such as non-payment or withholding wages, and threats such as deportation or report to immigration authorities.¹¹

In disaster and post-disaster contexts, labor exploitation can increase because of the demand for cheap labor, limited capacity of regulatory agencies, and suspension of key labor protections. For example, after Hurricane Katrina hit the Gulf South in 2005, the DOL temporarily suspended health and job safety standards and affirmative action requirements for federal rebuilding contracts.¹² These relaxed standards fostered labor exploitation as many workers did not know their rights or did not have alternatives to exploitative labor conditions.¹³ The National Guestworker Alliance estimated they served more than one thousand victims of forced labor in the post-Katrina era.¹⁴ Similar to worker conditions documented after Hurricane Katrina, guestworkers' vulnerability to labor exploitation was amplified by the COVID-19 crisis.

Crawfish Industry in Louisiana

Louisiana relies heavily on guestworkers to fill seasonal and temporary jobs in agriculture and food production industries. In 2020, Louisiana had the seventh highest number of H-2A visas and fourth highest number of H-2B visas issued in the U.S.^{8,9} The majority of these visa holders work in sugar cane, crawfish, landscaping/groundskeeping, and food processing.^{8,9} As much as 70 percent of Louisiana's crawfish industry is staffed by guestworkers, and in 2019, thirty-one crawfish processors employed guestworkers.^{15,16}

Louisiana's crawfish industry is the largest freshwater crustacean aquaculture industry in the U.S. Approximately 90 percent of the U.S. farmed and wild crawfish production comes from Louisiana, particularly South Louisiana where crawfish are abundant in the swamps, marshes, and wetlands.¹⁷ The total annual economic impact on Louisiana's economy exceeds \$300 million, and more than seven thousand people depend directly or indirectly on the crawfish industry.¹⁸ Crawfish are sold live or processed and sold as fresh or frozen abdominal or "tail" meat. Work at crawfish processing facilities is labor intensive and involves peeling, boiling, and packing crawfish.

Previous investigations documented unsafe and illegal conditions for guestworkers at some of Louisiana's crawfish processing plants. In 2012, investigations revealed that C.J.'s Seafood made employees work 24-hour shifts, locked some workers in the plant, and threatened employees and their relatives in Mexico with violence to discourage workers from complaining to authorities. As a result of these abuses, Walmart suspended C.J.'s as a crawfish supplier.¹⁸ In 2015, workers at the L.T. West Crawfish Farm filed complaints of abuse, wage withholding, and confiscation of passports.¹⁹ A 2016 study at several Louisiana processing plants found that 39 percent of the guestworkers experienced violence or physical abuse, 44 percent were paid less than the

contract wage, and 34 percent had at least one work-related injury.²⁰ A 2017 study of nineteen guestworkers reported that almost 50 percent of workers experienced a work-related injury and 57 percent feared employer retaliation for complaining about worksite conditions.²¹

Guestworker Health, COVID-19, and Government Response

Seafood processors and other food production workers were considered essential workers and their employment continued throughout the COVID-19 pandemic. Although the essential designation made it possible for workers to maintain employment, for guestworkers who were already at risk of losing their visa status if they spoke up about unsafe working conditions, the pandemic created an additional level of concern about contracting a potentially deadly virus. Sabina Hinz-Foley Trejo, an organizer at the Seafood Workers' Alliance, said COVID-19 outbreaks were "inevitable" considering the working standards and H-2B arrangements.²² The Seafood Workers' Alliance is a New Orleans-based worker center that organizes workers across Louisiana to address labor and workplace safety issues at seafood processing plants.

Trejo and other labor advocates described guestworkers' crowded living and working conditions and lack of personal protective equipment.^{6,22} Other poor conditions, some of which may have contributed to the transmission of COVID-19, include unfamiliarity with the U.S. health care system, ineligibility for some worker health benefits, lack of access to health care due to cost and other factors, language barriers, and dismissal or retaliation against sick or hospitalized workers. The Centro de los Derechos del Migrante documented that 94 percent of interviewed Mexican guestworkers in the agricultural industry reported three or more labor law violations including underpayment, unsafe work conditions, and overcrowded housing.⁶

In April 2021, David Michaels, former head of OSHA said, "If we don't control workplace transmissions, the pandemic will continue to worsen."²³ In Louisiana alone (as of October 2021), there have been 1433 COVID-19 outbreaks (two or more unrelated cases at a site within a two-week period), resulting in 9601 cases.²⁴ Of these, 41 percent of cases and 35 percent of outbreaks were determined by the Louisiana Department of Health to be workplace-associated infections. Food processing sites accounted for 33 percent of all workplace cases and 11 percent of all workplace outbreaks. Although not all outbreaks occurred at seafood processing plants, accounts from workers at three processing plants depicted unsafe working and living conditions, a disregard of public health recommendations for COVID-19, and reports of more than one hundred workers who developed symptoms of COVID-19.²²

One of the plants was so crowded that workers had difficulties moving without touching each other. In addition to a lack

of social distancing protocols, workers slept in dorm-like settings with six or seven people to a room. Workers with COVID-19 symptoms were quarantined in employer-provided housing and not provided medical consultation or treatment.²⁵ Workers had difficulties accessing tests. Some workers were taken to a clinic for tests but did not receive results. Other workers were offered tests at the worksite for a fee.²⁵

Two female guestworkers from Mexico who were working at a crawfish processing plant in Crowley, Louisiana, filed a whistleblower account with representation from the Seafood Workers' Alliance. One of the women reported "In the plant, I worked elbow-to-elbow with my coworkers for nearly twelve hours a day, in a cold, unventilated space, processing crawfish. My coworkers and I were not provided face masks or other PPE [sic] (Personal Protection Equipment) that might have protected us from infection with COVID-19."²⁶

When both women became ill with COVID-19, their employer told them to transfer to quarantine housing instead of seeking medical treatment.²² When their health worsened, they left on their own to receive medical care at a nearby hospital. The women stated that they did not feel confident that their employer would provide medical care, and they feared for their lives.²⁶ In response to leaving the employer housing, the employer fired both women and threatened to report them to immigration, claiming they "abandoned" their jobs.²⁷ The women filed charges against their employer with the U.S. National Labor Relations Board and a whistleblower complaint with OSHA.²⁷

Guestworkers in Louisiana and throughout the U.S. were endangered by COVID-19 outbreaks as lax government oversight contributed to unsafe working and living conditions and inadequate safety measures. This disregard for worker health fits a long-time narrative of inadequate governmental oversight of guestworkers. A 2020 congressional investigation identified enforcement of guestworker laws and regulations as a key policy area in need of congressional action.²⁸ Central to the investigation was how to address legitimate, temporary labor needs while protecting workers from abuse and retaliation at the hands of employers and their agents.

The COVID-19 pandemic further worsened guestworkers' health and labor conditions, but the pandemic also served to make guestworkers more visible to the rest of society and highlighted the connection between worker safety and health and public health. This increased awareness allows for ongoing public health engagement to address longstanding abuses of the guestworker program.

The DOL has the authority to ban employers with substantial program violations and enforce employer obligations and worker rights by enforcing laws and regulations, and imposing penalties.²⁸ This includes violations related to back wages, impermissible paycheck deductions, and prohibited fees and expenses. In addition to enforcement of guestworker laws and regulations, the DOL's OSHA protects guestworkers, and all U.S. workers, through its enforcement

authority to conduct worksite inspections and assess employers' compliance with health and safety standards. By law, all workers in the U.S. have the right to a safe workplace, and employers are responsible for ensuring a workplace free of harm. OSHA can issue citations and impose fines on employers if violations are found, and through its Whistleblower Protection Program, it can protect employees who experience retaliation for reporting violation of workplace health and safety laws.²⁹

Although OSHA has the legal authority to protect the health and safety of guestworkers, in practice OSHA's enforcement tools and capacity are inadequate. Worksite inspections rarely occur: in Louisiana, fewer than 2 percent of OSHA-covered employees have their worksites inspected.³⁰ During the first quarter of 2020, OSHA's Whistleblower Program for Region VI (which includes Louisiana) had a 42 percent increase in complaints with only seven investigators in the region, and it took an average of 279 days to close an investigation.²⁹ OSHA's limited enforcement capacity weakens the pressure for regulatory compliance which in turn contributes to the growth of vulnerable workers.

Investigation of worksites are also limited because guestworkers rarely file complaints with OSHA due to fear of retaliation by employers and other barriers, such as: language, transportation, and general lack of information about workers' rights.⁶ When complaints are filed, guestworkers often rely on worker advocates such as worker centers, university-supported legal clinics, and labor advocacy groups.⁵ These types of organizations are limited in Louisiana, and other Southern states. Even with legal representation, these cases are difficult to navigate given the complexities in regulatory requirements and agency involvement.

Further impacting the protection of worker safety and health is the lack of occupational health capacity and expertise within public health. Currently about half of the states and territories have some occupational health capacity within their public health departments, yet more resources are needed to sufficiently enable public health services to address work-related issues. In a 2017 survey of state and territorial health departments, 65 percent of respondents reported none to minimal occupational health capacity to lead activities, provide subject matter expertise, or manage resources to conduct occupational health activities.³¹ Similar findings were reported from a survey of the largest metropolitan health departments that combined represent about 17 percent of the total U.S. population. Only 15 percent of respondents indicated adequate capacity in occupational health.³²

Recommendations

Through its core functions of assessment, policy development and assurance, public health aims to promote systems and conditions that enable optimal health and address systemic and structural barriers that foster health inequities.³³

As public health increases its focus on social and structural determinants of health inequities, it also needs to increase its focus on workplace safety and health standards and fair labor practices. Labor exploitation occurs on a spectrum from wage theft and safety violations to coercion and labor trafficking; engagement by public health agencies at any aspect of the spectrum contributes to improved working conditions and fair labor for all workers.

Public health agencies' legal authority to require disease reporting uniquely positions them to collect, monitor, and analyze health data. Hospitalization, emergency department visit, and fatality data are routinely analyzed by public health agencies to identify health inequities and prioritize public health actions. Work-related information, such as occupation and industry, is essential for characterizing a population and understanding health inequities. This information, however, is not routinely collected and analyzed. COVID-19 underscored the importance of analyzing health data by work factors to guide outreach and prevention activities such as targeted COVID screening and vaccination efforts. Early in the pandemic, the lack of job information for individuals with COVID-19 hampered worksite outbreak investigations and evaluation of exposure risk by occupations.³⁴ Over time, public health agencies improved their ability to collect and analyze employment data. In May 2020, the CDC modified its COVID case reporting and contact tracing forms to include details about an individual's employment.³⁴ With lessons learned and new data collection processes in place, public health agencies can continue to expand the collection and use of work-related data to inform and guide their programming.

Timely and accurate data on work-related injuries and illnesses can bring attention to workplace safety and health issues and complement labor enforcement activities, such as OSHA investigations. Worksites with unsafe working conditions that result in worker injuries or COVID-19 outbreaks may also be worksites that violate guestworker labor standards such as withholding of wages, excessive working hours, and unsanitary living conditions. Through their routine collection and analysis of health data, public health agencies can identify worker populations with high rates of occupational injuries and illnesses. These data can supplement federal data sources such as OSHA's Fatalities and Catastrophes reports (FatCat) and Severe Injury Reports, and the Bureau of Labor Statistics' Census of Fatal Occupational Injuries (CFOI) and Survey of Occupational Injuries and Illnesses (SOII). These national data are useful to identify trends and high-risk industries and occupations, yet they have well-documented weaknesses that limit their use. The weaknesses include undercount of non-fatal injuries and illnesses, lag time before data are available, and limited location details to enable analysis and use at the local level.³⁵

OSHA's recordkeeping regulation requires all employers, with limited exception, to keep records of all work-related injuries and illnesses that meet certain criteria.³⁶ The SOII

is based on information from OSHA recordkeeping logs. Researchers have documented that under-recording of injuries on the OSHA logs has resulted in an undercount of injuries on the SOII ranging from 20 percent to as high as 70 percent.³⁵

There have been many efforts to characterize and promote complete and accurate reporting of work-related injuries.³⁷ The Obama administration amended OSHA's recordkeeping regulations to require electronic reporting of case reports in addition to reporting of additional details about each case.³⁸ Trump rescinded these changes and further limited OSHA's overall enforcement and regulatory authority by not installing an Assistant Secretary of Labor or issuing a COVID-19 standard.³⁹

Public health can integrate worker safety and health into its programming and, in some communities, public health agencies may also be able to contribute to the monitoring and enforcement of labor laws. Through required disease reporting requirements, the Louisiana Department of Health receives and investigates cases of elevated adult blood leads. When an investigation reveals an occupational source, the case is referred to OSHA for investigation. In San Francisco, local public health agencies use their authority to revoke or suspend a permit when a business violates other local, state, or federal laws. If an employer does not comply with labor laws, such as payment of minimum wage or use of unpaid sick leave, the Office of Labor Standards Enforcement can request the San Francisco Department of Public Health to revoke or suspend an employer's business permit which is a significant financial disincentive for a business.⁴⁰ These interagency collaborations are a valuable model as they address both limited government resources to conduct worksite investigations, and the potential efficiency of public health's administrative enforcement mechanisms compared with those available to labor agencies.⁴⁰

Enforcement of labor issues at the local and state level is strengthened through community awareness and engagement. Public health's focus on community engagement and advocacy lends itself to mobilizing local, multi-sector support for fair labor practices. A current example in Louisiana is the synergy around worker rights and disasters that has developed into a growing movement due to collaborative, community-based training efforts. In the spring of 2018, the Greater New Orleans Human Trafficking Task Force partnered with a public health disaster response program (the Louisiana Hurricane Response Hub) to conduct trainings throughout the state on the intersection of labor trafficking and natural disasters. These trainings emphasized the vulnerabilities of laborers in Louisiana, explored the ways disasters amplify worker abuses, and educated communities how to identify and respond to labor abuses in disaster recovery contexts. Training participants included first responders, protective service staff, law enforcement, health care and social service providers, and community members. These trainings raised awareness

about Louisiana's vulnerable worker population and engaged community organizations and local and state government in Louisiana's anti-human trafficking movement. This work has led to a recommendation by the Louisiana Human Trafficking Prevention Commission that the Governor's office create an awareness campaign for post-disaster contexts that educates vulnerable workers about their rights. An additional partnership with the Governor's office and the Louisiana Child and Youth Trafficking Collaborative resulted in trainings for local FEMA providers.

Public health professionals and worker rights advocates offer unique skills to advance shared agendas of worker health and fair labor. Issues such as access to healthy foods, sustainability and local food environments are important public health concerns. Food production is also an important labor concern. A 2020 report on Louisiana's seafood industry described the economic threat of foreign seafood imports on the stagnating demand for Louisiana seafood products.⁴¹ The report stressed the value of marketing the Louisiana seafood brand, especially during COVID-19 when there is increased consumer interest in regional food systems and small businesses. Although the report mentioned the seafood industry's reliance on guestworkers, it did not mention the negative impact of labor abuses on Louisiana's brand. As public health engages with communities around food and agriculture issues, it can also partner with labor advocates such as local worker centers to support policies and programs that support workers who grow, harvest, and process food.

Worker centers have created a new paradigm for empowering workers through social responsibility campaigns as well as market-impacting produce and merchant boycotts. These community-led centers originate out of collaborations between community and labor leaders and offer services, advocacy, and local organizing to support low-wage workers. The Coalition of Immokalee Workers, a worker center in Florida, successfully advanced the needs of the hard to organize group of migrant agricultural workers. The coalition formulated a strategy to win legal advances and ensure benefits like higher pay, water and sanitation in the field, and protections from sexual harassment. This strategy created the Fair Food Program which is considered among the 15 "most important social-impact success stories of the past century."⁴² The Fair Food Program relies on documenting and bringing public, legal, and consumer attention to farm labor exploitation and using market power through consumers and major corporate buyers to boycott employers and their products. The coalition works with partnering employers to implement the Fair Food Code of Conduct which enables third-party worksite audits and code enforcement.

The COVID-19 pandemic highlighted opportunities for worker centers to work collaboratively with public health and other organizations for increased impact. "We are now transforming our organization to be more nimble for this moment: making room for more workers and building on our ability to impact individual and local issues like wage theft and

criminalization to also impact our states economic development and governance,” said Ursula Price, Executive Director of New Orleans Workers Center for Racial Justice.⁴³ By engaging with worker centers, public health can assist in promoting strategies like the Fair Food Program to champion guestworker rights. Elements of this strategy include disclosing labor abuses to restaurants and consumers, making alliances with restaurants, suppliers, and consumer advocacy groups, and applying market pressure through product and producer boycotts. Current economic pressure on Louisiana’s seafood industry makes negligent facilities more vulnerable to advocate for a system like the Fair Food Program which allows for external auditing and supports certification for employers meeting fair labor standards.

Public health can also support bi-national strategies promoted through organizations such as Global Labor Justice and the Mexican organization ProDESC. These organizations advance policies and laws that protect decent work, hold global corporations accountable for labor rights violations in their supply chains, and provide temporary workers with knowledge and tools to demand and defend their human rights at work.^{44,45}

Conclusion

Healthy communities are built from economies that value human rights, including the right to a safe work environment, fair wage, and unexploited labor. This article highlights the limited health, safety, and labor protection afforded to guestworkers despite their essential role in maintaining farming and food processing industries, including Louisiana’s crawfish industry. Labor issues in the U.S. have been addressed primarily through enforcement and criminal justice responses outside of the public health space, but these methods have not effectively protected workers. COVID-19 illuminated the central role of employment and work conditions on health inequities and the value of a public health approach to worker rights. As public health increases its focus on structural determinants of health inequities, it can contribute to improved worker safety and health. Ensuring the economic health of workers contributes to overall community and public health.

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