

U.S. Anti-Discrimination Laws: A Tool to Protect Victims of Trafficking



**David Lopez, General Counsel
U.S. Equal Employment Opportunity
Commission
October 2012
Patrick.Lopez@EEOC.GOV**

Human Trafficking and Slavery

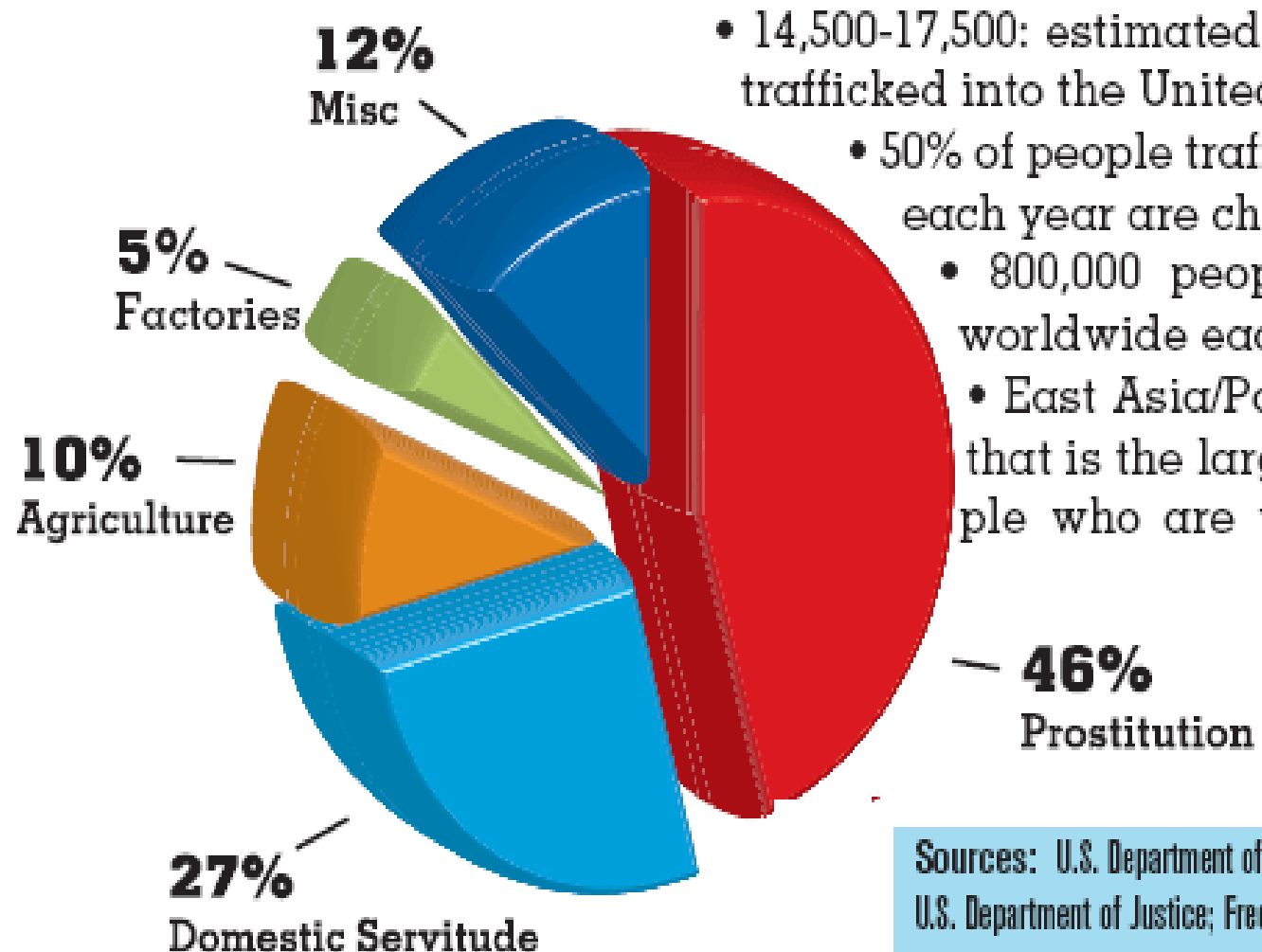
In U.S., people are trafficked into:

- Domestic service, factories, agriculture, restaurant work, construction, hotel/motel housekeeping, prostitution, and other informal labor sectors
- Victims can be men or women of varying ages, varying educational levels, and varying skills.

Human Trafficking

- Human trafficking is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- Usually, cases involve workers from other countries transported into the U.S. & forced to work under restrictions that limit ability to leave.

Human Trafficking Numbers



- 14,500-17,500: estimated number of people trafficked into the United States each year
- 50% of people trafficked into the U.S. each year are children
- 800,000 people are trafficked worldwide each year
- East Asia/Pacific is the region that is the largest source of people who are trafficked into the U.S. each year.

Sources: U.S. Department of Health and Human Services
U.S. Department of Justice; Free the Slaves

Criminal Law vs. Civil Law

U.S. court system allows for prosecution of claims in both Criminal and Civil Courts.

Criminal courts punish individual(s) for crimes committed.
Burden of proof is higher :



“Beyond a reasonable doubt”

vs.



“Preponderance of the Evidence”

Civil courts award compensation to victim(s). Burden of proof is lower: “Preponderance of evidence.”

HUMAN TRAFFICKING STATUTES

Trafficking Victims Protection Reauthorization Act (TVPA) of 2008,
18 U.S.C. § 1595 allows private right of action for violations of

A. 18 U.S.C. § 1589 (forced labor - obtaining labor or services by (1) threats of serious harm or physical restraint; (2) scheme or plan causing victim to believe she'd suffer serious harm or physical restraint or (3) abuse or threatened abuse of law or legal process);

B. 18 U.S.C. § 1590 (knowingly recruiting, harboring, transporting, providing or obtaining by any means persons for labor or services in violation of this chapter); and

C. 18 U.S.C. § 1591 (sex trafficking).

- Compensatory, punitive damages, and attorneys fees available.
- 10 year statute of limitations.

What is the role of EEOC?

- Federal agency charged with enforcing laws that prohibit discrimination in the workplace.
 - Development of Policy.
 - Outreach and public education.
 - EEOC investigates complaints of discrimination and in some cases may file lawsuit against employer.
 - Litigation in federal courts

Anti-Discrimination Laws Enforced by EEOC

TITLE VII OF THE CIVIL RIGHTS ACT of 1964

Race



National Origin



Color



Sex



Religion



- **Equal Pay Act of 1963, as amended (EPA)**
Prohibits discrimination in pay because of sex.
- **Age Discrimination in Employment Act of 1967, as amended (ADEA)** - Prohibits employment discrimination against individuals who are 40 years of age or older.
- **Americans With Disabilities Act (ADA) & ADA Amendments Act of 2008 (ADAAA)** – Prohibits employment discrimination against individuals with disabilities. Requires reasonable accommodations.
- **Genetic Information Non-Discrimination Act Of 2008 (GINA)** - Prohibits discrimination because of genetic information, including person's/relatives disorder, disease or genetic tests.
- All of these laws prohibit RETALIATION.

EEOC Initiatives

- **Commissioners Meeting on Issue of Human Trafficking (Jan. 2011)**
 - Internal work groups such as the Anti-Human Trafficking Task Force and Immigration work group.
- **Establishment of Immigrant Worker Team:**
 - **Goal:** Develop and implement a comprehensive plan for EEOC to address the intersection of employment discrimination issues affecting workers of foreign national origin.
 - **Focus:** human trafficking, migrant workers, and immigrant workers.

EEOC and Trafficking

- Legal Theories under Title VII:
 - Disparate Treatment: employee (victim) is treated differently than another employee because of a protected basis (i.e., national origin or race).
 - Hostile work environment: employee (victim) subjected to severe and pervasive harassment because of a protected basis (i.e., national origin or race).
 - EEOC has filed 5 human trafficking cases. All have been large class cases.

CASE STUDY

Chellen and EEOC v. John Pickle Co.

*344 F.Supp.2d 1278 (N.D. Okla. 2004) and
446 F.Supp.2d 1247 (N.D. Okla. 2006)*

- 52 Indian skilled workers paid less than min. wage (\$1 – \$3.17 hr), restrained in substandard living conditions, subjected to harsher conditions than Caucasian, U.S. born workers
- Claims brought under Title VII (national origin) and FLSA. Court awarded workers back pay under FLSA and Title VII for work done;
- Compensatory and punitive damages; \$1.3 million court award.

Significance of case against John Pickle Co.

- First EEOC case involving human trafficking
- Court applied Title VII and other civil laws and remedies to case of foreign worker exploitation. Typically acts considered a criminal matter of human trafficking and involuntary servitude.
- Company tried to shortcut immigration laws by use of wrong visas for highly-skilled steel workers. Got B1 “Visitors Visas” for alleged “training” and lied to US Consulates that no work for pay was involved.
- Company profited and displaced its American workers.

EEOC v. TransBay Steel

- 48 welders brought from Thailand on H-2B visas.
- Held against will, threatened, passports confiscated, movement restricted, forced to work 14 hour days/6 days a week without pay and confined to cramped apartments without any electricity, water or gas.
- Escaped and sought help at Thai Temple.
- U.S. born were not treated the same way.
- Case resolved in December 2006.

Settlement of TransBay case

- Three year consent decree
- Recovered over \$1 million for 48 welders
- Housing stipend
- Relocation money
- Training at a local college
- Certification
- Guaranteed wages and positions including supervisors for some
- Monitoring, reporting, training

EEOC v. Henry's Turkey Service

- Class of intellectually disabled workers were paid substandard wages as compared to non-disabled workers between 2007 - 2009.
- Court ordered company to pay \$1.3 million for lost wages.
- Lawsuit also alleges that the men were subjected to abusive and verbal physical harassment, harsh punishment and restricted their freedom, forced to live in substandard living conditions and failed to provide proper health care. Claims still pending.

EEOC v. Global Horizons

- Largest trafficking case brought by the EEOC in agriculture
 - 300 to 600 Thai agricultural workers (H2-A visas)
 - Brought as a pattern and practice case against placement agency and farm employers
 - Allegations: harassment, terms & conditions, pay, and constructive discharge because of their national origin (Thai) and race (Asian).
- Employees were also retaliated against, threatened with deportation, prohibited from leaving farms, etc.
- Two cases in federal court: Hawaii and Washington

EEOC v. Signal International

- Class of over 500 similarly situated Indian nationals (H2-B visa) were subjected to hostile work environment because of national origin (Indian), race (Asian).
- Employees also subjected to disparate treatment and retaliation.

REMEDIES Available to Trafficking Victims?

- Back Pay = for wages earned and/or lost wages
- Compensatory Damages = emotional distress
- Punitive Damages = intended to punish employer for actions
- Injunctive relief = to correct unlawful employment practices by establishing changes (policy) in the workplace

Trafficking Victims May Be Eligible for Visas

- Victim(s) may petition for T or U Visas with U.S. Citizenship & Immigration Services (USCIS).
- Visas can last up to four years; allows individual to remain in U.S., be authorized to work, and to travel.
- After 3 years of continuous presence, can apply for permanent residency (green card).
- Family members who accompany the petitioner may also be eligible for visas.