

# Proposal for Day Labor Legislation



The Day Labor Organizing Project is an initiative to improve the situations of day laborers in Cincinnati through advocacy, education, legislative reform, and collaboration between allies. Its volunteers include day laborers, advocates, leaders of religious congregations, and community members.

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Day Labor Organizing Project

# Introduction to Day Labor in Cincinnati

## DLOP Endorsers

Over the Rhine  
Community Council

The Church of Our  
Saviour, Mt. Auburn

The Pastoral Leader-  
ship Caucus of the  
AMOS Project

The Faith Community  
Alliance of Greater  
Cincinnati

Intercommunity  
Justice and Peace  
Center

Change to Win –  
Make Work Pay

Justice for Janitors

Greater Cincinnati  
Coalition for the  
Homeless

Drop Inn Center

Cincinnati Interfaith  
Worker Center

Over the Rhine  
Community Housing

Cincinnati for  
Economic Justice

Interfaith Hospitality  
Network

Ohio Justice and  
Policy Center

Healing Connections

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There are numerous labor halls in the City of Cincinnati that contract with local businesses to provide unskilled, manual labor on both a short-term and a long-term basis. Due to the low wages and the usually arduous and undesirable nature of the work offered, these agencies rely on the employment of low-income and often homeless individuals. For a worker lacking a permanent address, identification, and/or marketable job skills, day labor is the only immediate option for fiscal survival. It is estimated that over 60% of homeless individuals in Cincinnati work, yet still remain without enough income to obtain permanent housing.

Day labor halls in the downtown and immediately surrounding areas have recently raised eyebrows due to public safety and civil rights problems associated with their daily operation. Issues with two agencies, Quikstaff and Minute Men, arose months ago. Cincinnati Police, Downtown Cincinnati Incorporated, and business owners in the northwest business sector became concerned about loitering and public urination by workers due to the agencies' long wait times for work, failure to pay, and lack of restrooms for the employees. On the civil rights and worker safety end, individuals have reported temp agencies' numerous abuses during focus groups and individual assessments conducted by the Coalition for the Homeless and the Cincinnati Interfaith Worker Center.

Perhaps the worst offenders are the labor halls situated in Cincinnati's inner city neighborhood, Over the Rhine; in a survey of over 110 day labor workers in Cincinnati, One Force/Labor Solutions, with offices in Covington and Over the Rhine, was rated the worst labor hall with regard to harassment, discrimination, and superfluous fees. Reported problems with these employers include: unsafe transportation, buses catching on fire, unnecessary fees, low wages, hours of unpaid waiting before and after jobs, wrongful termination, harassment, refusal of permanent employment, and racial discrimination, among many issues. Far from being occasional isolated anecdotes, these problems happen on a routine basis and are indicative of abusive, exploitive labor practices.

Day laborers have a major economic impact on this city, particularly on low to moderate income communities. When they are not paid and are mistreated in the workplace, the effects permeate throughout their communities, causing economic hardships, a dissatisfied workforce, and greater social vulnerability. This vulnerability leads to numerous problems: more individuals and families on welfare, food stamps, and Medicaid; lack of ability to pay child support; higher levels of underemployment; and more individuals and families experiencing or on the edge of homelessness. Proactive legislation will have a positive effect on individuals, families, and our communities.



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# Day Labor Legislation and Model Language

## Report Card

*110 day laborers were surveyed on their experiences working at various labor halls. Their ratings of particular practices and overall quality were averaged. The labor halls were rated A-F.*

**One Force/  
Labor Solutions**  
D-

**Minute Men**  
D

**CinTemp**  
C

**Quikstaff**  
D

**Labor Works**  
C-

**TLC**  
D+

While most federal, state, and city employment laws already apply to day laborers, the short term nature of day labor and the numerous parties involved lead to gaps in worker rights and loopholes in some of the most fundamental labor protections. Like many low-wage workers who lack contracts, day laborers are more susceptible to mistreatment and exploitation than other workers. The result is a workforce that often is left without safety provisions, without a livable wage, or without pay altogether.

Because day labor halls often do not play by the same rules as standard employment businesses and non-standard workers lack many of the rights that regular workers possess, several city and state governments have enacted legislation to better regulate these non-standard workplaces. Chicago and Atlanta are two cities that have adopted ordinances, and Florida, Illinois, Texas, Arizona, Georgia, New Mexico, and Massachusetts are among the states that have passed legislation concerning day labor.

The provisions in many of these laws have helped address public safety concerns and civil rights abuses associated with the all too common poor business practices of some labor halls. After the passage of Chicago’s Day Labor Ordinance, for example, an audit of the city’s labor halls resulted in the refund of over \$500,000 to more than 5,000 day laborers who were overcharged for transportation costs.

Listed in the following pages is model language for day labor legislation. The proposed provisions are indicative of the issues and needs that day laborers experience every day. They are divided into seven categories: **Definitions; Wage and Hour; Fees and Deductions; Day Labor Service Agency Regulations; Transportation; Rights and Anti-Retaliation; and Disclosure.**

## Definitions

### A Day in the Life

**4:00am** – Wake up – possibly at a shelter by the staff – and head to work. If you are staying at a shelter, you may go without breakfast.

**4:30am** – Arrive at the labor hall and wait for it to open.

**5:00am** – Employees shows up to open the labor hall. You enter, sign your name on the dispatch list, and wait in the hall. You have arrived early to get near the top of the list.

**6:30am** – Those who have shown up for work are sent out to available jobs. If you are near the top of the list, you may get sent out – unless a dispatcher offers preference to a friend or someone who appears more qualified based on appearance (race, sex, etc).

**7:00am** – Arrive at workplace on the sub-standard bus transportation provided by the labor hall (for which you will be charged \$6-7 out of your check); wait until 8:00 to clock in. You are not paid for any of this time prior to when you clock in, yet you are required to be there.

The first priority in establishing proper regulations on day labor is defining “day labor” and the employer-employee relationship. Many labor halls and on-site employers are able to shirk regulations amidst the confusion of multiple employers being involved. Clear definitions clarify this relationship and hold each party responsible. By clearly defining “day labor” it distinguishes it from more professional and clerical temporary work. This also serves as the properly defined language for “day labor” and other parties throughout the rest of the ordinance.

**DAY LABOR**—The term “day labor” means labor or employment that is occasional or irregular, in which an individual is employed for not longer than the period of time required to complete the assignment for which the individual was hired and in which wage payments are made directly or indirectly to the day laborer by the day labor service agency or by the third party employer, for work undertaken by the day laborer. Day labor does not include labor or employment of a professional or clerical nature.

**DAY LABOR EMPLOYER:** The term “day labor employer” refers to any person or entity that directly or indirectly, though an agent, day labor service agency or any other entity action in the employer’s interest, engages, suffers or permits a day laborer to work or otherwise exercise control over the wages, hours or working conditions of a day laborer.

**DAY LABOR SERVICE AGENCY:** The term “day labor service agency” means any person or entity that recruits, dispatches or otherwise facilitates the employment of day laborers by a third party employer. Day labor service agencies are day labor employers and share all legal obligations placed on day labor employers by this Act. Not-for-profit organizations are not day labor service agencies.

**THIRD PARTY EMPLOYER:** The term “third party employer” refers to a person or entity that suffers or permits a day laborer to work by contracting for personal services with a day labor service agency. Third party employers are day labor employers and share all legal obligations placed on day labor employers. Does not include professional or clerical work.



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# Wage and Hour

## Continued

**8:00am** – Clock in and begin work. Contacts vary from industrial work to shipping to picking through trash at a landfill.

**8:00am – 4:00pm** – Working the entire first shift. Depending upon the work load for the day, you may not get any sort of a break. You may be charged to rent any safety equipment (goggles, gloves, hardhats), even if it is provided by the contracting company.

**4:00pm** – Clock out and wait for the labor hall transportation to pick you up. You will not be reimbursed for this time.

**5:00pm** – The bus may show up earlier, it may show up later. Often, the transportation will break down on the way home – you will not be reimbursed for any of this lost time.

**5:30 – 6:00pm** – Arrive back at the labor hall. If paid daily, you may wait several hours for your check. If at any time you complain, you may be DNRd (Do Not Return = blacklisted), meaning that you will not be hired again. You can be DNRd for any reason by anyone working directly with the labor hall.

Day laborers are routinely denied the most basic right to be paid for their work. On occasion a worker will be called to work or even dispatched to a work site, only to have an employer decide not to utilize the worker. Many labor halls have a company policy dictating that a worker shall be paid the equivalent of four hour’s pay to compensate their time and lost opportunity at other work. However, this policy is often not enforced by employees, leaving workers without pay for their time.

Labor halls also are known to pay workers less than the quoted wage after the work is complete. This is often done in the event that a worker is fired or leaves in the middle of a job due to illness or any other reason. Upon termination for any reason, payment is often withheld for up to a month. If a worker works a certain amount of hours, that worker has the right to be paid for the hours worked at the quoted wage. Later sections will outline how to ensure workers are quoted a wage prior to being dispatched to a job site.

**CALL IN PAY**—If a day labor employer fails to appear at a designated time and location or fails to utilize a day laborer after requesting a day laborer’s services, the day laborer shall be compensated for 4 hours of work at the regular rate of pay.

**PROHIBITION ON WAGE REDUCTION**—Where a day labor employer and a day laborer have agreed upon a wage rate, the day labor employer shall not reduce the negotiated salary during the agreed term of employment, even if the day laborer’s employment is terminated following the hours worked.

**PAYMENT ON TERMINATION** – All wages must be paid to a day laborer within 72 hours of termination.

## Fees and Deductions

*Reported problems...include: unsafe transportation, buses catching on fire, unnecessary and superfluous fees, low wages, hours of unpaid waiting before and after jobs, wrongful termination, harassment, refusal of permanent employment, and racial discrimination. Far from being occasional isolated anecdotes, these problems happen on a routine basis and are indicative of abusive, exploitive labor practices.*

Day labor halls often deduct fees for borrowed safety equipment (often \$3-4) required for a job and for transportation to a work site (\$6-7). Both of these are generally already reimbursed by the 3<sup>rd</sup> party employer, resulting in a profit for the labor hall and an hour or two of equivalent lost wages for the day laborer. On check statements, day labors often notice a random, unexplained deduction of a dollar or two taken out by and for the labor hall. A further provision would require labor halls to disclose all deductions and fees to the day laborer prior to being dispatched to a job site. Written authorization from the worker would be necessary before deductions can be made; this prevents unforeseen fees after a job is completed.

**SAFETY & PROTECTIVE EQUIPMENT**— The day labor employer shall provide, at no cost to each day laborer, any special attire, accessories, tools, safety equipment or other items required by law or custom to perform the work assignment. For any other equipment, clothing, accessories, or any other items the day labor service agency or day laborer employer makes available for purchase, the day laborer shall not be charged more than the actual market value for the item.

In the event that the day laborer willfully fails to return equipment provided for a job, the day laborer employer is not precluded from charging the day laborer the market value of items temporarily provided to the day laborer.

**TRANSPORTATION FEES**— Day labor employers are prohibited from charging a day laborer for the transportation to and from the worksite or between worksites.

**WRITTEN AUTHORIZATION FOR FEES AND WAGE DEDUCTIONS**—A day labor employer shall not charge a day laborer and fees or make deductions from wages without the express written authorization of the day laborer. Authorization must specify the amount and purpose of the fee or wage deduction. Authorization must be obtained in a language understood by the day laborer.

## Day Labor Service Agency Regulations

*When a day laborer is dispatched to a work site, he or she is often unaware as to where he or she is being sent, what work that will be performed, and what the pay will be.*

When a day laborer is dispatched to a work site, he or she is often unaware as to where he or she is being sent, what work that will be performed, and what the pay will be. The following provisions require that day labor service agencies post all available jobs and their pertinent information. Further regulations in this section prevent questionable business practices often instituted by the labor halls or even individual employees such as denying the use of a bathroom to an employee or not providing an itemized wage statement showing fees and deductions. Finally, there must be no barriers to a worker obtaining permanent employment. Labor halls are known to block the requests of employers to hire day laborers as their own permanent employees, thus keeping the day laborer in a dead end cycle of precarious employment.

### NOTICE REQUIREMENTS—

- (a) A day labor service agency shall, in the public reception area, post a list of all employers that are seeking day laborers, which shall include the following:
- (1) The name and address of the employer and the address of the work site if different from that of the employer.
  - (2) The type of job opportunities for day laborers.
  - (3) The amount of wages to be paid per hour for the work.
  - (4) Whether transportation is available, whether the work site is accessible by public or personal transportation, and the approximate commute time to the work site.

**JOB NOTICES—**A day labor employer shall, for each job opportunity posted, provide a detailed written description of the work to each day laborer, which shall include the following:

- (a) A detailed description of the work to be performed by the day laborer, including any requirements for special attire, accessories, or safety equipment.
- (b) The exact address of the work site and a telephone number at which a day laborer can be reached for emergency purposes. If the location is in a rural area, the notice must also contain directions to the work site.
- (c) The time of day the work will begin, the time of day the work will end, and the overtime rate of pay.
- (d) Whether a meal is provided, either by the day labor service agency, day labor employer or the third party employer, and the cost of the meal, if any.
- (e) A phone number and business address for the third party employer requesting the day laborer through the day labor service agency.



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## Day Labor Service Agency Regulations

“Millions of immigrants, African Americans, and other people of color labor on the lowest rungs of metropolitan labor markets with limited prospects for improving the quality of their present positions or advancing to better jobs. It is unfortunate but true that immigration status, combined with ethnic and racial origin, has perhaps the greatest impact on jobs, compensation, and a worker’s options for redress when mistreated by an employer.”

-From *Worker Centers: Organizing Communities at the Edge of the Dream* by Janice Fine, Feb. 2006

**PUBLIC ACCESS AREA-** Each day labor service agency shall provide adequate seating in the public access area of the agency. Employment and wage notices required by this Act shall be posted in the public access area and provided in hand to day laborers. The public access area shall allow for access to restrooms and water.

**WORK RESTRICTION-** No day labor service agency shall restrict the right of a day laborer to accept a permanent position with a third party employer to whom the day laborer has been referred for temporary work or restrict the right of such third party employer to offer such employment to a day laborer. This subsection shall be understood to outlaw the charging of fines or additional amounts for making or accepting an offer of employment.

**ITEMIZED WAGE STATEMENTS—**At the time of the payment of wages, a day labor employer shall provide each day laborer with an itemized statement showing in detail each deduction made from the wages.

## Transportation

“If you pay for transportation for a year, why, that’s a downpayment on a car. After 5 years, you’ve bought a car.”

-Thomas, Day Laborer in Cincinnati for over 20 years

If a day laborer is given transportation from a specific point of hire – generally the labor hall – he or she must be provided return transportation. As a side note, it may also be necessary to reinforce Department of Transportation safety standards already in place through further legislation. Vans and busses used for transportation to and from work sites are known to be of poor maintenance and safety.

**TRANSPORTATION BACK TO POINT OF HIRE** – Unless the day laborer requests otherwise, the day labor employer shall provide transportation back to the point of hire at the end of each work day.

## Rights and Anti-Retaliation

*Low-wage workers are generally the most likely to have their rights violated and are least educated on these rights ... Day labor service agencies are often able to fire a worker for any reason.*

A day labor service agency must not be allowed to cause a day laborer to waive his or her rights as provided in this act; low-wage workers are generally the most likely to have their rights violated and are least educated on these rights. This would include an employment application, contract, or other signed document. Day labor service agencies are often able to fire a worker for any reason. Therefore, a day laborer must be protected from retaliation if he or she wishes to make a complaint or investigate mistreatment.

**WAIVER THROUGH CONTRACT**—Any agreement between a day laborer and a day labor employer or day labor service agency to waive rights and responsibilities under this Act is void and unenforceable as violative of public policy.

**FREEDOM FROM RETALIATION**—A day labor employer or day labor service agency shall not retaliate against day laborers seeking to enforce their rights under this Act. Protected activities include, but are not limited to:

- (1) making a complaint to the day laborer's employer, or a state agency, or federal agency, or community organization that rights guaranteed a day laborer under this Act have been violated;
- (2) making a complaint to an employer, a co-worker, or before a public hearing or the press that rights guaranteed a day laborer under this Act have been violated;
- (3) causing to be instituted any proceeding under or related to this Act; and
- (4) testifying or preparing to testify in an investigation or proceeding under this Act.

## Disclosure

*Because day labor halls often do not play by the same rules as standard employment businesses and non-standard workers lack many of the rights that regular workers possess, several city and state governments have enacted legislation to better regulate these non-standard workplaces.*

In addition to posting information about employers and available jobs, day laborers must be made aware of where they are going to work, how much they are to be paid, how many hours are to be worked, what deductions must be made, and what safety hazards they may encounter. It is unsafe and unethical for a worker to be sent to a job without being informed of this information.

### DISCLOSURE PRIOR TO DISPATCH-

- (a) A day labor service agency shall provide to a day labor and receive signed agreement to the following prior to a day laborer's dispatch to a new job:
- (1) The name, address, and phone number of the employer and the address and phone number of the work site if different from that of the employer.
  - (2) The amount of wages to be paid per hour for the work.
  - (3) The exact nature of the work to be performed.
  - (4) Whether transportation is available, whether the work site is accessible by public or personal transportation, and the approximate commute time to the work site.
  - (5) Any requirements for special attire, accessories, or safety equipment.
  - (6) The time of day the work will begin, the time of day the work will end, and the overtime rate of pay.
  - (7) Whether a meal is provided, either by the day labor service agency, day labor employer or the third party employer, and the cost of the meal, if any.
  - (8) Any deductions that will be made from the day labor's pay.
- (b) A day labor service agency is not required to receive signed receipt of disclosure for a worker returning to a ticket they have already worked, provided that the details of the above have not changed.