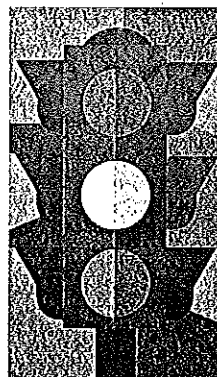




EEOC'S ROLE IN JAMMING LABOR TRAFFIC



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HUMAN TRAFFICKING AND SLAVERY

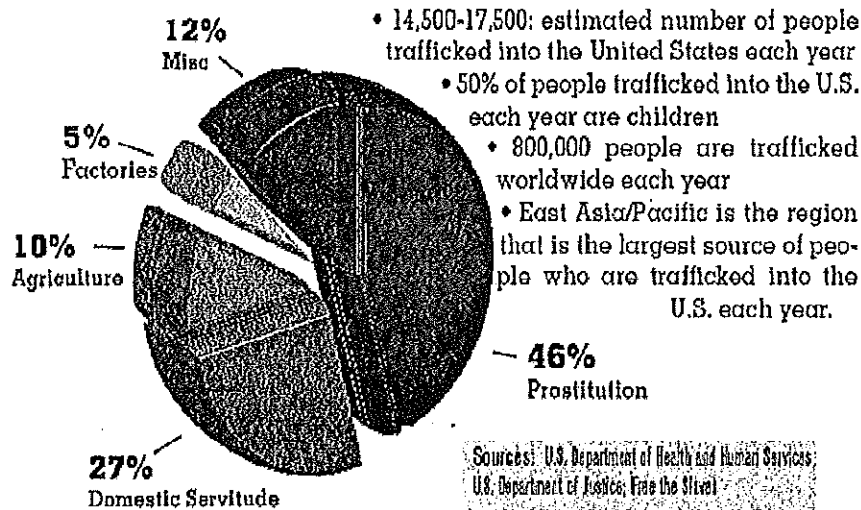
- Recruitment, harboring, transportation, provision, or obtaining of a person for labor or services...
- through the use of force, fraud, or coercion ...
- for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. ("Forced Labor")

- Usually, cases involve workers from other countries transported into the U.S. & forced to work under restrictions that limit ability to leave, BUT victims are not necessarily foreign workers.

WHERE ARE VICTIMS OF TRAFFICKING BEING PARKED?

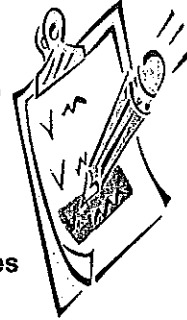
- Agriculture
 - Meat /Poultry Processing Plants
 - Skilled or Unskilled Steel Work and Construction
 - Factory/Manufacturing/Garment Industry
 - Janitorial Services
 - Restaurant and Hotel (Hospitality Services)
 - “Dirty, Dangerous, and Degrading” Industries
- AND CONTRACTED LABOR COMING TO A NEIGHBORHOOD NEAR YOU!

TRAFFICKING IN NUMBERS



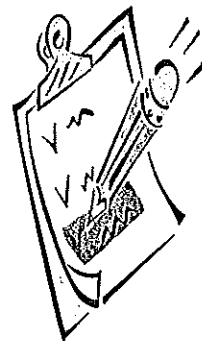
FORCED LABOR and HUMAN TRAFFICKING; WHAT IT LOOKS LIKE

- Recruitment may be by Coercion or premised on Misrepresentations or Fraud, and may involve Migration;
- Physical, Psychological Assault or Abuse (sex, race, national origin, disability or other bases);
- Threat of Serious Harm to victims or close family members;
- Threats of Criminal Prosecution or to Disclose Issues with Immigration/Visa Status to compel labor;
- Substantial Control Over Income Distribution and Living Conditions (i.e. Housing, Food, Transportation)



Other Indicators of Forced Labor and/or Human Trafficking:

- Isolation, Confinement, Restriction on Movement
- Health and Safety Concerns in Workplace and/or Housing
- Wages Deducted to "pay off" debt or "offset" alleged company expenses
- Confiscation of Identity Documents and Travel Documents
- Denial of Food, Clothes, Transportation and Medical Care



What is the Role of EEOC?

As a federal agency charged with enforcing laws that prohibit discrimination in the workplace:

- Outreach and Public Education
- Policy Development
- Investigation of complaints of Discrimination
- Resolutions (Non-Litigation) w/ Targeted Equitable Relief
- Litigation in Federal Courts

EEOC Initiatives

- Commissioners Meeting - Human Trafficking (Jan. 2011)
- Establishment of Immigrant Worker Team:
 - _ Led by: General Counsel
 - 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 NATIONAL STRATEGIC PRIORITIES IN 2013

- Eliminating barriers in recruitment and hiring;
- Protecting immigrant, migrant and other vulnerable workers;
- Addressing emerging and developing employment discrimination issues;
- Enforcing equal pay laws;
- Preserving access to the legal system; and
- Preventing harassment through systemic enforcement and targeted outreach.

VULNERABLE POPULATIONS?

EMPLOYEES OR APPLICANTS
(including foreign and
undocumented workers)
WHO MAY:

- Lack Employment Choices and Economic Bargaining Power
- Lack Familiarity w/ Labor and Employment Laws of the United States
- Be Easily Isolated given the Location of Employment or Nature of the Industry
- Be Limited in Ability to Communicate with persons other than their employers
- Include Victims of Fraud or Coercion



**FEDERAL LAWS AND AUTHORITIES
THAT CAN BE USED TO PROTECT
VULNERABLE POPULATIONS**

- **TRAFFICKING VICTIMS PROTECTION ACT (TVPA)**
22 USC §7101 et seq. (2000); Reauthorized (2008 and 2013)
Enforced by U.S. DOJ, Civil Rights Division
Leading Criminal Law Enforcement against Modern Day Slavery,
Involuntary Servitude, Sex Crimes
- **FAIR LABOR STANDARDS ACT (FLSA)**
29 USC §201 et seq.
Enforced by Wage and Hour Division U.S. Department of Labor
Addressing Civil Minimum Wage and Overtime Violations.
- **ALSO, Immigration laws, IRCA, Visa Fraud, etc.**

**EEOC'S ROLE
IN COMBATting
TRAFFICKING WITH
LITIGATION**



**Using Federal Anti-Discrimination Statutes
in Civil Actions:**

SO FAR...

- **TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, (Title VII)** as amended; 42 USC §2000(e) et seq.
- **The AMERICANS WITH DISABILITIES ACT (ADA)**, as amended; 42 USC §12101 et seq.

Criminal or Civil Law BOPs

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

Criminal actions punish individual(s) for crimes committed.
Burden of Proof is very high.

"BEYOND A REASONABLE DOUBT"

vs.

* "PREPONDERANCE OF THE EVIDENCE"



Civil Actions award compensation to victim(s)
and deters future conduct.

Burden of Proof is lower – "More Likely Than Not" or "51%"

51% - more likely than not.

LEGAL REMEDIES EEOC WILL SEEK

- In addition to INJUNCTIONS that may shut down some illegal operations, CORRECTIVE RELIEF, TRAINING AND PROHIBITION AGAINST RETALIATION for ongoing businesses... (ex. where subcontractor is involved)
- UNPAID WAGES Based not just on Federal Minimum Wage, but the Market Wage Rate for the Job at Issue, which is often much higher than Min Wage.
- DAMAGES under the Civil Rights Act of 1991, 42 USC §1981a which includes:
 - COMPENSATORY (Out of Pocket and Emotional Harm)
 - PUNITIVE (To Deter Employer from Future Unlawful Practices that may be Based on Financial Motivations)

EEOC Role re: U and T VISAS for Victims of Labor Trafficking

Because EEOC conducts investigations into discrimination or retaliation claims that may be intertwined with trafficking scenarios:

EEOC is authorized as a "Certifying Agency" to provide Certification to US DHS/USCIS, which attests to the need of continued presence of non-immigrant witness victims for a federal (civil) investigation which appears to involve "qualifying criminal activity". 8 USC § 1101(a)(15)U(iii)

It can help to have the support of the US DOJ.

EEOC's LEGAL THEORIES IN TRAFFICKING-TYPE SCENARIOS

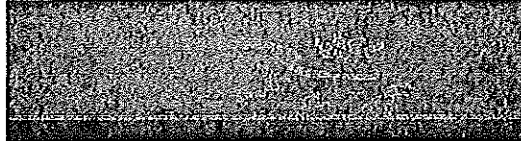
EEOC has filed several class cases that we consider human trafficking or a form of exploitation that is very close to trafficking. (Remember, we do NOT have to prove Trafficking to prove discrimination)

Disparate Treatment: employee (victim) is treated or paid differently than other employees because of a protected basis. (There can also be more direct evidence of discriminatory animus for the mistreatment of a particular group; and denial of simple freedoms)

Hostile Work Environment: employee (victim) is subjected to severe or pervasive harassment (and even abuse) because of a protected basis.

Retaliation: People are fired or threatened with prosecution or deportation.

***Chellen and EEOC v. John Pickle Co.,
344 F.Supp.2d 1278 (N.D. Okla. 2004) and Chellen and
EEOC v. John Pickle Co., 446 F.Supp.2d 1247 (N.D.
Okla. 2006)***



- Court applies Title VII and other civil laws and remedies to case of foreign worker exploitation which is typically 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.
- Class of skilled craftsmen from India made to work on production for less than minimum wage (\$1-\$3.17 hr.) and restrained in substandard living conditions.
- Company profited and displaced its American workers.



**EMPLOYER IN A PICKLE JARRED
BY JUDGE'S RULING**

- First EEOC Labor Trafficking Case under Title VII
- Judge issued 100 Pages of Published Law
- Final Judgment Oct. 16, 2006 for EEOC and Plaintiffs on ALL claims; Award of \$1.3 Million
- Money damage award for amount that was equal to avg. wage of non-victim co-workers (approx. \$10-12 hr.)
- Bottom Line: Trying to get "Cheap Labor" can be costly.

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. HILL COUNTRY FARMS, INC.
dba HENRY'S TURKEY SERVICE (TX -IA)**

- Suit for 32 intellectually disabled men who were exploited for 35-40 years because of their vulnerability.
- An Iowa Turkey Processing Plant paid Henry's Turkey \$10-11,000 per week for work of the disabled men. Henry's, in turn, paid each man only about \$2 per day (\$65 mth) and paid itself the rest.
- The company claimed that large sums had to be deducted from the worker's wages to reimburse the company for "room and board" and other "misc. expenses", BUT...

This "room and board" was in a 100 year old abandoned school house with boarded up windows, roach and mouse infestation, inoperable water heaters, a leaking roof, and the worst fire hazard the Fire Marshal had seen in his career and thousands of inspections. Co. paid only \$20 per man per mth. a total \$600 per mth for the entire group including Supvrs. Meanwhile, HCF was "reimbursing" itself over \$600 per mth PER MAN.



THE LAW

AMERICANS WITH DISABILITIES ACT
(ADA)

Three Primary Theories of Discrimination:

1. Non-payment of Wages
2. Harassment (Verbal and Physical) abuses that created a Hostile Work Environment
3. Disparate/Discriminatory Terms and Conditions of Employment
 - Required to live in Substandard Living Conditions
 - Restrictions on Freedom of: Movement/Communication/Relationships
 - Harsh Discipline; Denial of Bathroom Breaks
 - Denial of Proper Medical Care



THE LAW

"BECAUSE OF" -- DISABILITY

Treatment of Comparators

Non-Disabled Workers ("Team Leaders" and others below the level of Supervisor) WERE NOT...

- Paid Less
- Forced to Live in a Company-Controlled Property;
- Punished by Deprivation or Physical Abuses.

They had Choices re: food, use of their free time, and employment

Direct Evidence

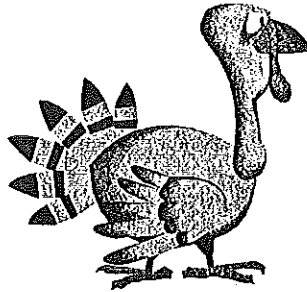
- Employer admitted different treatment was based on the Disability of the workers, just not with discriminatory intent.
- Evidence of Name Calling: Dumb Ass, Stupld, Retarded etc.
- EEOC Expert testified that :

Employer's exploitation was Because of Vulnerability and Vulnerability was Because of Intellectual Disabilities.

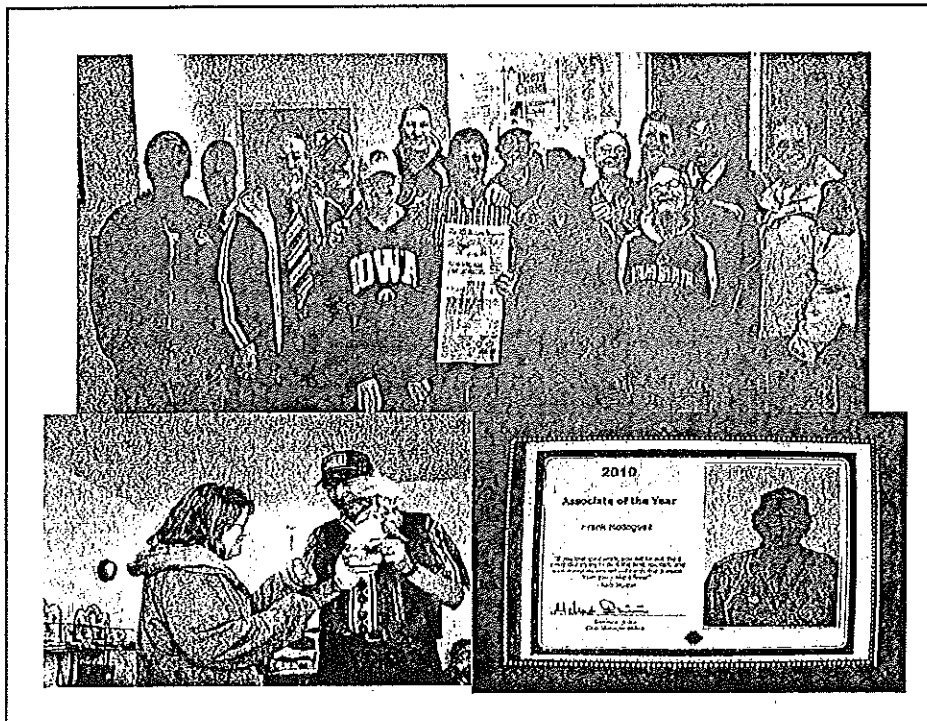
Results in Henry's Turkey Service Re: Wages

- Court agreed with EEOC that the men were due more than just a federal minimum wage under the FLSA. (DOL had recently won a judgment for those wages) In the EEOC case, the Court ruled that the disabled men were entitled to recover the Market Wage Rate, paid to non-disabled workers with the equivalent experience, tenure, and performing the same work in the turkey processing operations (in this case, in the very same plant) (\$10-12hr)
- On EEOC's Motion for Summary Judgment in 2012, Court ordered company to pay \$1.374 million for 2 years of unpaid wages.

Results in Henry's
Turkey Service
Re: Treatment



Next, Trial on the Treatment and Hostile Environment claims for compensatory and punitive damages. On May 1, 2013, Iowa Jury verdict awarded \$240 Million (\$5.5M for comps and \$2M for punis for each of the 32 victims). Reduced to \$50K each by the statutory cap for a total of \$1.6 Million. Judgment to be collected is close to \$3.5 Million total damages.



EEOC v. Global Horizons

Case No. 1:11-cv-00257-LEK-RLP

(U.S. District Court – Hawaii)

Largest trafficking case brought by EEOC in Agriculture Industry

- 500 Thai agricultural workers (H2-A visas)
- Brought as a Pattern and Practice case against recruitment agency and several farm employers
- Allegations: pay violations, hostile environment harassment, terms & conditions of employment, constructive discharge because of their national origin (Thai) and race (Asian). They were in essence held against their will and prohibited from leaving farms, etc.
- Employees were also retaliated against, not only with abusive conduct, but threatened with deportation
- Two cases in federal court: Hawaii and Washington

EEOC v. Global Horizons

March 19, 2014 --

Court Grants Judgment (“as a matter of law” prior to trial) in Favor of EEOC against Farm Labor Contractor On all Claims of National Origin (Thai) and Race (Asian) Discrimination and Retaliation

- Issue of Damages Amount \$\$ for these Title VII Violations to go to Trial later this year.

EEOC v. Global Horizons

FACTS RELIED UPON BY THE COURT:

- GH = recruiter/employer supplied the workers to the Farms that are also Co-defendants.
- EEOC submitted Requests or Admissions to which GH never responded – therefore, deemed admitted and undisputed facts as a matter of law.
- GH Field Supvr, Regional Mgr, and a VP engaged in Physical Abuse and Threats toward Claimants.
(ex: slapping, grabbing by throat, hitting with a stick, carrying gun and bat, threats to shoot, arrest or deport)
- Working/Living Conditions and Restrictions on Freedom
(ex: Curfews/Bedtimes, Security Guards, No Newspapers, Denied Food, and adequate Housing and Medical Care)

EEOC v. Global Horizons

PROOF THAT DISCRIMINATION WAS

"BECAUSE OF" NATIONAL ORIGIN and RACE:

- GH CEO admitted to targeting Thai for recruitment versus other nationalities because of a stereotypical characterization that they are More compliant and less likely to try to leave.
"Thai people, they are good people, nice people. And they just follow..." Comparing to "other countries" such as Mexico and China, CEO says about recruits from Thailand, "You know it is going to be easier and they are going to stay on the job."
- Workers from Micronesia and Philippines (non-Thai) not subjected to same treatment and restrictions. (Note that comparators can be other foreign workers)

EEOC v. Global Horizons

Proof of Retaliation - §704a of Title VII

- **Complaints re: pay, conditions and treatment by the workers**
- **Responses by Supervisors to the issues raised by the workers = ignored, threatened deportation, physical threats, threats to transfer workers to other farms for “harder work and less money”, admonished not to speak with federal investigators.**
- *(Court did not require specific knowledge by the workers that the treatment was a violation of Title VII)*

EEOC v. Signal International ***(Pending)***

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

Nothing Moves Us Like the True Story

LINK TO GLOBAL HORIZONS -- TV STORY

- <http://www.kitv.com/news/labor-company-liable-for-worker-abuse/25148512>

LINK TO RAPE IN THE FIELDS -- PBS FRONTLINE

- <http://www.pbs.org/wgbh/pages/frontline/rape-in-the-fields>

LINK TO HENRY'S TURKEY -- NY TIMES ONLINE

- <http://www.nytimes.com/interactive/2014/03/09/us/the-boys-in-the-bunkhouse.html>



WARNING



BEFORE ANY OF YOU SAY TO YOURSELVES

...."This could never happen to me or my organization"

- Be on guard about those with whom you join in business ventures, sub-contractors or agencies/companies supplying workers.
- Employer can be held liable for labor violations and discrimination even when committed by third-parties or subcontracted workforces. The principle company can be deemed a joint employer ultimately or mutually responsible for non-compliance with the law.
- Be careful not to fall into a false sense of security believing that these horror stories will not be left on your doorstep. As long as you are interested in expansion and growth and associate with other businesses or enlist special workers or services, always remain watchful for the practices of those with whom you do business.

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