

Workplace Discrimination and Undocumented First-Generation Latinx Immigrants

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Advocates' Forum

Abstract

This paper provides an analysis of the discrimination faced by first-generation undocumented Latinx immigrants in the workplace. It outlines the different types of workplace discrimination (e.g., exploitation, dangerous working conditions, wage theft, physical and emotional abuse) and the factors that feed it (e.g., in-groups and out-groups, negative media portrayal, anti-immigrant sentiment, ethno-racial profiling, criminalization). While it explores the implications of immigration law, specifically the Immigration Reform and Control Act (IRCA), it also highlights the psychological distress, depression, and vulnerability to disease faced by first-generation undocumented Latinx immigrants who experience these conditions. It assesses the coping mechanisms for the negative effects of workplace discrimination and discusses the ways social workers and advocates can support the overall undocumented immigrant community.

There are thought to be approximately eight million undocumented immigrants in the U.S. work force—a conservative estimate given the difficulty counting such workers (Lee, 2018). Most occupy low-wage jobs in agriculture, construction, food-service, domestic work, and day labor. Federal laws like the Immigration Reform and Control Act (IRCA) of 1986 limit the rights and protections of these workers. Employers use the threat of immigration enforcement to create an atmosphere of coercion and exploitation in which undocumented workers are reluctant to report abusive employer practices. Research

shows that immigrant workers experience 300 more workplace fatalities and 61,000 more workplace injuries annually than native-born workers, and undocumented immigrants are more likely to experience dangerous working conditions than legal immigrants (Lee, 2018).

The IRCA prohibits employers from consciously hiring unauthorized workers, requires all employers to collect immigration status information on all employees using Form I-9s, and sanctions employers who hire unauthorized workers (Wishnie, 2003). The IRCA does not, however, ban undocumented workers from serving as independent contractors. Between lax enforcement of the hiring guidelines and the independent-contractor loophole, undocumented workers often find low-wage (and often unsafe) jobs in the United States with employers able to avoid any legal responsibility for issuing overtime pay and protections in the case of injuries (Lee, 2018). As a result, undocumented workers often lack, in practice, the rights and protections enshrined in the laws that could benefit them.

For example, a study of Mexican migrant farm workers in the Midwest determined the stressors contributing to higher levels of anxiety and depression were “rigid work demands, hard physical labor, and employer exploitation” (Joseph, 2011, p.176). Additionally, other workers often toil without the basic rights of breaks, food and water, as well as earning substandard wages (37% receive less than minimum wage) and experiencing wage theft (76% experience wage theft) (Green, 2014). Again, these workers are often afraid to call attention to unfair work practices because they fear employer retaliation of deportation (Kristen, Banuelos, & Urban, 2015).

In 2014, an estimated 22% of undocumented immigrants worked in private households (Desilver, 2017). The majority of these domestic workers are female. In addition to unregulated pay, they are often victims of physical and mental abuse, ranging from rape and verbal abuse to 12-hour work days with little to no breaks and no overtime pay (Davis, 1993). Similarly, male undocumented immigrants often

seek out day labor positions by standing near businesses or parking lots and this visibility makes them vulnerable to police, security guards, and anti-immigrant groups (Ojeda & Piña-Watson, 2013). Due to daily work competition, they are often chosen by independent employers based on their perceived physical health and may be abandoned after finishing work tasks (Ojeda & Piña-Watson, 2013).

This article examines further the effects of immigration law on undocumented work. It investigates the types of discrimination that undocumented workers face as well as the rights and protections that federal and state laws grant them. It looks, in particular, at first-generation undocumented Latinx workers and discusses some foundations of workplace discrimination, as well as outlining the individual cost and response of that population. Lastly, it sketches the role social workers can play on behalf of first-generation undocumented Latinx workers.

Rights and Protections of the Undocumented Worker

Undocumented workers do have rights and protections. Federal and state laws prevent workplace discrimination and offer remedies for employer violations. The National Labor Relations Board (NLRB), the Department of Labor (DOL), the Equal Employment Opportunity Commission (EEOC), and the Occupational Safety and Health Administration (OSHA) all enforce workplace protections regardless of immigration status (Gleeson, 2010). Undocumented workers are entitled to minimum wage, overtime pay, breaks and tips and are protected under health, safety, and anti-discrimination laws as well ("Undocumented Workers' Employment Rights," n.d.). However, ongoing systemic failures to enforce employer sanctions and limit the involvement of immigration law in labor disputes discourage undocumented workers from fighting unfair work treatment (Wishnie, 2003).

An undocumented worker bringing a dispute to court risks punishment if found to have used false documentation in obtaining work. For example, an undocumented worker unfairly terminated from

a job is not actually entitled to back pay or reinstatement because such remedies would directly violate the IRCA (Wishnie, 2003). Anti-retaliation provisions make it unlawful for employers to use undocumented status to terminate employment in retaliation of a worker complaint. However, if employer retaliation does occur, Immigration and Customs Enforcement (ICE) can still follow up on a report and attempt to deport the undocumented worker (“Undocumented,” n.d.). While states like California and New York have passed bills to help protect undocumented-worker rights in lawsuits, and some workers may find that they are eligible for U or T visas—those visas reserved for the undocumented victims of crimes—rights and protections are not uniform or well understood and thus are easily side-stepped by employers (Kristen et al., 2015).

The Foundations of Discrimination

Workplace discrimination against first-generation undocumented Latinx immigrants can be understood as an effect of a larger dynamic sociological pattern in which positive values are attributed to in-groups (i.e., groups we feel that we belong to) and conversely negative values ascribed to out-groups (i.e., groups we feel that we do not belong to) (Allport, 1954). Rejection of out-groups is founded on implicit attitudes and stereotypes that in turn produce discriminatory behavior (Greenwald & Krieger, 2006). The prejudice against first-generation Latinx immigrants is fueled by broad anti-immigrant sentiment often tied to perceptions of economic and resource scarcity (Blumenfeld & Raymond, 2000; Cobb et al., 2019). In 2015, then-candidate Donald J. Trump promoted anti-immigrant sentiment when he used media appearances to proclaim that Mexico was only sending the United States drugs, criminals, and rapists (Reilly, 2016). This type of rhetoric scapegoats Latinx immigrants and further encourages those with similar views to confirm their biases (Sapolsky, 2017).

Stereotyping of first-generation Latinx immigrants paves the way for ethno-racial profiling and criminalization. Laws like Arizona’s SB-1070,

which codifies “reasonable suspicion” as a legitimate basis for asking individuals to prove immigration status (Joseph, 2011), perpetuates an “illegality” of all Latinx individuals by failing to acknowledge implicit and explicit biases of authority figures. Additionally, our social systems constantly criminalize undocumented adult first-generation immigrants by deeming them undeserving of support and opportunities as well as disregarding their pre-migration hardships and trauma—the very conditions that forced them to migrate in the first place.

These political and social attitudes come together in the workplace. Political and cultural forms of discrimination are exacerbated by institutional and structural discrimination as those in power are unwilling to abide by current laws or stand up for the fair treatment of those seen as a vulnerable “out-group.” Thus, first-generation undocumented Latinx immigrants not only lack knowledge of American workplace laws and their own rights and protections (Gleeson, 2010), but lack access to resources and community networks while facing language and cultural barriers that might, in some small ways, mitigate their vulnerabilities.

Individual Cost of Workplace Discrimination

The vulnerabilities of individual first-generation undocumented Latinx immigrants are determined by several variables. They are determined in large part by intersecting identities (e.g. ethnicity, class, gender, sexual preference) that may serve to buffer or exacerbate the negative effects of perceived discrimination. A study revealed that “having Latino ethnicity, being women, residing in the United States for a longer time, and experiencing a downgrade in social status (compared to their previous status in the country of origin) are associated with greater odds of a depressive episode” (Joseph, 2011, p. 171).

They are also shaped by social status and social capital. Because immigrant groups tend to be disadvantaged in social capital and tend to use kin and ethnic ties to access resources that are overall

homogeneous, low socioeconomic status (SES) may easily be preserved (Lin, 2000). Low SES further creates psychological harm that directly causes poor health and stress, both of which lead to increased vulnerability to diseases (Sapolsky, 2017). The demanding work schedules of undocumented immigrants also facilitate poor diets, increasing susceptibility to weight gain and lack of sleep, which in turn create physical health problems that go unsolved due to lack of access to basic health care (Joseph, 2011).

The overt threat of employer retaliation and the possibility of ICE raids both at home and at work have a strong negative impact. Such threats build a hypervigilance that while serving as a protective measure, may do harm as well. While being vigilant for discrimination may buffer from adverse consequences, research has shown that greater vigilance and mistrust can impair learning and increase underperformance (as seen among African American students) (Steele, 2010). Navigating workplace environments where more-subtle forms of discrimination exist can take a greater toll on first-generation immigrants because subtle and difficult-to-recognize discrimination may do more damage to individuals than overt discrimination. Subtle discrimination creates uncertainty. The uncertainty causes psychological distress due to the cognitive demands needed to comprehend the event; demands not present in perceiving overt discrimination (Noh, Kaspar & Wickrama, 2007)—a study of adult Korean immigrants in Toronto revealed that while overt discrimination was associated with an erosion of positive affect, subtle discrimination was directly associated with depressive symptoms (Noh et al., 2007).

These findings show that anything in excess can cause harm. In the case of undocumented immigrants, a high level of mistrust in the government and in health facilities can hinder the opportunities to seek legal aid to combat workplace discrimination or seek proper mental- and health-care, even from organizations that provide services for this specific population.

Responses to Workplace Discrimination

A study of Hispanic undocumented immigrants from Houston, Texas and Little Rock, Arkansas found that participants with strong racial-ethnic identity reported overall improved well-being, life satisfaction, personal self-esteem, and cognitive health, along with fewer depressive symptoms—all owing to a sense of belonging and purpose correlated with a stronger connection to an ethnic group (Cobb et al., 2019). These results are consistent with findings of increased racial-ethnic identity centrality (i.e., the measure of how significant an individual's attachment to their ethnic/racial background is in defining their identity) working as a coping mechanism against discrimination in the population of African American young adults (Sellers & Shelton, 2003). Does racial-ethnic centrality therefore serve to attenuate the effects of discrimination? Other research argues that immigrants who have high racial-ethnic centrality may feel the ill-effects of discrimination even more because immigrants are less likely to report being the targets of discrimination and more likely to have less experience coping with its consequences (Yip, Gee & Takeuchi, 2008). This should be taken into account when observing the high number of undocumented immigrants who do not report workplace discrimination.

Although first-generation undocumented Latinx immigrants are more vulnerable, coping mechanisms can strengthen the longer they reside in the United States. In-group networks develop and resilience is strengthened—a pattern found in a study of Koreans living in Canada where greater acculturation improved coping with the negative effects of discrimination and a lessening of depressive symptoms (Noh & Kaspar, 2003). More specific to the Latinx undocumented community, heritage, religious and cultural values, and perspectives on work can also serve as protective coping strategies. A study on undocumented Latino male day laborers from Texas found that high levels of spirituality served as a protective factor against the role of discrimination in life satisfaction (Ojeda & Piña-Watson, 2013). Having a sense that religion is important was also found to be related

to lower levels of depression among Mexican adults (Ojeda & Piña-Watson, 2013). Likewise, familismo, which “emphasizes the importance of loyalty, reciprocity, and solidarity toward one’s family,” has also been found to promote mental health and mitigate the effects of discrimination (Ojeda & Piña-Watson, 2013, p. 271). However, the strength of these cultural values can be limited depending on the physical proximity of family. In analyzing how one’s personal view on work can buffer discrimination effects, the same study on Latino male day laborers found that when participants viewed work as a means for survival rather than personal fulfillment, perceived workplace discrimination did not lower life satisfaction (Ojeda & Piña-Watson, 2013). Therefore, the way in which undocumented immigrants perceive the importance and meaning of the work that they do may aid in distancing them from the negative environments too often created in the workplace of undocumented immigrants.

Conclusion

In the United States, labor laws, rights and individual protections exist to combat potential discrimination in the workplace. Unfortunately, undocumented immigrants, who occupy some of the most important jobs in our economy, face many injustices detrimental to their well-being. Exploitation in the form of strenuous physical work, long hours, and substandard wages are intensified by potential employer retaliation and encouraged by the deep-rooted influence of immigration law in labor dispute cases. Intensified by anti-immigrant sentiment, these conditions promote negative mental and physical health outcomes in communities of undocumented immigrants, many of whom have already undergone a great amount of trauma. While there are some mechanisms to mitigate the effects of this experienced discrimination, there are things one can do to advocate for fair rights and protections on behalf of this group.

To provide the undocumented immigrant community with the tools of empowerment that they need, we must provide accessible services in

a culturally sensitive manner and be willing to direct to alternate resources when knowledge fails us. Furthermore, it is important to be aware of the rights and protections offered to undocumented workers in one's locality, city, and state. Due to a large amount of undocumented immigrant populations concentrated around particular regions of the country, some states and localities have extended support to this community by becoming sanctuary cities or creating laws to expand rights. If working with social policy, investigating these locations are vital to create social systems that assist this population in gaining more rights and protections across the country. While it is challenging to find undocumented populations willing to participate in studies, it is essential that we expand the ethnic backgrounds of the populations we work with in order to discover differences in patterns of discrimination, individual costs, and coping mechanisms. By doing so, we will have a deeper comprehension on the ways in which we can alter our own practices to support specific groups.

References

Allport, G. W. (1954). *The nature of prejudice*. Cambridge, MA: Perseus Books.

Blumenfeld, W., & Raymond, D. (2000). Prejudice and discrimination. In M. Adams, W. J. Blumenfeld, R. Castaneda, H. W. Hackman, M. L. Peters, & X. Zuniga (Eds.), *Readings for diversity and social justice: An anthology on racism, anti-semitism, sexism, heterosexism, ableism, and classism* (pp. 21-30). New York, NY: Routledge.

Cobb, C. L., Meca, A., Branscombe, N. R., Schwartz, S. J., Xie, D., Zea, M. C., ... Sanders, G. L. (2019). Perceived discrimination and well-being among unauthorized Hispanic immigrants: The moderating role of ethnic/racial group identity centrality. *Cultural Diversity and Ethnic Minority Psychology, 25*(2), 280–287.

Davis, M. F. (1993). Domestic workers: Out of the shadows. *Human Rights, 20*(2), 14-29.

Desilver, D. (2017). Immigrants don't make up a majority of workers in any U.S. industry. Pew Research Center.

<https://www.pewresearch.org/fact-tank/2017/03/16/immigrants-dont-make-up-a-majority-of-workers-in-any-u-s-industry/>

Gleeson, S. (2010). Labor rights for all—the role of undocumented immigrant status for worker claims making. *Law and Social Inquiry*, (3), 561-602.

Green, E. (2014). Undocumented immigrants still mistreated by employers despite new laws. KQED News.

<https://www.kqed.org/news/146984/undocumented-immigrants-still-mistreated-by-employers-despite-new-laws>

Greenwald, A. G., & Krieger, L. H. (2006). Implicit bias: Scientific foundations. *California Law Review*, 94(4), 945-967.

Joseph, T. D. (2011). "My life was filled with constant anxiety": Anti-immigrant discrimination, undocumented status, and their mental health implications for Brazilian immigrants. *Race and Social Problems*, 3(3), 170-181.

Kristen, E., Banuelos, B., & Urban, D. (2015). Workplace violence and harassment of low-wage workers. *Berkeley Journal of Employment and Labor Law*, (1), 169-204.

Lee, J. J. (2018). Redefining the legality of undocumented work. *California Law Review*, (5), 1617-1656.

Lin, N. (2000). Inequality in social capital. *Contemporary Sociology*, 29(6), 785-795.

Noh, S., & Kaspar, V. (2003). Perceived discrimination and depression: Moderating effects of coping, acculturation and ethnic support. *American Journal of Public Health*, 93(2), 232-238.

Noh, S., Kaspar, V., & Wickrama, K. (2007). Overt and subtle racial discrimination and mental health: Preliminary findings for Korean

immigrants. *American Journal of Public Health*, 97(7), 1269-1274.

Ojeda, L., & Piña-Watson, B. (2013). Day laborers' life satisfaction: The role of familismo, spirituality, work, health, and discrimination. *Cultural Minority and Ethnic Minority Psychology*, 19(3), 270–278.

Reilly, K. (2016). Here are all the times Donald Trump insulted Mexico. *Time: Politics*. <https://time.com/4473972/donald-trumpmexico-meeting-insult/>

Sapolsky, R. M. (2017). *Behave: The biology of humans at our best and worst*. New York, NY: Penguin Press.

Sellers, R. M., & Shelton, J. N. (2003). The role of racial identity in perceived racial discrimination. *Journal of Personality and Social Psychology*, 84(5), 1079-1092.

Steele, C. M. (2010). *Whistling Vivaldi: How stereotypes affect us and what we can do*. New York, NY: Norton & Company.

Undocumented workers' employment rights. (n.d.). *Legal Aid at Work*. <https://legalaidthatwork.org/factsheet/undocumented-workers-employment-rights/>

Wishnie, M. J. (2003). Emerging issues for undocumented workers. *University of Pennsylvania Journal of Labor and Employment Law*, (3), 497-524.

Yip, T., Gee, G. C., & Takeuchi, D. T. (2008). Racial discrimination and psychological distress: The impact of ethnic identity and age among immigrant and United States- born Asian adults. *Developmental Psychology*, 44(3), 787-800.

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