



VERITÉ®

The Garment Sector in the United States

Undocumented Workers and their Vulnerability





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Introduction

After a dramatic decline in garment manufacturing in the U.S. due to outsourcing of production, garment manufacturing began to rebound after the turn of the 21st century and is likely to continue growing in the coming years. Many retailers source garments from U.S. factories so that they can closely oversee quality control and in order to meet last minute, unexpected spikes in demand for the styles generated by today's ever-changing fashion demands. Additionally, it has recently become relatively cheaper to produce garments in U.S. factories: while wages have risen dramatically in other countries, wages have stagnated in the U.S. due to the economic recession and the widespread employment and underpayment of undocumented workers.

In September 2013, The New York Times reported on recent growth in U.S. textile and apparel exports, which were valued at \$22.7 billion in 2012, an increase of 37 percent over 2009.¹ A recent survey by the MIT Forum for Supply Chain Innovation and Supply Chain Digest found that about a third of manufacturers were considering reopening facilities in the U.S., and that 15 percent already had.²

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Today, garment manufacturing is concentrated in California and New York. Research conducted in New York in 2002 identified 1,600 garment manufacturers and 2,600 contractors registered with the New York Department of Labor, with an additional 2,500 unregistered worksites.³ Los Angeles has overtaken New York in terms of production output, with \$8 billion in 2012.⁴ According to the Bureau of Labor Statistics, there were almost 3,000 registered apparel factories in the Los Angeles area in 2010.

The risks that garment workers are exposed to are multifaceted. The quick turnaround times and high demand for orders oftentimes requires 12 or 14 hours shifts six or even seven days a week at sub-minimum wage levels. Undocumented workers are more likely to find themselves in situations of forced labor due to the use of labor brokers and the fear of being reported to authorities and deported if they report labor violations. To address this type of complicated problem, we propose a solution that includes immigration reform, increased worker protections, better recruitment practices, and higher levels of brand accountability.



Apparel Manufacturing Establishments by county, 2010 annual averages



Map taken from the Bureau of Labor Statistics⁵

U.S. Garment Manufacturing Sector Workforce

According to a 2005 Pew Research Center report, 26 percent of apparel workers and 18 percent of sewing machine operators were believed to be undocumented.⁶ Immigrant labor makes up about 64 percent of garment and other factory workers in New York City, according to 2013 reports.⁷ The main reasons why employers might hire undocumented workers include a shortage of citizens willing to work in certain sectors, such as agriculture and garment manufacturing, as well as the absence of a functional, affordable guestworker system to meet employer demand for workers. Undocumented workers are also more likely to accept substandard working conditions, potentially reducing costs for employers. Undocumented workers not only have limited employment opportunities, but also work and live under the constant threat of deportation and thus fear being denounced to authorities.

The Problem

Increased Worker Vulnerability

The garment industry has long presented a challenge to those seeking to monitor and improve workplace conditions. U.S. Department of Labor Wage and Hour Division Administrator Dr. David Weil wrote that, as one of the first “fissured industries,” garment manufacturing has long used diverse organizational methods that keep employers from directly employing the personnel manufacturing those products.⁸ At the turn of the 20th century, early labor regulation grappled with the garment industry’s decentralized production cycle and the large amount of unregulated, invisible “home work.”⁹ Today, multiple levels of contracting, intense industry competition and dysfunctional immigration policies impede efforts to establish and sustain a legal, safe, and fair working environment.

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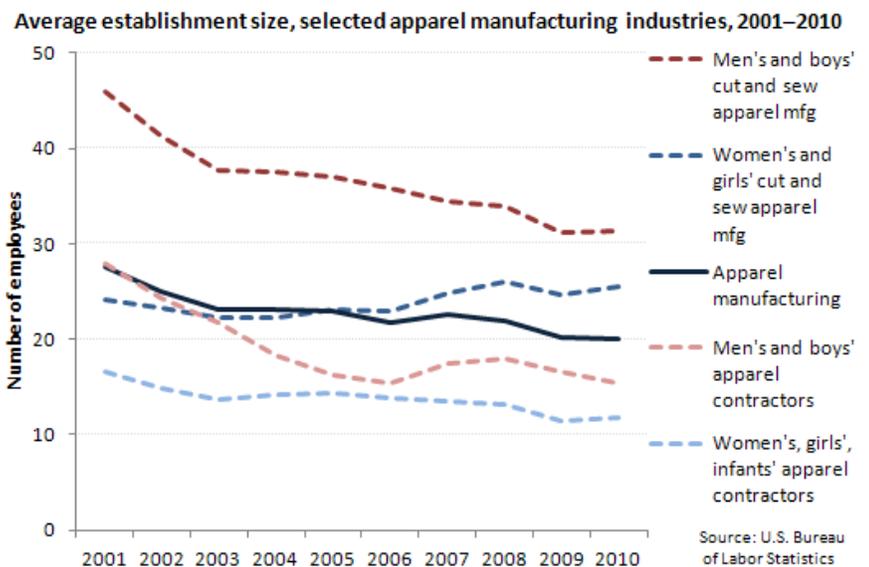


Modern garment production remains a “fissured” industry today. As described by Dr. Weil (and well-known within the sector), “A ‘jobber’ may sell a design to a retailer, and then contract with a manufacturer for delivery of the product. The manufacturer may purchase and cut the product, but then contract the sewing to one or more companies (which may further contract out sub-assembly).”¹⁰ Each time a piece of the process is subcontracted, the profit margin diminishes and competition between firms intensifies. Since labor costs comprise the bulk of input costs, many sewing contractors’ only way to profit is to pay sub-minimum wages.¹¹

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laid off more easily during slow periods.¹⁴ Many small factories close due to an inability to turn a profit. When this occurs, informal contractors can easily shut down and reopen shop in other locations, under different names to avoid legal liability or payment of employee back wages. Consequently, the average life of a garment sewing shop is 13 months.¹⁵

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Graph taken from the Bureau of Labor Statistics

The relationship between retailers and manufacturers further encourages labor violations. Retailers negotiate prices and purchase finished garments from the manufacturers, exerting strong pressure on manufacturers to keep costs low and speed up production times. The manufacturers place that same pressure on the contractors and subcontractors who produce the goods, often through the exploitation of immigrant labor.¹⁶

Verité expert interviews indicate that brands have a significant amount of leverage over small-scale garment factories: they can unilaterally set prices and turnaround times due to intense

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competition between producers. In many cases, brands pay factories low prices for each piece of clothing produced while demanding short turnaround times. Factories pass these demands onto workers in the form of low piece-rate pay and mandatory overtime with no overtime premium. Workers often do not earn an hourly wage that complies with minimum wage and overtime regulations.

Wage and Hour Violations in the Garment Sector

The National Employment Law Project (NELP) states generally that workplace violations are more likely to occur in sites where employees are not paid an hourly rate and in companies employing less than a hundred staff members.¹⁷ This description fits most garment production sites: worksites often employ fewer than fifty people, primarily female workers who are generally paid a piece rate.¹⁸ The U.S. Department of Labor's 2000 survey of garment workshop conditions indicated that more than half of the country's 22,000 sewing shops violated minimum wage and overtime laws and 75 percent of U.S. garment shops violated health and safety laws. In addition to overtime violations, the garment sector is particularly prone to minimum wage violations. The 2008 NELP survey found that nationally, apparel and textile factories posted the highest rate of minimum wage violations of surveyed industries employing low-wage workers, at a rate of 42.6 percent.¹⁹ Piece-rate workers reported more than double the rate of minimum wage violations as workers receiving an hourly wage.²⁰ According to the U.S. Department of Labor, garment workers are typically paid per each garment they sew or cut, resulting in payments of as little as \$6 per hour, well under the federal minimum wage of \$7.25.²¹

This is particularly concerning given that in New York, 40 percent of garment sector workers were paid by the piece. This pattern continues, as shown by Department of Labor officials, who conducted more than 1,500 inspections of Southern California garment industry employers between 2007 and 2012. Ninety-three percent of inspections detected violations, including more than \$11 million in back wages owed to approximately 11,000 workers.²² A 2013 report indicated that 60 percent of Los Angeles garment workers were paid less than the minimum wage and 90 percent did not receive overtime pay, even when working in excess of 40 hours per week.²³ A 2010 UCLA study concluded that \$26.2 million per week was withheld or stolen from garment workers in Los Angeles alone.

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Due to the large number of unregistered factories and labor brokers in the garment sector, as well as undocumented workers' reluctance to file complaints, the Department of Labor's

recorded rates of labor violations likely do not fully capture the true extent of violations. According to the Migration Policy Institute, in New York State, 96 percent of labor standards investigations were complaint-driven.²⁴ According to experts interviewed by Verité, due to their legal status and vulnerability to the threat of dismissal and deportation, undocumented garment workers are unlikely to complain or report abuses.

Undocumented garment workers are unlikely to report abuses, as they may be threatened with dismissal and deportation if they complain.

Moreover, when fines are levied, they may have no impact: factories may simply reopen in a different location or under a different name, or may consider such fines a cost or risk of doing business.²⁵ Such was the case in a Queens, New York factory in which authorities found that \$5.5 million in wages had been withheld from employees, who were primarily Chinese immigrants that worked 12-hour days for six or seven days per week.²⁶ To avoid penalties, the factory changed its name multiple times while manufacturing for multiple well-known clothing brands.²⁷

Recruitment and Hiring of Migrant Workers

The Risk of Human Trafficking

As indicated above, the trend to subcontract production at each step in the production process is common in the garment industry. In much the same way, garment factories increasingly tend to outsource hiring, usually through third-party labor brokers or private employment agencies. As noted above, U.S. manufacturing firms have expanded their domestic operations.²⁸ Labor, however, is difficult to find, as few U.S. citizens would consider working in the industry.²⁹ Manufacturers look to immigrants to help fill the labor demand, but legal immigrant labor can be difficult to secure. Some employers have turned to the guestworker system.³⁰ However, it is very cumbersome, restrictive, and expensive for employers, leading them to circumvent rules or hire undocumented workers, who are difficult to recruit directly. Therefore, employers turn to labor brokers.



Verité research has determined that hiring through labor brokers drastically increases the risk of worker exploitation, as well as legal risks to factories and brands. Labor brokers charge workers recruitment fees, deceive them about their conditions of employment, make deductions from workers' wages, and fail to comply with legal standards.³¹ According to interviews, labor brokers in the garment sector often pay workers weekly by cash, many times less than the minimum wage. Cash payments make it difficult for factories and brands to determine the actual amount of payments and deductions. While factories may pay brokers at least the minimum wage per hired worker they supply, in many cases these payments are not passed on to workers themselves, opening factories and brands to the risk of reputational damage and legal sanctions for minimum wage violations, or even in some cases, human trafficking.

Verité has reported on cases in which labor brokers have trafficked guestworkers and undocumented workers to the United States for forced labor. In many cases, guestworkers are charged exorbitant up-front fees and are deceived about their conditions and/or place of work

Industry Risks to Human Trafficking

- Hazardous, undesirable work
- Vulnerable, easily replaced, and/or low-skilled workforce
- Migrant workforce
- Presence of labor contractors, recruiters, agent or other middlemen in the supply chain
- Long, complex, and/or non-transparent supply chains.

prior to departure. When they arrive in the United States, they are subjected to deductions, poor working conditions, isolation, and threats, along with a visa system that ties them to a single employer, even if that employer is violating their labor rights or the terms of their original contracts. In some cases, labor brokers may front undocumented migrants' smuggling fees and force them to work those fees off in the United States, sometimes under the threat of violence or deportation.³² These scenarios have been reported by both Latin American and Asian migrants.

Many undocumented migrants must incur significant debt in order to migrate to the United States. Verité research indicates that smuggling fees from Guatemala average around \$7,500, and fees from Mexico to the United States can range from \$1,000 to \$3,500. Migrants from China, many of whom are smuggled by "snakeheads," may pay as much as \$20,000 to reach the United States.³³ In most cases, workers pay some or all of the fees up front to their smugglers, some or all of which they must borrow from family members or informal money lenders. However, in some cases, human smugglers or "snakeheads" front some or all of the smuggling fees, which migrants must pay back once they reach the United States. While in most cases, migrants choose their place of employment and repay fees in installments, according to experts interviewed, smugglers can force migrants to work at specific sites, including garment factories, until fees are paid off.



For undocumented workers [...] termination at the behest of a brand's pursuit for 'social compliance' would be a cruel irony.

The Solution

For companies that source in the domestic U.S. apparel sector, it is likely that some of their production is made by undocumented workers. The conditions that allow for the exploitation of undocumented workers in the U.S. – the reliance on labor brokers, lack of transparency, and double-bookkeeping – also create the risk of reputational damage and legal sanctions for buyers and brands.

Yet, to help workers and reduce these risks, brands face a conundrum. In order to support workers' welfare and legitimate aspirations for gainful employment, the workers have to be employed within the factory from which a brand sources. But employment of undocumented workers is illegal. For undocumented workers who have been living in American communities and working in U.S. factories for years if not decades, termination at the behest of a brand's pursuit for 'social compliance' would be a cruel irony.

Brands that assess working conditions in their U.S. production, be it through social audits or other mechanisms, will likely face this dilemma. Some brands have reacted by dismissing undocumented workers or turning a blind eye to labor abuses. Neither will solve the problem nor protect workers. Instead, companies must ensure that undocumented workers' rights are respected and press for legal reforms to ensure a dependable stream of workers whose rights are protected.

It is of the utmost importance that brands carry out in-depth assessments throughout their supply chains to identify labor risks that workers may be facing, as well as legal and reputational risks that the brand itself may face. If undocumented workers are discovered in this process, Verité advocates that rather than dismissing these workers or severing the relationship with the supplier, brands should work with the supplier in order to ensure that these workers' rights are respected and provide undocumented workers with resources so that they can obtain immigration and labor rights assistance. Should it be necessary to sever employment for workers who cannot obtain documentation, brand and employer should ensure the worker receives appropriate financial severance.



Fair Hiring Toolkit

For the specific risks related to trafficking of undocumented workers, Verité's Fair Hiring Toolkit provides detailed guidance for brands, suppliers, governments, and advocates on:

1. Improving Codes of Conduct and Company Policies
2. Raising Awareness and Building Capacity
3. Strengthening Assessments & Social Audits
4. Taking Corrective Action & Developing Systems Improvement Plans
5. Reporting & Transparency
6. Multi-Stakeholder & Multi-Brand Engagement
7. Public Policy Advocacy

It can be difficult to monitor the working conditions of undocumented workers, since many factories do not use workers' real names on payroll records and many undocumented workers are afraid of being discovered and are thus reluctant to speak openly with auditors. Therefore, there is a need for brands not just to take remedial actions, but also to advocate for reforms of laws that are detrimental not only to migrant workers, but also to companies. Verité recommends that brands that depend on undocumented workers in the U.S. garment, agricultural, and other sectors unite to advocate for legal reforms. Only comprehensive immigration reform and increased protections will ensure a stable labor force and protect companies from legal and reputational risk.

Comprehensive immigration reform

As long as undocumented workers are barred from obtaining legal status, companies will face a conflict of interest between workforce retention and legal compliance. This conflict of interest has led to a common challenge where employers are neither in compliance with the law nor in a position to protect their hard-working employees.

Businesses including Coca-Cola, McDonalds, Loews Hotels, Tyson Foods, Cargill, and other companies have demanded comprehensive immigration reform, including the creation of a temporary visa for low-skilled employees that ensures that their labor rights are protected.³⁴ Verité calls for a path to citizenship to be created for undocumented workers currently residing in the U.S. that includes increased protections for immigrants' rights, as laid out in the "Border Security, Economic Opportunity, and Immigration Modernization Act" (S. 744). While imperfect, these policy solutions will help shape a more humane immigration regime and workforce culture.

Alongside a path to citizenship for undocumented workers already in the U.S., Verité advocates for the streamlining and expansion of the guestworker visa program for low-skilled workers



that is easier and cheaper for employers to use, allows for visa portability among employers, and includes increased protections for workers. The H-2B temporary visa program is designed to address employer demand for labor in non-agricultural industries. The House of Representatives has heard employer complaints in testimony concerning the H-2B visa program. To encourage increased use of temporary visa programs, quotas must be expanded and the programs must work to ensure that employers' business needs are met in a timely manner.

The H-2B visa program must also be reformed to prevent worker abuse and protect brands from legal and reputational risk caused by exploitative labor brokers. Verité has carried out extensive in-depth research on the ways in which exploitative labor brokers have subjected guestworkers to forced labor in the U.S. agricultural sector.³⁵ The Pennsylvania State School of Law and the National Guestworker Alliance document how brokers have exploited guest workers on H-2B visas, using workers' conditional immigration status as leverage in a similar manner to undocumented workers.³⁶ A 2010 Government Accountability Office report found H-2B worksite violations regarding minimum wage or overtime pay violations in 60 percent of cases, and the use of fraudulent documents in 80 percent of cases.³⁷ A reformed visa program must allow workers to transfer between worksites so they may be free to leave abusive situations. It must also prohibit labor brokers and employers from charging workers fees, provide for regular monitoring of worksites and housing, and provide for confidential, effective grievance mechanisms.

Worker protections against retaliation

We ask businesses to support a nation-wide bill to strengthen labor protections for whistle-blowers, especially undocumented workers. Employers may threaten to notify immigration authorities if undocumented workers complain about their conditions of work.³⁸ This practice is a common occurrence, and protections must be broadened to encourage undocumented workers to come forward. In October 2013, California passed three bills designed to protect whistle-blowers and their families from retaliation by their employers or related persons: AB 263 – "Employment: retaliation: immigration-related practices," AB 524 "Immigrants: extortion," and SB 666- "Employment: retaliation." Such protections are vital to secure worksite compliance with U.S. labor regulations, but they must be extended across the U.S. to be fully effective.



Many cases of trafficking originate with deception regarding the place of work, wages, and other crucial information.

Increased regulation of recruitment

We ask businesses to support a bill similar to the previous H.R. 3344 - “Fraudulent Overseas Recruitment and Trafficking Elimination Act,” which requires third-party foreign labor brokers to “disclose in English and in the primary language of the worker being recruited specified information, including the identity of the employer and the recruiter, worker protections, and a signed copy of the work contract.”³⁹ Many cases of trafficking originate with deception regarding the place of work, wages, and other crucial information, as well as high recruitment fees that force migrant workers into debt bondage. H.R. 3344 would penalize third-party labor recruiters who fail to present accurate information. Verité also supports New York’s draft Justice for Jobseekers bill, which would prohibit labor brokers from charging workers advanced recruitment fees and would increase sanctions for fraudulent recruitment practices.⁴⁰

Who is Verité?

Verité is an international not-for-profit training, consulting and research NGO that has been a leader in supply chain social responsibility and sustainability since 1995. For its work, Verité was the winner of the Schwab Social Entrepreneur of the Year Award in 2011 and the Skoll Award for Social Entrepreneurship in 2007.

For more information, please contact Quinn Kepes, Program Director at +1.413.253.9227 or qkepes@verite.org.

Resources

Verité, Fair Hiring Toolkit (www.verite.org/helpwanted/toolkit)

Verité, *An Ethical Framework for Cross-Border Labor Recruitment*, 2012

Verité, Forced Labor Commodities Atlas (www.verite.org/Commodities)

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