

PLEASE REMEMBER: CONSENT TO WORK IS NOT CONSENT TO BE EXPLOITED

Labor Trafficking/Drugs Charge **Judicial Bench Card**

LABOR TRAFFICKING DEFINITION:

Those forced to perform labor and/or services in conditions of involuntary servitude, peonage, debt bondage or slavery through force, fraud or coercion.

**from the Trafficking Victims Protection Acts (TVPA)¹*

Common Industries for Labor Trafficking: agriculture, ranching, energy sector, restaurants/hospitality, construction, landscaping, and domestic servitude; **as well as illicit activities** such as drug dealing, drug muling and forced panhandling.

Colorado Wage Theft Law, 2019 (HB 19-1267)²

1. Theft - wages - failure to pay wages - paying less than the minimum wage. The act defines wage theft as theft, which is a felony when the theft is of an amount greater than \$2,000.
2. The act includes refusing to pay wages or compensation with the intent to coerce a person who is owed wages as conduct that constitutes wage theft.

LABOR TRAFFICKING VS WAGE THEFT

The difference between these crimes can be nuanced.

1. WAGE THEFT:

- If someone is not being paid or being paid less than the minimum wage for their work but is able to safely leave the job without:
 - Threats to their/their loved ones' safety
 - Threats to report them to ICE*
 - Threats of blackmail/being reported to the police
 - Physical violence
 - Being physically prevented from leaving
 - Being unable to leave because the employer has control of their identity documents

If the individual is free to leave the job safely and find other work, the situation may be wage theft.

2. LABOR TRAFFICKING:

- Must involve elements of **force, fraud, or coercion**. Trafficking is generally harder to prove.

EMPLOYERS MAY USE SUBCONTRACTORS TO CIRCUMNAVIGATE LABOR TRAFFICKING LAWS.

- The TVPA does not make companies responsible for crimes committed by their subcontractors.³
- **Red Flag:** A worker hired on through a subcontractor who is working like an employee on only one site/at one job (e.g. cleaning crews who are only cleaning one office building should likely be employees).

QUESTIONS TO IDENTIFY LABOR TRAFFICKING:

- Do you have a debt to your employer or someone you work with?
 - How are you paying that debt off?
 - Is the debt being paid off in a trackable/fair way?

PLEASE REMEMBER: CONSENT TO WORK IS NOT CONSENT TO BE EXPLOITED

- Were you recruited and told you need to pay back recruitment fees?
- Are the terms of work/type of work different than what you originally agreed to?
- Do you live in the same place that you work?
 - Are you required to live in the housing you are provided?
 - Are you free to move somewhere else?
 - Does anyone else have access to your housing besides who lives there?
- Are you living with many other people?
 - Is there enough space for the number of people living where you are living?
 - Do people need to “take shifts” sleeping?
- Are you free to come and go from work/your housing when you want?
- Do you have a cell phone or a way to communicate with others?
- Are you in contact with your family/friends?
- Do you have access to transportation to fulfill your basic needs (groceries, laundry, etc.)?
- Do you have control over your ID/Passport?
 - Keep in mind the individual may say it is lost
- Are you working more than 40 hours a week?
 - If yes, are you being paid overtime?
 - Do you have a record of the number of hours you have worked?
 - Are you allowed to take breaks/vacations?
- Are there protocols in your place of work for Workers' Compensation?
- Do you feel like if you got hurt at work, you would be taken care of medically by your employer?
- Do you have the correct safety equipment for your job?
- Is food or housing contingent on your work performance?
- Do you work with others who can corroborate your story?
- Is everyone you work with a suitable age to legally work? Note: agriculture, family businesses and restaurants have different age requirements.⁴
- Have you ever been threatened at work?
- Have you ever been threatened with losing your job if you didn't do something at work?

RED FLAGS FOR LABOR TRAFFICKING:

- Signs the individual's basic needs are being withheld:
 - Dehydration
 - Malnutrition
 - Weather exposure (sun, cold, wind)
 - Exhaustion
 - Lack of knowledge of Workers' Comp. Laws
- Injuries or ailments a result of lack of training or safety equipment:
 - For example, if working in agriculture, chemical burns from farming chemicals; if working in construction, injuries from falls, improper use of tools.
- Signs of physical abuse/neglect
 - Untreated/neglected injuries (broken bones which have healed improperly)
 - Untreated chronic health conditions (diabetes, cardiovascular disease, etc.)

PLEASE REMEMBER: CONSENT TO WORK IS NOT CONSENT TO BE EXPLOITED

- ❑ Not licensed for the type of work they are doing
 - ❑ For example, in massage parlor labor trafficking situations, only one individual may have a massage license.
- ❑ Accompanied by someone who speaks for them/acts controlling at time of arrest⁵
- ❑ Signs of trauma:
 - ❑ “Inconsistent history/account”⁶
 - ❑ “Submissive, fearful, hypervigilant, or uncooperative behavior”⁷
- ❑ You may want to ask to look at the individual’s pay stub to determine what they are being paid, and if money is being deducted.
 - ❑ While it is not illegal for an employer to make deductions from an employee’s paycheck for housing, transportation costs, etc., the percentage of a paycheck an employer can legally deduct is regulated by state and federal law. The employee must be paid at least the minimum wage.⁸

THE ROLE OF TRAUMA

- Respondents whose answers initially indicate a lack of victimization may instead be demonstrating reasonable fear or forgetfulness as a symptom of trauma.”⁹
- Victims of labor trafficking may not think of forced shoplifting and forced drug smuggling as “work.”¹⁰

Common Misconceptions:

- Consenting to work or even to a potentially exploitative situation is not consenting to be exploited. Individuals may consent to exploitation if they are desperate to get their basic needs met/acting out of severely constrained choices.
 - Often the hours, terms of work, type of work, compensation, location of the work will differ from what was originally agreed to.
 - Individuals may be aware they are being exploited/entering an exploitative situation but have no other options.
- Not all people experiencing labor exploitation are immigrants. Anyone in need of work can be vulnerable to labor trafficking, including U.S. citizens.
- **Labor trafficking occurs in regular markets (agriculture, construction, domestic servitude, massage parlors, bars and clubs¹¹) AND illicit markets (drug muling or dealing, panhandling, gang activity¹², forced theft).**
 - Individuals are often forced to commit crimes which profit the trafficker.
- There are female labor traffickers; traffickers are not always men.
 - Female traffickers often have a higher social status than those they are trafficking.
- While some victims of labor trafficking are harbored against their will, **not everyone experiencing labor trafficking is physically restrained.**
 - Coercion/fraud is often part of someone’s experience (e.g., threats of deportation).

Common Patterns in Labor Trafficking

- Debt bondage (using a “debt” for recruitment/housing fees/visa fees to control someone) is a common coercive method in labor trafficking.
- People are often trafficked by people of the same culture/nationality.
- Consider and analyze the employer/employee relationship:
 - Are both employee/employer nationals of the same country?
 - Is there a noticeable power dynamic in the relationship (threats, controlling behavior, isolating the worker)?

PLEASE REMEMBER: CONSENT TO WORK IS NOT CONSENT TO BE EXPLOITED

Identifying Those at Risk of Trafficking¹³

- Court personnel should consider not only if individuals are being actively trafficked/have been trafficked, but if they are at risk of human trafficking. Many factors can increase risk, including:
 - Economic disadvantage
 - Lacking legal immigration status †
 - Substance Abuse
 - Domestic Abuse
- Juvenile Court Judges should identify juveniles who commit status offenses, such as running away or skipping school, who are highly vulnerable to victimization.

† Refer to Immigration benchcard if person is an immigrant.

Citations:

¹ “International and Domestic Law - United States Department of State.” United States Department of State, <https://www.state.gov/international-and-domestic-law/>. Accessed 27 Jan. 2021.

² Colorado General Assembly . “Colorado House Bill on Human Trafficking: HB14-1273.” Colorado General Assembly , https://leg.colorado.gov/sites/default/files/2019a_1267_signed.pdf. Accessed 23 Feb. 2021.

³See 1

⁴“Youth Law | Department of Labor & Employment.” Home | Department of Labor & Employment, <https://cdle.colorado.gov/youth-law#:~:text=16%20year%2Dolds%20and%20older,subject%20to%20Colorado%20youth%20laws>. Accessed 24 Feb. 2021.

⁵CommonSpirit Health, HEAL Trafficking, Pacific Survivor Center. “PEARR Tool: Trauma-Informed Approach to Victim Assistance in Health Care Settings.” Pennsylvania Coalition Against Domestic Violence, <https://www.pcadv.org/wp-content/uploads/CSH-PEARR.Tool-Tel-Field-FA3.pdf>. Accessed 24 Feb. 2021.

⁶See 5

⁷See 5

⁸U.S. Department of Labor. “Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA) | U.S. Department of Labor.” *Home | U.S. Department of Labor*, <https://www.dol.gov/agencies/whd/fact-sheets/16-flsa-wage-deductions>. Accessed 24 Feb. 2021.

⁹Vera Institute of Justice . “Guidelines for Administering the Trafficking Victim Identification Tool (TVIT).” *Vera Institute of Justice* , <https://www.vera.org/downloads/publications/human-trafficking-identification-tool-and-user-guidelines.pdf>. Accessed 24 Feb. 2021.

¹⁰See 9

¹¹Office of Court Improvement. “Grace Court Benchbook 2017.” Florida Courts. Accessed March 23, 2021. https://www.flcourts.org/content/download/217037/file/GRACE_Court_Benchbook.pdf.

¹²Office of Court Improvement. “Grace Court Benchbook 2017.” Florida Courts. Accessed March 23, 2021. https://www.flcourts.org/content/download/217037/file/GRACE_Court_Benchbook.pdf.

¹³Office of Court Improvement. “Grace Court Benchbook 2017.” Florida Courts. Accessed March 23, 2021. https://www.flcourts.org/content/download/217037/file/GRACE_Court_Benchbook.pdf.