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NEWS

How labor trafficking leaves S.D. workers with no money, no insurance and no freedom



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Before coming to Sioux Falls, the man was told he'd be paid \$12 an hour, 40 hours a week.

He would receive free transportation from Virginia to South Dakota and begin working for a construction contractor, with housing provided.

For a native of Guatemala who came to America seeking a better life, it sounded like a perfect opportunity. Then reality set in.

His salary and hours started to decline. He was charged \$3,000 for his ride to Sioux Falls and had to buy his own tools. He paid hundreds in rent for a two-bedroom house without a stove or heat – a situation he shared with about a dozen other men.

The man, who the Argus Leader is not identifying due to safety concerns and a potential criminal investigation into his former employer, was a passenger in a van with about eight other men when they crashed on their way back from a job site, and he needed medical attention.

His boss dropped him off at a local hospital with cash and told him to lie about how many men were in the car.

When he protested, the boss threatened to call immigration authorities if he spoke up again.

That's when the situation became labor trafficking, an illegal practice of exploitation and coercion seen in agriculture, construction, domestic work and manufacturing that affects about 20 million workers globally, according to the International Labor Organization.

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The man told his story last year through a translator to a small group of nonprofit activists and community members in a Sioux Falls church cafeteria.

In South Dakota, he's one of a handful of labor trafficking victims who have come forward, though advocates suspect hundreds of workers in multiple employment sectors across the state are victims of their employers' abuse and manipulation.

Their inability to speak up and defend themselves is part of the exploitation.

"Traffickers choose people who live low-profile lives," said Jordan Bruxvoort, founder of the Naomi Project, a nonprofit dedicated to identifying and helping trafficking victims. "They're looking for people in survivor mode."

Denial of liberty

Gerson Cortez put down a slice of pizza as he recalled hearing threats of immigration enforcement shouted at fellow workers on a Sioux Falls construction job.

The 29-year-old was taking a break from putting up sheet rock on a job in Brookings last week as he spoke of his work experiences. He's happy at his current job. He gets paid hourly, gets regular breaks and has health insurance.

That wasn't always the case.

Cortez remembers getting paid by the square foot of work done and "running and hanging" just to make \$70 for more than 10 hours on the job. He recalls hearing a subcontractor yelling at workers to work harder and faster or they'd be hearing from immigration officials. He shakes his head while telling of a coworker falling to the ground and shattering his kneecaps because he wasn't provided standard safety gear.

Labor trafficking: Here's what Rounds, Thune and Johnson had to say

"They didn't provide equipment," Cortez says. "They come and scream at you. It was scary."

The injured worker didn't have health insurance. His subcontractor or labor broker had him establish himself as an independent contractor, a way to absolve the employer from

providing any benefits or workers' compensation. The savings from that approach can undercut business competitors by as much as 30 percent.

Story continues below the video

When those workers get injured, they're typically dropped off at the hospital with a few \$100, or left to fend for themselves. Cortez, who came to the U.S. from Guatemala in 2003, heard rumblings that his employer called immigration on his injured coworker, and said it wasn't unusual.

"There's people missing sometimes and you know why," he says. "Not everybody who works in the field is illegal. But if you're a Latino and they see they can take advantage of you, they will."

In the United States, common types of labor trafficking include farm workers who are coerced with violence to harvest crops, factory workers operating in inhumane working conditions or people forced to work in homes as domestic servants, according to the Polaris Project. Trafficking has also been reported in restaurants, hotels, carnivals, door-to-door sales or health and beauty establishments.

Labor trafficking occurs as soon as the worker loses his or her freedom to make decisions, Bruxvoort said. It's illegal to withhold wages, underpay or not meet work safety standards. The actions become trafficking with the added cloaks of coercion and fear.

"At its heart, it's a denial of liberty," Bruxvoort said.

He mostly works with victims who are from other countries, brought to the U.S. legally on federal H-2B visas, which allow employers to hire foreign workers to perform temporary non-agricultural services on a seasonal basis. He also assists laborers smuggled in illegally by a coyote – a person paid to help people cross the country's southern border – working for employers seeking cheap labor.

Bruxvoort, who is fluent in Spanish, focuses efforts on the construction industry in the Sioux Falls area. He sees laborers from South or Central America toiling under layers of labor brokers or subcontractors, a format employers use to evade taxes and medical insurance costs, at the same time concealing poor working conditions.

"It's done because of the tax advantages and the legal shield it provides," said Bruxvoort, who started The Naomi Project/El Proyecto Nohemi in October 2017. "You don't have to pay

overtime. You're not responsible if someone is injured. It legally absolves the parties involved in an advantageous way – at the expense of the worker who is doing the work.”

Workers brought legally by a temporary visa can be exploited by employers who take advantage of the fact that workers can only legally be employed at one site. Or they can overextend the visa time limit – making threats of calling immigration authorities real if the workers try to walk away or report the behavior.

“When that (visa) ends, they're deportable, making it easier for them to be coerced,” Bruxvoort said. “The employer can cut the string they're hanging by.”

'A classic tale'

For Angelita and Robert Farrell, a small town just off Interstate 90 and the Missouri River in rural central South Dakota was an ideal place to recruit Filipino workers to staff their Comfort Inn and Suites in Oacoma.

The Farrells went to the Philippines to recruit housekeepers, with the promise of \$6.05 per hour, eight hours a day, six days a week, according to U.S. Supreme Court documents from the 2008 case. They were promised overtime, holidays, a place to live, transportation. The workers were brought legally on H-2B visas.

“It was a classic tale,” said Kevin Koliner, a U.S. Attorney who prosecuted the case. “As soon as they got off of the plane in South Dakota, it was a different story.”

When the workers arrived in 2005, they were forced to hand over their visas, passports and immigration documents. They were paid \$3 per room instead of the promised hourly wage and were told if the room was not up to standards, they wouldn't be paid at all, according to federal court papers. They regularly worked 13 hours a day, every day, usually receiving about \$250 per week.

More: Delta donates more than 100 flights, \$2.5 million to help human trafficking survivors

Seven workers shared a two-bedroom apartment. Each was told to pay \$150 a month, even though the Farrells paid \$350 in rent. Angelita Farrell, who had ties to the Philippines, kept the keys to the apartment, forcing the workers to leave it unlocked, allowing her to do regular combings through their personal belongings.

The couple “contracted” with the nine workers to pay off debt they accrued for housing, supplies and transportation to and from work, after they were told those services would be included.

The debt continued to grow.

The Farrells controlled every aspect of the workers’ paychecks, dictating how much money they could send back home to their families. Robert Farrell threatened he would send any worker who tried to run away back to the Philippines in a “balikbayan box,” a small wooden or cardboard box typically used to send gifts back to the Philippines, according to federal court documents.

Authorities were made aware after one worker who had returned to the Philippines – after telling the Farrells her mother was dying – made a report to the U.S. Embassy.

The Farrells were arrested in March 2007.

Though force, fraud and coercion – elements necessary for a trafficking case – were evident in the victims’ situation, the case wasn’t necessarily prosecuted as a “human trafficking” case.

Other crimes that contribute to trafficking are usually easier to prove, and often have a higher punishment.

A jury convicted the Farrells of four counts of peonage (debt servitude), one count of conspiracy to commit peonage, two counts of making false statements, one count of visa fraud and one count of document servitude – a punishment possibility higher than a federal human trafficking charge.

Senators: Abolishing ICE would worsen child smuggling and other US-Mexico border problems

It’s one reason Koliner says tracking the number of actual trafficking cases is difficult: they aren’t often logged as such, and not every wage theft or fraud case involves trafficking.

The Filipino workers were eventually paid restitution and some filed a civil suit, though the settlement was kept confidential, Koliner said.

Robert and Angelita Farrell were sentenced to 50 months and 36 months in federal prison, respectively. They appealed to the Supreme Court, which upheld their convictions.

Tough to enforce

The blue-collar market in a rural area employing vulnerable people can be fertile ground for trafficking.

South Dakota's sparse population adds a layer of difficulty for investigators to probe a crime that's already difficult to prove.

"Surveillance is very difficult," said Homeland Security Investigations special agent Craig Scherer, who is based in Sioux Falls. "That's in addition to meeting the burden of elements of trafficking itself."

Homeland Security investigators work with confidential informants, local and state law enforcement, Immigration and Customs Enforcement (ICE) agents and non-governmental organizations to identify potential abuses. Investigations can start anywhere, from a report of a business not paying taxes or from someone who says they were told to cash their check at a store rather than a bank.

By hiring workers as independent contractors, not bound by federal Fair Labor Standards Act provisions, developers can avoid paying workers' compensation, benefits, overtime and taxes.

"It drives out legitimate competition because they can't compete and can't stay viable," said Homeland Security investigator Shawn Neudauer. "It creates an uneven playing field."

Story continues below the document

Jorge Duran, an area representative for the Regional Council of Carpenters, has spoken with citizens who have tried to get hired by a contractor and are turned away because they have legitimate paperwork rather than identification the employer fabricates.

"It's very sad when these guys say, 'I'm a citizen, I was born in the U.S. When I came to this contractor, he told me there's no way I could get the job with a real license to work construction. I gotta go get one of those fake ones if I want to work construction,'" Duran said.

Dean Sands, manager of the Sioux Falls branch of Olympic Companies, has been in the contracting business for more than two decades and has seen workloads increase and the number of workers decrease. He's aware of the practice of using labor brokers to find workers

for jobs, and knows that not everyone in the area pays their workers fairly or has them covered by workers' compensation.

Sands says Olympic seeks subcontractors who employ legitimately, but recognizes that sometimes he, and others in his position, may not know of the practices going on when they're not around.

"For me, why would I compromise what I believe and how to take care of your employees to save a few dollars?" Sands said.

The culmination of a worker shortage, a competitive environment and a lack of oversight provides a breeding ground for mistreatment of workers.

"The environment is created in good times and in bad times, and in highly competitive times," Sands said. "The abuse and real dirtiness happens in a way nobody is ever going to see it."

Culture of accountability

The main issue, advocates say, is a lack of accountability and oversight.

The H-2B visa program has the rules that employers agree to follow: Workers must be paid regularly for all hours on the job. Employers must provide tools and equipment as well as reimbursement for any visa, border crossing or transportation costs incurred on their way to the job site.

A handout required to be posted at every site says employers must follow federal and state regulations – including prohibition against holding workers' passports or other immigration documents.

So how can some employers violate these rules? A touch of legitimacy and a lack of oversight.

One element to the H-2B program is that those who have a visa can only have one employer, giving that employer power. If the employers had to compete more for that pool of workers, experts say, the possibility of losing workers to better conditions could help hold employers accountable.

"The problem is baked into the program," Bruxvoort said. "There's no flexibility with the visa. We came up with these laws. We can change them."

U.S. Congressman Dusty Johnson echoed that idea during a recent Sioux Falls visit.

"Work visa programs can be really good news for communities, businesses, people who are here working legally," Johnson said. "When well-constructed, they can do a really good job. I would like to see more flexibility in those programs."

Senators John Thune and Mike Rounds said the visa programs are important to South Dakota's economy. Rounds said the visas are temporary to avoid situations where employers can exploit or abuse workers, adding that H-2B workers he's spoken with enjoy the short term money-making opportunity.

When abuses occur, however, it's a crime that can hide in plain sight. The average citizen can drive by a construction site and not blink an eye.

"The public stigma with sex trafficking, that dark-world environment, lends to public awareness," Scherer said. "Labor trafficking is hidden in plain view. They see these people every day, but they don't see the indicators of what they're doing is illegal."

Becky Rasmussen, executive director of Call to Freedom, said her organization, which helps connect survivors of human trafficking to resources, has assisted about six individuals who had situations involving elements of labor trafficking.

"Victims often don't know they're being trafficked," Rasmussen said. "Immigrants don't understand the culture, and traffickers take advantage of that."

The victim pool is one typically at the center of a heated national discussion, especially with the current rhetoric surrounding immigration. Even if they come to the country legally, they can carry the stigma of taking away work from others.

"People say it's jobs that Americans won't do," Neudauer said. "Really, it's jobs Americans won't do for that low of pay."

Most on the front lines of the labor trafficking fight agree that more oversight and awareness is needed to deter employers from exploiting what amount to easy targets for financial gain.

"If there aren't groups who actively stand up for vulnerable people, those who (traffic) get bolder," Bruxvoort said. "We need to build a culture of accountability."

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