

Subcontractor Servitude

The New York Times

By JENNIFER GORDON September 1, 2013

http://www.nytimes.com/2013/09/02/opinion/subcontractor-servitude.html?_r=0

THE words “guest workers” and “strike” are not often seen together. Yet twice this summer, members of a group of more than 150 Jamaican guest workers who clean luxury Florida hotels and condos walked off the job. The workers came to the United States in April anticipating a summer of hard work and decent earnings to send home. Instead, they encountered the black hole of labor subcontracting.

Labor-recruitment firms brought the workers from Jamaica to the Florida Panhandle. Cleaning contractors hired them and then leased them out to scrub toilets and sweep sand from floors for vacation property companies.

By the time the workers first went on strike, in June, they had much to protest. They had borrowed to pay recruitment fees of \$2,000 to \$2,500, counting on promises of full-time work and good housing. But in Florida, the cleaning company packed as many as 15 people into unfurnished two-bedroom apartments, for which it collected as much as \$5,000 a month. Charges for rent and required extras like \$70 for a T-shirt “uniform” reduced the workers’ net pay to subminimum levels, sometimes even zero, and — the final insult — paychecks repeatedly bounced. Children back home waited for money that never came.

Those problems typify the debt, fraud and coercion that plague guest-work programs in the United States. An estimated 700,000 to a million guest workers and their families enter the country each year, mostly to work in low-wage industries but also as nurses, teachers, computer programmers and the like. When guest workers are exploited, it lowers the floor for American workers, too.

[H-2B visas](#), the class of visas held by the Jamaicans, are reserved for temporary or seasonal work for which there are not enough “able, willing, qualified and available” Americans — but of course, availability depends on the wages and working conditions on offer. Florida’s unemployment rate has been stuck at over 7 percent, so it seems unlikely that no local cleaners could be found.

Guest workers, however, offer something hiring a local worker does not: subservience. They are tied by law to the employer who sponsored their visas, which means that if they are found too “difficult” for any reason — including asking that their rights be respected — the employer can effectively deport them and blacklist them from receiving future work visas. When the Jamaican cleaners struck the first time, protesting their stolen wages and miserable living conditions, the cleaning company stapled a notice to their paycheck stating that immigration authorities and local law enforcement would escort anyone who didn’t return the next day to the airport, to fly home.

The Jamaicans' situation is part of a broader phenomenon of subcontracting. The structure of work has shifted since the 1980s, for workers from Manhattan office cleaners to Bangladeshi garment stitchers. The [National Employment Law Project](#) reports that 58 percent of jobs added during the recovery have been in low-wage sectors, which have high levels of contingent and subcontracted jobs. Today, almost all production in global manufacturing involves subcontracting. It is central to the structure of employment in the American construction, warehousing and agricultural industries as well.

Subcontractors compete on the price of labor. Where production can't travel, they move workers across borders, with recruiters' help. They also shield businesses from legal liability for the treatment of workers and from labor-organizing efforts. Three steps are essential to curbing the system's worst abuses.

First is immigration reform that protects all workers: When guest workers can defend their rights, the millions who labor alongside them benefit as well. Immigration law must be amended to forbid employers from charging guest workers exorbitant fees directly or through recruiters and to protect those who report abuses from retaliation. The bill passed by the Senate this summer is far from perfect, but it restricts what recruiters can charge and would allow guest workers and other immigrants in a serious labor dispute to change jobs and stay in the country. In contrast, the guest-worker bill House Republicans are threatening to introduce lacks those protective features entirely and would bring in many more workers, on much worse terms.

A second necessary reform is legal responsibility along the contracting chain. If workers in a subcontracting chain are abused, the firms at the top of the chain that benefit from their labor should not be insulated from financial responsibility. An innovative California law penalizes a firm for its subcontractor's workplace violations if the firm did not pay the subcontractor enough for it to comply with all applicable labor laws. In Britain, the quaintly named [Gangmasters Licensing Authority](#) can penalize a firm in the food sector if its labor contractor violates the law. In the Philippines, recruiters are held responsible if they place a worker into a job abroad that violates national laws on overseas employment. Such joint liability should be the standard in subcontracting arrangements.

Third is reform of labor laws. Before their second strike, on Aug. 17, the Jamaicans sought help from the [National Guestworker Alliance](#) (a nonprofit advocacy group, but not a union) and filed a complaint with the Labor Department. Other subcontracted workers are members of traditional unions, but the National Labor Relations Act restricts their ability to protest against the employer who actually holds the purse strings in a subcontracting chain, or to bargain collectively with that employer. It is time to repeal this damaging restriction.

This Labor Day, a group of courageous workers in Florida remind us that the right to fair working conditions is one that no company should be able to subcontract its way out of.

[Jennifer Gordon](#) is a professor of law at Fordham.