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**KENNEDY FIGHTS TO PROTECT WORKERS WITH VIGILANT ENFORCEMENT OF
LABOR LAWS**

OFFERS LABOR PROTECTIONS AMENDMENT TO IMMIGRATION BILL

Washington, DC: Today Senator Kennedy offered an amendment to the immigration reform bill that would ensure vigilant enforcement of critical labor protections to preserve the health, safety, and well-being of all American workers. While there are good labor protections in the bill designed to protect immigrant workers and ensure that the guest worker program does not hurt American workers, Senator Kennedy believes the best way for us to protect American workers and immigrants alike is to more vigilantly enforce our existing labor laws, including the National Labor Relations Act (right to organize), the Fair Labor Standards Act (minimum wage, overtime, and child labor), and the Occupational Safety and Health Act (worker safety).

“We need to provide real penalties, not slaps on the wrist, for employers that violate the Fair Labor Standards Act, the Occupational Safety and Health Act, and the National Labor Relations Act,” Senator Kennedy said. “Congress passed these laws in order to establish the minimum labor standards necessary to preserve basic human rights. But we must provide meaningful enforcement if we want these to be meaningful laws. This measure ensures vigilant enforcement of these critical labor protections to preserve the health, safety, and well-being of all American workers.”

The amendment also overturns the Supreme Court’s decision in *Hoffman Plastics*, which held that an employer cannot be required to pay back-pay to an undocumented worker when the is fired for supporting a union.

The amendment would also:

- Increase the monetary penalties for violations of the Fair Labor Standards Act (FLSA), including unpaid wages, unpaid overtime compensation, and child labor violations.
- Increase the monetary penalties for violations of the Occupational Safety and Health Act (OSHA).
- Make willful or grossly negligent violations of OSHA a criminal felony, subject to fines and imprisonment.
- Require the National Labor Relations Board to seek a federal court injunction against an employer that has discharged or discriminated against employees during a union organizing drive. (*This provision is from your Employee Free Choice Act.*)
- Increase the backpay remedy for workers who are discharged or discriminated against during an organizing drive, and increase the civil penalties for employers that violate employee rights. (*This provision is from your Employee Free Choice Act.*)
- Fix the Supreme Court’s decision in the Hoffman Plastics case by clarifying that an employer can be required to pay backpay for breaking a labor law when the violation involves an undocumented worker.
- Provide that 25% of all fees collected under the guestworker program must be dedicated to enhanced enforcement of the FLSA, OSHA, and the labor protections of the immigration bill in industries that have the highest percentage of violations, and the highest percentages of guest workers.

- Increase the number of bilingual investigative staff at the Department of Labor.
- Extend the 60-day period for guest workers to find another job after being discharged when the discharge is in retaliation for exercising a right guaranteed by law.

**Statement of Edward M. Kennedy
On Labor Protections Amendment
May 23, 2006
(As prepared for delivery)**

Immigrant workers are among the most vulnerable in our nation. While performing society's most difficult and dangerous work, they face abuse by employers, the denial of basic rights, and economic exploitation. In negotiating the McCain/Kennedy bill we took great care to include protections that will halt these alarming trends and ensure fair wages and working conditions for guest workers. We also took great care to protect American workers and ensure that the guest worker program does not diminish American labor standards.

However, history shows us that it is not enough to pass good labor laws if we do not also make a strong commitment to enforcing these laws. Beyond anything we've provided in this bill, the most important step we could take to help American workers and immigrant workers alike would be to improve our enforcement of the critical labor protections that have been part of U.S. law for decades.

We have laws on the books that protect the safety of American workers. Yet, each year in the United States over 5,700 workers are killed on the job, and 4.3 million others become ill or are injured. That's 16 deaths and 12,000 injuries and illnesses each day[S1] <#_msocom_1> .

We have laws on the books that prohibit child labor. Yet there are about 148,000 illegally employed children in the United States[S2] <#_msocom_2> today.

And we have laws on the books that give workers a voice on the job and protect their fundamental right to organize and join a union. Yet, each year in the United States, more than 20,000 workers are illegally discriminated against for exercising these rights in the workplace.

These appalling statistics persist because our efforts to seek out and punish employers who violate the law are laughably inadequate. We find and address only a miniscule fraction of the number of violations that occur each year. And even when we do try to enforce the law, the penalties for breaking it are so low that employers treat them as a minor cost of doing business.

The average find for a serious OSHA violation last year was \$883. The average fine for a child labor violation was \$718. And violations of workers' right to organize are remedied with backpay awards that come years too late. Such minor sanctions provide no incentive for employers to comply with the law.

We need to provide real penalties, not slaps on the wrist, for employers that violate the Fair Labor Standards Act, the Occupational Safety and Health Act, and the National Labor Relations Act. The Kennedy Amendment bolsters our enforcement of these important laws. It updates the penalties under the Fair Labor Standards Act by increasing the back-pay remedy for willful violations, and increasing the maximum penalty for violations of minimum wage, overtime and child labor protections.

It would also update OSHA's civil penalties, which have been unchanged since 1990. It would provide a maximum penalty of 50,000 when a worker's death is caused by willful violations of the law, and would make it a felony when an employer kills or injures an employee through such willful

violations.

But these increased fines and penalties – while important – are not enough. We also need to take stronger steps to ensure that current laws are being enforced, and violations are being detected and remedied. Vigilant enforcement is particularly important in occupations with high percentages of immigrants, which often see large numbers of violations of health and safety and wage and hour laws. It can be difficult to enforce the law in such occupations, where workers often don't know their rights, or are afraid to report violations.

That's why we need targeted enforcement efforts to ensure that guest workers' rights are protected and our high American labor standards are maintained for all workers in this country. The Kennedy Amendment will serve this important goal by requiring that 25% of all fees collected under the guest-worker program must be dedicated to enhanced enforcement of the FLSA, OSHA, and the labor protections of the immigration bill in industries that have the highest percentage of violations, and the highest percentages of guest workers.

Another key step in protecting both American and immigrant workers is to end the economic incentives that employers have under current law to abuse undocumented workers. The Supreme Court's decision in *Hoffman Plastic Compounds v. NLRB* was a major setback for America's workers. By ruling that undocumented workers are not entitled to back pay when their rights are violated, the Supreme Court left millions of workers without meaningful recourse when they are fired for trying to organize a union.

Unfortunately, this terrible decision has been applied to other labor laws as well, making undocumented workers even more vulnerable to exploitation because their employers can violate their rights with relative impunity.

The decision also hurts American workers in several ways. It encourages employers to hire undocumented workers by making them less expensive and easier to intimidate. Businesses take advantage of this situation by hiring undocumented workers and cutting legal corners. Under *Hoffman*, unscrupulous employers are rewarded for this unlawful behavior.

Congress should not allow employers to use immigration laws as a shield for unlawful and abusive behavior. All workers should be entitled to the protections of our labor laws, regardless of their immigration status.

Finally, our workplace standards will not be effective until workers have the security, knowledge and means to enforce them. And the best way to provide workers with these resources is to give them the ability freely and fairly to choose a union. The right to organize and join a union is a fundamental right recognized in the United Nations Declaration of Human Rights. Yet, the United States violates this fundamental principle every day, because our laws don't adequately protect the right to organize. When workers attempt to form a union, employers intimidate them, harass them, and retaliate against them. Employees who stand up for their rights are fired.

The Kennedy Amendment provides stronger protections that allow workers to organize freely and require employers to negotiate fairly. It allows workers to get court orders to stop employers from firing or threatening union advocates, and strengthens the penalties in current law for mistreatment of workers who support a union.

It's long past time to give workers these basic protections. Congress passed laws like the Fair Labor Standards Act, the National Labor Relations Act and the Occupational Safety and Health Act in order to establish the minimum labor standards necessary to preserve basic human rights. But we must provide meaningful enforcement if we want these to be meaningful laws. The Kennedy Amendment

ensures vigilant enforcement of these critical labor protections to preserve the health, safety, and well-being of all American workers.

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[S1] BLS (2004 data)

[S2] <http://www.stopchildlabor.org/USchildlabor/enforcementoverview.htm>