

LABOR TRAFFICKING
Penal Law § 135.35 (3)¹
(Committed on or after Nov. 1, 2007)

The (*specify*) count is Labor Trafficking.

Under our law, a person is guilty of labor trafficking if he or she

Select appropriate alternative(s):

compels or induces another person to engage in labor [or]

recruits, entices, harbors or transports another person *to engage in labor*²

by means of intentionally using force or engaging in any scheme, plan or pattern to compel or induce another person to engage in or continue to engage in labor activity by means of instilling a fear in such person that, if the demand is not complied with, the actor or another will do one or more of the following:

Select appropriate alternative(s):

¹ Prior to January 19, 2016, the instant crime was subdivision four of Penal Law 135.35. Effective January 19, 2016, the Labor Trafficking statute was amended by repealing subdivision one and reenacting it as the separate crime of Aggravated Labor Trafficking under Penal Law § 135.37, and this subdivision, then subdivision four, was renumbered subdivision three and the remaining subdivisions of the Labor Trafficking statute were also renumbered accordingly. L 2015, ch 368.

² The italicized words are not in the statutory definition. They are in the statutory definition of an accomplice (see Penal Law § 135.36 ["In a prosecution for labor trafficking, a person who has been compelled or induced or recruited, enticed, harbored or transported to *engage in labor...*"] [emphasis added]). Thus, in accord with legislative intent and for the sake of clarity, they are here included in the definition of the crime.

cause physical injury, serious physical injury, or death to a person;

cause damage to property, other than the property of the actor;

engage in other conduct constituting a felony [or unlawful imprisonment in the second degree]³;

accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against such person;⁴

expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
or

use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

³ The remainder of the statute, "in violation of section 135.05 of this article," is omitted as unnecessary. If "unlawful imprisonment in the second degree" is charged, the Court should define that crime (see Penal Law § 135.05).

⁴ The statute here contains an affirmative defense that applies only to this subdivision. The statutory language is omitted here but provided for in the charge below in accordance with the standard CJI2d affirmative defense format.

The following terms used in that definition have a special meaning:

[PHYSICAL INJURY means impairment of physical condition or substantial pain.⁵]

[SERIOUS PHYSICAL INJURY means impairment of a person's physical condition which creates a substantial risk of death or which causes death or serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.⁶]

[Under our law, (specify) is a FELONY. *If appropriate, define the felony.*]

[CRIME means a misdemeanor or a felony.⁷ (specify) is a crime.]

[PUBLIC SERVANT means any public officer or employee of the state or of any political subdivision thereof or of any governmental instrumentality within the state, or any person exercising the functions of any such public officer or employee. The term public servant includes a person who has been elected or designated to become a public servant.⁸]

Intent means conscious objective or purpose.⁹ Thus, a person INTENTIONALLY uses force or engages in any scheme, plan or pattern to compel or induce another person to engage in

⁵ Penal Law § 10.00 (9); *See People v Chiddick*, 8 NY3d 445 (2007).

⁶ Penal Law § 10.00 (10).

⁷ Penal Law § 10.10 (6).

⁸ Penal Law § 10.00 (15).

⁹ *See* Penal Law § 15.05 (1). An expanded definition of "intent" is available in the General Charges section under Culpable Mental States.

or continue to engage in labor activity when his or her conscious objective or purpose is to do so.

In order for you to find the defendant guilty of this crime, the People are required to prove, from all of the evidence in the case, beyond a reasonable doubt, both of the following two elements:

1. That on or about (date), in the county of (County), the defendant, (defendant's name),

Select appropriate alternative(s):

compelled or induced (specify) to engage in labor;

recruited, enticed, harbored or transported (specify);
to engage in labor, and

2. That the defendant did so by means of intentionally using force or engaging in any scheme, plan or pattern to compel or induce (specify) to engage in or continue to engage in labor activity by means of instilling a fear in (specify) that, if the demand is not complied with, the defendant or another will:

Select appropriate alternative(s):

cause physical injury, serious physical injury, or death to a person;

cause damage to property, other than the property of the actor;

engage in other conduct constituting a felony or unlawful imprisonment in the second degree;

accuse some person of a crime or cause criminal charges or deportation proceedings to be instituted against some person;

expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule;

testify or provide information or withhold testimony or information with respect to another's legal claim or defense;

use or abuse his or her position as a public servant by performing some act within or related to his or her official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely.

[Note: If the affirmative defense does not apply, conclude as follows:

If you find the People have proven beyond a reasonable doubt both of those elements, you must find the defendant guilty of this crime.

If you find the People have not proven beyond a reasonable doubt either one or both of those elements, you must find the defendant not guilty of this crime.

[NOTE: If the affirmative defense does apply, continue as follows:

If you find that the People have not proven beyond a reasonable doubt each of those elements, you must find the defendant not guilty of Labor Trafficking as charged in the _____ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt each of the elements, you must consider an affirmative defense the defendant has raised. Remember, if you have already found the defendant not guilty of Labor Trafficking, you will not consider the affirmative defense.

Under our law, it is an affirmative defense that the defendant reasonably believed the threatened charge to be true and that his or her sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of such threatened charge.¹⁰

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant.

A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People had proven beyond a reasonable doubt the elements of Labor Trafficking, you must find the defendant guilty of that crime as charge in the _____ count.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not guilty of Labor Trafficking as charged in the _____ count.]

¹⁰ Penal Law § 135.35 (4) (d).