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Beating the System is the System: A Survey of Workplace Violations in Chicago, Los Angeles, and New York City

The Workplace Violations Survey Project

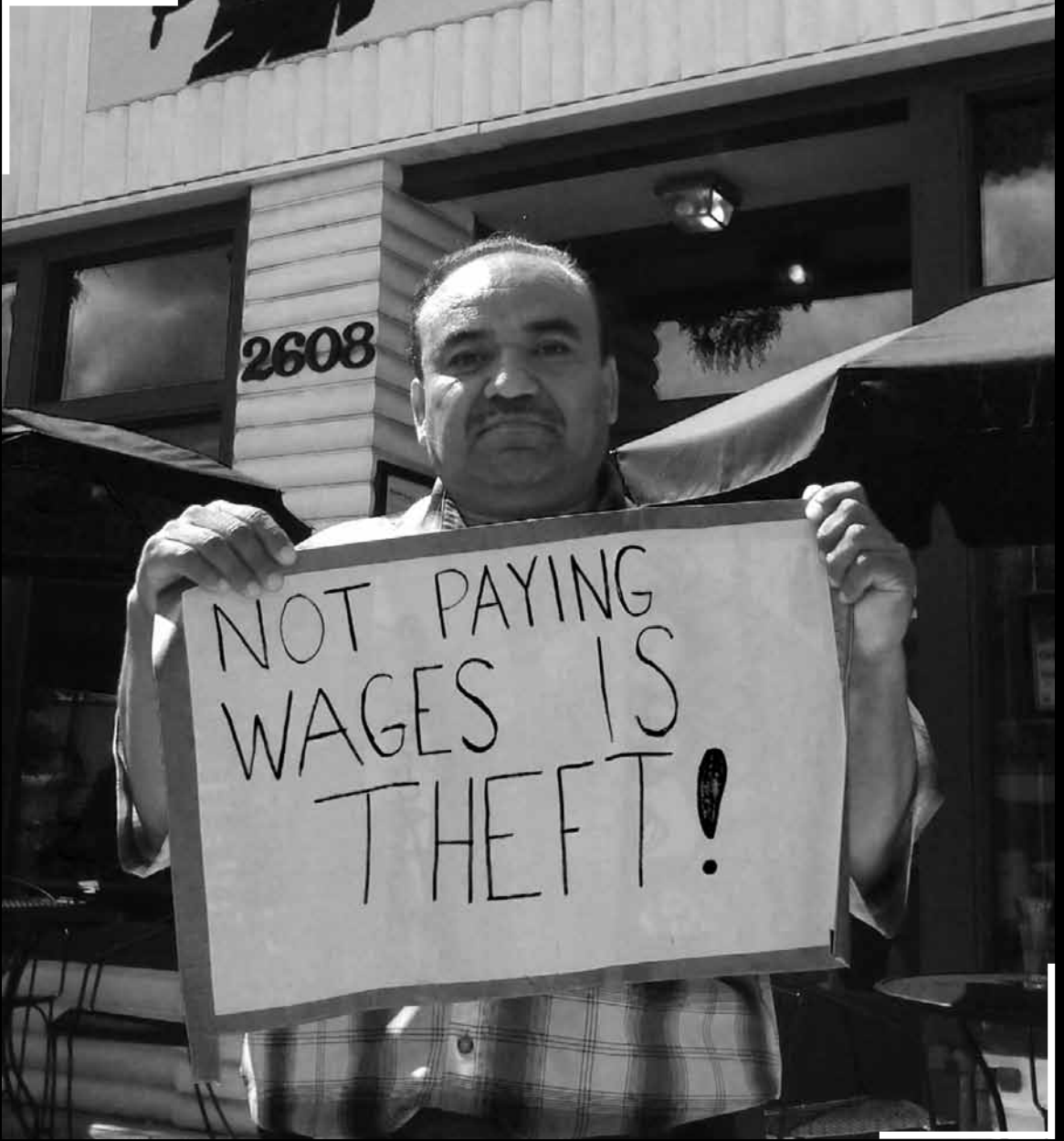
New Labor Forum, Volume 19, Number 1, Winter 2010, pp. 72-79 (Article)

Published by The Murphy Institute/City University of New York



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BEATING THE SYSTEM IS THE SYSTEM

A Survey of Workplace Violations in Chicago, Los Angeles, and New York City

AT THE START OF THE TWENTY-FIRST CENTURY, AMERICA'S CORE EMPLOYMENT and labor laws are failing to protect the nation's workers. These are laws that most of us consider absolute and inviolate, most of which date back to the New Deal. Employers must pay workers at least the minimum wage, and time and a half for overtime hours. They must follow regulations to protect workers' health

and safety, and carry workers' compensation insurance in case of injury. They may not discriminate against workers on the basis of age, race, religion, national origin, gender, sexual orientation, or disability. And they must respect workers' right to organize and bring complaints about working conditions.

In recent years, we have seen growing evidence that employers are breaking these bedrock laws—not just in manufacturing plants

outside our borders, or in the sweatshops that flourished a century ago, but in a wide range of core industries inside the United States, from construction to retail, restaurants, janitorial services, and home health care. However, until now, very few researchers have been able to accurately estimate the proportion of workers experiencing workplace violations, or the proportion of employers committing them. As a result, we lack robust benchmarks of the

** This article is based on the authors' 2009 report, "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," available at <http://www.unprotectedworkers.org> (please see the "About Our Contributors" section for a full listing of the authors' names). This research was supported by the Ford Foundation, the Haynes Foundation, the Joyce Foundation, the Rockefeller Foundation, and the Russell Sage Foundation.*

magnitude of the problem, the industries that are the biggest offenders, or the workers who are most affected. The limited data, in turn, hamper effective policy responses at the federal, state, and local levels.

This article summarizes new research findings that begin to fill the gap. In 2008, we surveyed 4,387 workers in low-wage industries in the three largest U.S. cities—New York City, Los Angeles, and Chicago—using a rigorous survey methodology that allowed us to reach vulnerable workers who are often missed in standard surveys.¹ We attempted to answer the following questions: (1) How common are workplace violations, such as the percentage of workers earning less than the minimum wage or working overtime without pay?; (2) Which industries and occupations have the highest concentration of violations?; and (3) Who are the workers most affected? We think of this survey as a census of the invisible because, from the standpoint of public policy and government regulation, these jobs (and the workers who hold them) are all too often off the radar screen.

THE PREVALENCE OF WORKPLACE VIOLATIONS IN AMERICA'S CITIES

WE FOUND THAT CORE EMPLOYMENT and labor laws are systematically violated in the low-wage labor markets of the nation's three largest cities. Low-wage workers are being paid less than the minimum wage and are not receiving legally mandated overtime pay. They are working off the clock without pay, and not getting meal breaks. When injured, they are not receiving workers' compensation. And they are retaliated against when they try to assert their rights or attempt to organize.

Minimum Wage Violations

Minimum wage laws place a floor under pay for frontline workers in the U.S. labor market. Covered employees must be paid at or above the minimum wage set by federal or state law, whichever is higher.² In measuring the prevalence of minimum wage violations, we did not rely on respondents' own knowledge of these laws, but instead gathered detailed

Many frontline workers in the low-wage labor market perform “off-the-clock” work for which no pay is provided.

information about the work week immediately prior to each interview. We used that information to calculate each respondent's hourly wage rate for the job(s) he or she worked that week, dividing total weekly earnings by the number of hours worked, after taking into account bonuses, taxes, deductions, and overtime pay. We then compared the result to the relevant state minimum wage standard to determine whether or not there was a minimum wage violation.

Fully 26 percent of the workers in our sample were paid less than the minimum wage in the previous work week. Moreover, these minimum wage violations were not trivial in magnitude: 60 percent of respondents were underpaid by more than \$1 per hour. We also measured minimum wage violations for tipped workers in particular, who in Illinois and New

York have a lower minimum wage than non-tipped workers. Of the tipped workers in our sample—restaurant workers, car wash workers, hotel workers, and the like—30 percent were not paid the tipped-worker minimum wage.

Overtime Violations

The 1938 Fair Labor Standards Act (FLSA) stipulates that covered employees must be paid “time and a half” for all hours worked over forty during each week for a single employer. Over a quarter of our respondents worked more than forty hours during the previous work week for a single employer and were therefore at risk for an overtime violation. More than three-quarters (76 percent) of these workers were not paid the legally required overtime rate by their employers. Like minimum wage violations, overtime violations were far from trivial in magnitude; employees with an overtime violation worked an average of eleven overtime hours in the previous week.

Off-the-Clock Work

In addition to unpaid overtime hours, many frontline workers in the low-wage labor market perform “off-the-clock” work that takes place before or after a regularly scheduled shift and for which no pay is provided. By law, employees must be paid for all of the hours they work. We asked workers whether they came in before their official shift or stayed late after their official ending time and, if they did, whether or not they received payment for this time. Nearly one-quarter of workers (22 percent) stated that they had worked before and/or after their regular shifts in the previous work week, and were thus “at risk” for off-the-clock violations. Of these workers, 70 percent did not receive any pay at all for the work they performed outside of their regular shift. Those who experienced this type of violation worked a median of one hour per week without pay.

Meal Break Violations

California, Illinois, and New York have laws that require employers to provide workers with an uninterrupted meal break during their shift (although the length of the required meal break, as well as the minimum shift length after which a break must be provided, varies from state to state). The laws do not require the employer to pay for the meal break, but if the employee works during the break, he or she must be compensated. We applied each state’s specific regulations to determine whether workers received all of their required meal breaks and whether these breaks were of the required length.

The vast majority of our respondents (86 percent) worked enough consecutive hours to be legally entitled to a meal break. However, more than two-thirds of these workers (69 percent) experienced a meal break violation in the previous work week. Nearly one-quarter (22 percent) of respondents with this violation received no meal break at all at some point during the previous week. Half (50 percent) had a meal break that was shorter than the legally mandated length. Workers also reported being interrupted by their employer during the break (16 percent) or working during part of their meal break (17 percent).

Other Violations

The survey documented many other violations as well, ranging from late payment of wages, to tip stealing, to illegal payroll deductions. We also found widespread reports of employer retaliation: of the workers who made a complaint about working conditions or who tried to organize a union during the last year, 43 percent experienced at least one form of illegal retaliation from their employer. Another set of findings involves the workers’ compensation system, which appears to be largely dysfunctional in this part of the labor market. Among respondents who had a recent

on-the-job injury, more than half experienced a workers' compensation-related violation.

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Weekly Wage Theft in America's Cities

More than two-thirds (68 percent) of our sample experienced at least one pay-related violation in the previous work week. The average worker lost \$51, out of average weekly earnings of \$339. Assuming a full-time, full-year work schedule, we estimate that these workers lost an annual average of \$2,634 due to workplace violations, out of total annual earnings of \$17,616. That translates into wage theft of 15 percent of earnings. But workplace violations also adversely impact local economies. We estimate that, in a given week, approximately 1,114,074 workers in the three cities combined have suffered at least one pay-based violation. Extrapolating from this figure, frontline workers in low-wage industries in Chicago, Los Angeles, and New York City lose more than \$56.4 million *per week* as a result of employment and labor law violations.

EXPLAINING THE PATTERNS OF WORKPLACE VIOLATIONS

THE WORKPLACE VIOLATIONS DOCUMENTED by our survey are ultimately the result of employer decisions about whether or not to comply with the law, and therefore vary significantly by industry and occupation, as well as by other job and employer characteristics. In particular, we found widespread violations in some of the largest and fastest-growing industries in the country, such as retail, residential construction, and home health care. And although large companies had lower violation rates (for example, 29 percent of workers in companies with fewer than one hundred employees were paid less than the legally required minimum wage, compared with 15 percent of workers in companies with one hundred or more employees), violations are by no means limited to the “underground economy,” to marginal businesses, or to a few rogue employers. Nor are these abuses limited to unauthorized immigrants or to other especially vulnerable workers. Although women, immigrants, and people of color are dispropor-

Sixty-eight percent of [surveyed workers] experienced at least one pay-related violation in the previous work week.

tionately affected when employers violate core employment and labor laws, our analysis shows that where a worker is employed—that is, in which industry and in what type of job—is a far better predictor of violations than the worker's demographic characteristics.³

POLICY IMPLICATIONS

THE HIGH RATES OF WORKPLACE VIOLATIONS that we document in this report raise an urgent, resounding warning that U.S. employment and labor laws are failing millions of workers in low-wage industries. Our analysis, elaborated in other research, suggests that these violations are the outcome of economic drivers and policy enablers—that is, economic changes in trade and competition, some of them economy-wide, some specific to individual industries, interacting with public policies that either enable or fail to mitigate the negative impacts on workers and working conditions. In particular, policy failures over the past several decades in three areas—weak workplace laws, weak enforcement of those laws, and a dysfunctional immigration policy—have combined to enable—and even encourage—the type of systematic violations documented in this report.⁴ The policy challenge, then, is to move forward on three fronts: improved enforcement, updated standards, and immigration reform.

Improved Enforcement

Government enforcement must be the cornerstone of any viable response to workplace violations.⁵ However, in recent years, enforcement efforts at both the federal and state level have weakened. There is a pressing need for new strategies to address the reality that workplace violations are becoming standard practice in many low-wage industries. Enforcement agencies should:

- **Move toward proactive, “investigation-driven” enforcement in low-wage industries, rather than reacting to complaints as they come in.** This means identifying industries in which violations are systemic, conducting strategic, repeated, and well-publicized workplace audits, and cracking down on employers who are repeat offenders, as well as those who misclassify

their workers. The goal should be to send industry-wide signals that the government will pursue violations, and that the likelihood of inspection is tangible.

- **Increase the number of workplace investigators.** Between 1980 and 2007, the number of inspectors enforcing federal minimum wage and overtime laws declined by 31 percent, even as the labor force grew by 52 percent. Similarly, the budget of the Occupational Safety and Health Administration has been cut by \$25 million in real dollars between 2001 and 2007; at its current staffing and inspection levels, it would take the agency 133 years to inspect each workplace just once.

Violations are not limited to the “underground economy,” marginal businesses, or a few rogue employers.

- **Increase the reach and effectiveness of enforcement by partnering with worker centers, unions, service providers, legal advocates, and—where possible—responsible employers.** Government alone will never have enough staff and resources to monitor every workplace in the country on a regular basis. Community partnerships can help to identify the industry segments in which workplace violations are most concentrated and what types of methods employers use to evade detection.
- **Strengthen penalties for violations.** Currently, penalties for many workplace violations are so modest that they fail to deter many employers. For example, the savings to employers from paying employees less than the minimum wage often outweigh the costs,

even for those few who are apprehended.

Updated Legal Standards

Strong enforcement is important, but so are strong legal standards that recognize the changing organization of work in the United States. Specifically, we need changes that will:

- **Strengthen legal standards.** Raising (and indexing) the minimum wage, updating health and safety standards, expanding overtime coverage higher up the income ladder, and strengthening the right of workers to organize through labor law reform will raise compliance in the workplace and improve the competitive position of employers who play by the rules.

Women, immigrants, and people of color are disproportionately affected when employers violate core employment and labor laws.

- **Close coverage gaps.** Some types of workers—for example, home health care and domestic workers—are excluded from key workplace protections. Closing such gaps in coverage by employment and labor laws must be a priority for policymakers.
- **Hold employers responsible for their workers.** Some unscrupulous employers avoid their legal obligations by misclassifying workers as independent contractors or subcontracting work to fly-by-night operators who then break the law. Employers should be held

responsible for the workplace standards they control, whether directly or indirectly.

Immigration Reform

Although unauthorized workers are covered by most employment and labor laws, in practice they are effectively disenfranchised in the workplace by their lack of legal status, fear of deportation, and the willingness of all too many employers to exploit their vulnerability. Any policy initiative to reduce workplace violations must therefore:

- **Prioritize equal protection and equal status in national immigration reform.** Comprehensive immigration reform without close attention to labor market impacts and workers' rights will push more workers into the underground economy, leading to greater insecurity for immigrant families and less economic integration. A guiding principle for reform must be that immigrant workers are guaranteed the full protection and remedies of U.S. employment and labor laws.
- **Ensure status-blind enforcement of employment and labor laws by maintaining a firewall between workplace and immigration inspections.** Agencies enforcing minimum wage, prevailing wage, health and safety, and other worker protection laws can and should maintain a firewall between themselves and immigration authorities, so that unauthorized workers will not fear deportation if they make a wage claim or file a workplace grievance.

CONCLUSION

SECRETARY OF LABOR HILDA SOLIS HAS committed to renewing the Department of Labor's investigative and enforcement efforts. But the labor movement—including unions and the many worker centers that are leading the fight against wage theft across the country—also has a key role to play. Organized labor needs to use its political leverage to help

win the fight for strong employment and labor laws that are fully enforced. Most important, unions and worker centers need to continue to expand their efforts to organize the vast population of unorganized workers—especially women, immigrants, and workers of color, all

of whom are overrepresented in the industries and occupations with the highest violation rates. In the end, the best inoculation against workplace violations is ensuring that workers know their rights and have the collective power to enforce them.

Notes

1. We adopted two key innovations in our survey. First, we used a cutting-edge sampling methodology—Respondent-Driven Sampling (RDS)—that allowed us to reach the full range of workers in the low-wage labor market, including unauthorized immigrants and off-the-books workers. Second, we developed a detailed questionnaire that allowed us to rigorously assess whether employment and labor laws were being broken, without relying on workers' own knowledge of those laws. The survey was administered in 2008 to 4,387 frontline (i.e., workers holding non-managerial or non-professional positions), adult workers whose primary job was in a low-wage industry in Chicago (Cook County), Los Angeles (Los Angeles County), and New York City (the five boroughs). Recruiting began with a small number of workers who fit the study criteria; after they were interviewed, they recruited other workers in their social networks; in turn, those workers completed the survey and then recruited others; and so on, with successive waves of recruitment. As part of the RDS methodology, the resulting data were weighted to adjust for differences in respondents' social network size and recruitment patterns, and to ensure that the distribution of industries and occupations in our sample fully reflected the composition of each city's low-wage labor market. The research teams for each city were in the field for about six months during the spring and summer of 2008, conducting interviews at multiple sites, including community colleges, service providers, community-based organizations, and churches scattered across each of the cities. The surveys were conducted in English, Spanish, and eleven other languages. See the full report for more details.

2. In this article we are not able to elaborate on the complexity of employment and labor laws in detail; see the full report for federal and state legal standards and coverage.

3. We used logistic regression models to analyze the correlates of workplace violations, testing for the unique contribution of job/employer characteristics on the one hand, and demographic factors on the other. We found that job/employer characteristics were 4.0 times stronger than demographic characteristics in predicting minimum wage violation rates, 10.0 times stronger in predicting overtime violation rates, 1.8 times stronger in predicting off-the-clock violation rates, and 12.8 times stronger in predicting meal break violation rates.

4. See Annette Bernhardt, Siobhán McGrath, and James DeFilippis, *Unregulated Work in the Global City: Employment and Labor Law Violations in New York City* (New York: Brennan Center for Justice, 2007); Annette Bernhardt, Heather Boushey, Laura Dresser, and Chris Tilly, eds., *The Gloves-off Economy: Workplace Standards at the Bottom of America's Labor Market* (Ithaca, NY: Cornell University Press, 2008); Ruth Milkman, *L.A. Story: Immigrant Workers and the Future of the U.S. Labor Movement* (New York: Russell Sage Foundation, 2008); Nik Theodore, "Political Economies of Day Labour: Regulation and Restructuring of Chicago's Contingent Labour Markets," *Urban Studies* 40, no. 9 (2003): 1811-1827.

5. For analyses of public enforcement and policy solutions, see National Employment Law Project, *Rebuilding a Good Jobs Economy: A Blueprint for Recovery and Reform* (New York: National Employment Law Project, 2008); Howard Wial, *Minimum-Wage Enforcement and the Low-Wage Labor Market* (Harrisburg, PA: Keystone Research Center, 1999); David Weil, "Public Enforcement / Private Monitoring: Evaluating a New Approach to Regulating the Minimum Wage," *Industrial and Labor Relations Review* 58, no. 2 (2005): 238-257; David Weil, "Crafting a Progressive Workplace Regulatory Policy: Why Enforcement Matters," *Comparative Labor Law & Policy Journal* 28, no. 2 (2007).