

**Testimony of Annette Bernhardt, Ph.D.,
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Hearing Before the New York City Council, Committee on Civil Service & Labor
Regarding Proposed Resolution 245-A**

Chairperson Sanders and members of the committee, thank you for this opportunity to testify on the problem of wage theft in New York, and in support of Resolution 245-A calling on the New York State Legislature to pass the Wage Theft Prevention Act.

For the past 15 years, I have been conducting research on low-wage jobs and economic inequality in the United States (I hold a Ph.D. in sociology from the University of Chicago). In my current position at the National Employment Law Project, I also conduct policy analysis and work with community advocates and state and local legislators to develop policy responses to the core problems of the 21st century workplace.

My current research focus is on documenting the growing problem of unregulated work here in New York and across the county. Most recently, I was lead author of *Working Without Laws: A Survey of Employment and Labor Law Violations in New York City*, which was released in January of this year. The report documents the extent to which employers comply with workplace laws in New York City; it is based on a landmark 2008 survey of 1,432 workers in low-wage industries. We used an innovative, statistically rigorous methodology that allowed us to reach vulnerable workers who often are missed in standard surveys, such as unauthorized immigrants and those paid in cash.

Our findings expose a world of work in which the state's labor laws are failing to protect hundreds of thousands of New Yorkers. These protections, such as the right to be paid at least the minimum wage and the right to be paid overtime, are being violated at alarming rates. The sheer breadth of the problem, spanning key industries in the economy, as well as its profound impact on both workers and their communities demand urgent attention.

In what follows, I first summarize key findings of the *Working Without Laws* report and then discuss how the proposed Wage Theft Prevention Act is a key component of the fight to end wage theft in New York.

1. Workplace Violations are Severe and Widespread in New York's Low-Wage Labor Market

- ❑ *Minimum wage violations:* Fully 21 percent of workers in our sample were paid less than the legally required minimum wage in the previous workweek.
- ❑ *Overtime violations:* Of those who had worked more than 40 hours during the previous week, 77 percent were not paid the legally required overtime rate by their employers.

- ❑ *Off-the-clock violations:* Of the workers in our sample who came in early and/or stayed late after their shift during the previous workweek, 69 percent did not receive any pay at all for the extra hours outside their regular shift.
- ❑ *Meal break violations:* More than two-thirds (70 percent) of the workers in our sample experienced a violation of meal break law – either they didn't get any break at all, had their break shortened, were interrupted by their employer, or worked during their break.
- ❑ *Paystub violations:* Fully 55 percent of workers in our sample did not receive documentation of their earnings and deductions in the previous workweek (required under state law regardless of whether workers are paid in cash or by check).
- ❑ *Illegal deductions:* In the previous workweek, 33 percent of respondents who reported deductions from their pay were subjected to illegal deductions (e.g. for damage or loss, work-related tools or materials or transportation).
- ❑ *Tipped job violations:* In New York State, workers who receive tips have a separate, lower minimum wage requirement. Of the tipped workers in our sample, 37 percent were paid less than the tipped worker minimum wage in the previous workweek.
- ❑ *Illegal employer retaliation:* Nearly a quarter of the workers in our sample reported they had made a complaint to their employer or government agency, or attempted to form a union, in the last year. Of those, 42 percent experienced one or more forms of illegal retaliation from their employer (e.g. having their pay cut or being fired or suspended).
- ❑ *The failure of New York's workers' compensation system:* Of the workers in our sample who recently had a serious injury on the job, only 11 percent filed a workers' comp claim and only 6 percent had their medical expenses paid by workers' comp insurance. In addition, when workers told their employer about the injury, 16 percent experienced an illegal employer reaction (e.g. the employer fired or threatened to fire them if they filed a claim, or instructed them not to file for workers' compensation).

2. Workplace Violations Span the Breadth of New York City's Economy

- ❑ We identified five clusters of industries with significant rates of workplace violations
 - Retail, restaurants, grocery stores and drug stores
 - Caregiver industries: home health care, child care, domestic work
 - Construction, food and garment manufacturing, and wholesale trade
 - Personal services: dry cleaning, industrial laundries, car washes, car repair, parking lots, beauty and nail salons
 - Building services: janitorial and security guard services
- ❑ Workers in companies with less than 100 employees were at greater risk of violations than those in larger companies. But the problem is by no means limited to small firms. In large companies, more than one out of 10 workers experienced a minimum wage

violation, and of those who worked overtime, 58 percent were underpaid or not paid at all for the extra hours.

- ❑ Not all employers violate the law. We found a range of workplace practices—offering health insurance, providing paid vacation and sick days and giving raises—that were associated with lower violation rates.

3. All Workers are at Risk of Workplace Violations

Women, immigrants and people of color are disproportionately likely to be employed in low-wage industries, and in those industries, are also at greater risk of workplace violations. But violations are not limited to immigrant workers or other vulnerable groups in the labor force—everyone is at risk, albeit to different degrees.

4. The Cost of Wage Theft in New York City

- ❑ *The cost to workers:* Fully 54 percent of our sample experienced at least one pay-related violation in the previous workweek. We estimate that these workers lost an average of \$3,016 annually due to workplace violations, out of total earnings of \$20,644. That translates into wage theft of almost 15 percent of earnings.
- ❑ *The cost to communities:* We estimate that in a given week, approximately 317,263 workers in New York City have at least one pay-based violation. Extrapolating from this figure, front-line workers in low-wage industries in the five boroughs lose more than \$18.4 million *per week* as a result of employment and labor law violations.

5. How New York Can Fight Wage Theft:

Everyone has a stake in addressing the problem of workplace violations. When impacted workers and their families struggle in poverty and constant economic insecurity, the strength and resiliency of local communities suffer. When unscrupulous employers violate the law, responsible employers are forced into unfair competition, setting off a race to the bottom that threatens to bring down standards throughout the labor market. And when significant numbers of workers are underpaid, tax revenues are lost.

Policy reforms are needed at the federal level, but state and local governments have a significant role to play as well. New York is well-placed to tackle the problem of wage theft, given the state's commitment to workers' rights and strong base of community advocates. In recent years, enforcement by the New York State Department of Labor has improved substantially through the use of proactive investigations and outreach to community groups. But in order for these efforts to succeed, New York must strengthen its legal enforcement tools. That's because the strength of laws and the strength of their enforcement are deeply intertwined. Weak employment and labor laws send the wrong signal to the labor market, incentivizing low-road business strategies and robbing workers and enforcement agencies from the tools they need to ensure compliance with core workplace standards.

The state legislature has a prime opportunity to address the problem, as it considers the Wage Theft Prevention Act (A10163 and S8380). The bill, developed by Make the Road New York and supported by NELP and a wide range of stakeholders, targets unscrupulous businesses in order to level the playing field for responsible employers. Highlights of the proposed bill include:

- *It creates strong economic incentives for employers to comply with the law, by increasing penalties for wage theft.*
- *It protects workers who speak up for their rights and encourages other workers to come forward, by closing loopholes in existing law and establishing stiff damages to punish employers who retaliate against their workers.*
- *It ensures that workers are actually able to collect on the unpaid wages they are due, by giving Courts and the New York Department of Labor new tools to keep employers from hiding assets and defaulting on judgments.*

This bill will significantly advance New York's ability to address the chronic, economy-wide exploitation documented in *Working Without Laws*. In addition to significantly increasing the costs of violating the law (which is one of most important reforms that legislators can implement), I also want to flag the provisions that protect workers and ensure that they get paid.

Consider the following. In our survey, a quarter of the workers we surveyed said that they did not file a complaint during the past 12 months, even though they had experienced a serious problem such as dangerous working conditions or not being paid the minimum wage. Of these workers, 41 percent were afraid of losing their job and 40 percent thought it would not make a difference. Fear of retaliation and expectations of failure, then, figure strongly in workers' decisions about whether to make a complaint. Any robust system of enforcement depends on the ability of workers to come forward to report violations, and must provide strong protections and a demonstrated track-record of delivering the earnings that were lost to wage theft.

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At the National Employment Law Project, we believe that economic opportunity is built on strong labor standards that are fully enforced. We therefore wholeheartedly support Resolution 245-A calling on the New York State Legislature to pass, and the Governor to sign into law, the Wage Theft Prevention Act.