

B. UNREGULATED WORK IN THE RETAIL INDUSTRY IN NEW YORK CITY

The retail industry in New York City is one of the most important sources of employment for workers without college degrees, with about 250,000 employees (not including food stores). But as in other cities, retail is also a chronically low-wage, no-benefits industry, plagued by high turnover and part-time jobs. And in some industry segments, wages are increasingly dropping below the legal minimum.

This was not always the case. Thirty years ago, the retail industry was dominated by department stores with relatively high unionization rates. But with the decline of department stores, unionization has declined as well, to the point that it currently affects only a small segment of the industry. Instead, “big box” stores are flattening out the industry’s wage structure across the country. New York City has experienced some of this trend, but has also uniquely retained a host of independent stores. As a result, ownership structures and store formats run the gamut from small family-owned stores, to local chains of 10-20 stores, to major national chains.

INDUSTRY SEGMENTS WITH VIOLATIONS

We found the most evidence of workplace violations in the discount merchandise and “ethnic retail” segments. Discount stores – convenience stores, 99-cent stores, jewelry stores, beauty supply stores, clothing stores, electronics stores, flower stores – sell a range of cheap goods, relying on volume to generate sales and sometimes on the sale of counterfeit products. While many are independently owned, increasingly local chains own up to 30 stores across the city, including the all-pervasive 99-cent stores. The geography of discount retail is changing as well, having migrated to low-income neighborhoods in high concentrations (such as 125th and 145th Streets in Harlem, the Fulton Street Mall and Knickerbocker Avenue in Brooklyn, and Fordham Road in the Bronx).

Ethnic retail is an overlapping industry segment which is spread throughout the five boroughs. For example, South Asian retail in Jackson Heights and scores of small businesses in Chinatown operate in the informal cash economy, selling everything from appliances to traditional wedding dresses and religious items. These stores offer products demanded by immigrants but not sold elsewhere, and, like discount stores, offer convenience in terms of their location. The majority of workers are immigrants, and many of the entrepreneurs running these businesses with razor-thin margins are immigrants as well.

To a lesser degree, we also found workplace violations in drug stores and national chain stores. Here, violations take different forms because of the national corporate chain structure and standardized human resource practices (see below).

THE WORKERS & MOBILITY

The city’s retail workforce is disproportionately Latino and African American. The latter are more likely to be hired in national chain stores, including drug stores. But in low-end retail outlets, it is predominantly immigrant men that are hired – for example, by the open street-level stores that hire African and Arab men on a daily basis for security. (According to one of our respondents, the job needs “hard” men to deal with unpredictable customers.) Immigrant women usually are hired as counter-persons in ethnic retail shops.

A core characteristic of the retail industry is that mobility opportunities are minimal; for workers such as cashiers, stock clerks, security guards, and delivery persons, there are simply too few jobs to move up into. We did find one industry niche, flower stores, where the largely Mexican workforce received skills training and the chance of moving up to store manager (though pay remained quite low).

JOB QUALITY & WORKPLACE VIOLATIONS

As shown in Table B, in the non-union parts of the industry, the most common workplace violations are failure to pay the minimum wage and overtime. Workers are commonly paid \$300 per week or less, for 60 and even 80 hours of work per week – resulting in hourly wages ranging from less than \$4 per hour (*without* considering time-and-a-half pay for overtime hours), up to the minimum wage. While it is standard for employees to work more than 40 hours in a week, employers almost never keep track of overtime. During the peak holiday retail season, workers' hours can increase to 7 days a week, 12 hours a day without any corresponding increases in pay, pushing earnings well below the legal minimum.

Other violations include discrimination: women and undocumented workers consistently report being paid less than men, citizens, and documented immigrants. In drug stores, delivery services are not infrequently outsourced to subcontractors, who in turn misclassify their delivery staff as independent contractors and pay them as little as \$3 an hour. This kind of legal distancing from the employment relationship is also evident in retailer-owned warehouses (often located in New Jersey), where hiring is typically done through temp agencies, making it easier to hide nonpayment of overtime.

Finally, supervisory jobs are not necessarily immune. In both discount stores but especially the more established

chains, workers with nominal supervisory duties are sometimes misclassified as “floor managers” or “department managers,” in order to avoid paying overtime for what are often 60 hour work weeks.

Working conditions in retail can be difficult and in some cases dangerous. Because many stores are increasingly understaffed to keep labor costs low, workers are often pressured to work faster, with few breaks. Immigrant women in storefront retail shops report exhaustion and swollen feet from standing for the full shift without a bathroom break. Others report standing outside the store in the cold for ten hours a day, as security guards or handing out fliers. Outright violations of health and safety standards also occur, including blocked exits, faulty electrical wiring, wet or damaged walking surfaces, and improper equipment for shelving products.

Finally, retaliation is a real threat. One immigrant community group described its women retail members: “They work for 10 hours, they get 35 dollars, no lunch breaks, no overtime. The question of it never arises. The moment they talk about it they get fired.” Workers and community groups such as Make the Road by Walking (see Section VI) who have tried to organize the industry report retaliation for taking collective action to improve working conditions. For example, in 2005, the New York State Attorney General won a settlement with three retailers, who had underpaid their workers and then illegally fired them by closing their stores after being investigated.

TABLE B.
CHARACTERISTICS OF UNREGULATED WORK IN THE RETAIL INDUSTRY
IN NEW YORK CITY

INDUSTRY SEGMENTS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Industry segments	Violations most common in (1) low-end discount stores (convenience stores, 99-cent stores, jewelry stores, beauty supply stores, clothing stores, electronics stores, flower stores in the flower district) and (2) ethnic retail serving immigrant neighborhoods. Some violations are also found in non-union drug store chains and national retail chains.
Ownership and size	Either private, independently-owned stores or, increasingly, small local discount chains. In immigrant neighborhoods, most small retail is family-owned. Stores can be very small (less than 5 employees) but also bigger (5-30 employees).
Union density	Virtually none in the low-end discount segment. Department stores still have some union density, though it is declining.
THE JOBS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Occupations	Cashiers, stock clerks, security guards, delivery workers, and workers in retailer-owned warehouses.
Typical wages	Cashiers, stock clerks, security guards: Weekly wages range from about \$180 to about \$320, with hourly wages averaging around the minimum wage. Delivery persons: Can earn as low as \$25-\$35 per day for 8-11 hours worked. Retailer warehouse workers: Wages are higher, in \$7-\$9 range.
Typical hours	Hours average 8-12 hours per day, for 6-7 days per week, and fluctuate significantly by season.
Payment method	In national chain stores, largely on the books; in smaller and independent stores, largely off the books.
Benefits	Health benefits, vacation days and sick days are very rare (except in unionized stores).
THE WORKERS MOST AFFECTED BY WORKPLACE VIOLATIONS	
Demographics	Significant numbers of immigrant (Latino; West and North African; Arab; South Asian) as well as African American workers.
Immigration status	In discount and ethnic retail stores, many workers are undocumented.
INTERMEDIARIES PLACING WORKERS IN UNREGULATED JOBS	
Placement through employment agencies is relatively common, with the agencies charging workers up to a week's salary per placement. Some retail placements happen through agencies serving ex-offenders and ex-welfare recipients (both temp agencies and non-profits). In the drug store segment, delivery persons can be brought in via subcontractors. In retailer-owned warehouses, temp agency use is common.	
INDUSTRY-SPECIFIC LAWS AND REGULATIONS	
Most workers are covered by employment and labor laws. In addition, the New York State 2007 minimum wage for tipped employees such as delivery drivers is \$5.40 or \$6.05 an hour (depending on the weekly tip average), but if a worker's combined wages and tips do not at least equal the regular state minimum of \$7.15 per hour, the employer must make up the difference.	
COMMON WORKPLACE VIOLATIONS	
Minimum wage and overtime	Minimum Wage: Depending on hours worked, wages can range from \$2.75-\$6.00 per hour; especially in discount stores, the minimum wage is usually the high end of the pay scale. Undocumented workers are generally paid lower wages (about \$4-\$5 per hour), and delivery drivers were making as little as \$3 per hour in 2000. Overtime: Overtime is almost never paid in the discount segment and other non-union segments. Workers in retailer-owned warehouses report unpaid overtime (wages are typically above the minimum).

Non-payment of wages	Appears to happen occasionally, but not prevalent.
Meal breaks	Required meal breaks are often not given.
Employer taxes	Employers routinely fail to pay taxes on payments in cash.
Misclassification	Three types of misclassification were reported: (1) In national retail chains, workers with nominal supervisory duties may be misclassified as “floor managers” or “department managers” in order to exempt them from minimum wage and overtime protection; (2) workers are sometimes classified part-time for the purposes of payroll and benefits calculations, but consistently work full-time hours; (3) drug stores use subcontractors for delivery persons, which are misclassified as independent contractors by the contractor company.
OSHA	Violations include: blocked exits, faulty electrical wiring, wet or damaged walking surfaces, and improper equipment for shelving products.
Workers’ Compensation	Rarely carried or made accessible to workers who are qualified to receive it.
Discrimination	In the low-end discount segment, workers report sexual harassment of female workers; different wages for different ethnic groups; different wages for citizens or green card holders, compared to undocumented workers; and discrimination against pregnant workers.
Retaliation & the right to organize	Workers have faced retaliation (firing, immigration threats) for organizing efforts at discount stores.

Note: All violations were assessed using legal standards in effect when interviews were conducted, and in particular, wage rates are from 2004 and 2005.

Sources: Original data gathered by authors during fieldwork from 2003 through 2006 in New York City, as well as the following secondary sources: Adler (2003), Gerson (2005b), *Make the Road by Walking and Retail Wholesale and Department Store Union* (2005), *New York State Department of Labor* (2007b), *New York State Department of Labor* (2007c), *Office of the New York State Attorney General* (2005b), *Son* (2005), *Stuteville* (2005), *US Department of Labor* (2006b).