



Without Cops on the Beat, the Great Worker Rip-Off Continues

By Catherine Ruckelshaus and Christine Owens

Posted April 9, 2009

For the third time in less than a year, the U.S. Government Accountability Office (GAO) is reporting that protections guaranteed by the wage and hour laws are non-existent for many low-wage workers in this country, due in large part to failings of the U.S. Department of Labor (DOL) in recent years. In recent testimony to the House Education and Labor Committee, the GAO announced the results of its undercover investigation into the DOL's enforcement of wage and hour protections for these workers, and the news is disturbing.

The labor-intensive jobs in our increasingly dominant service sectors have long been fertile terrain for employers bent on cheating workers of their wages, but now the nose-diving economy is impelling even more firms into desperate cost-cutting modes. Some employers simply don't pay their workers. Others use schemes that obstruct enforcement, like calling employees "independent contractors," inserting fly-by-night subcontractors, and using payrolling or leasing companies in an attempt to shield themselves from liability and confuse the workers. Some employers seek out and hire undocumented workers, knowing they will not complain of underpayments. Competing firms feel pressured to adopt similar practices to stay in the game. As the GAO undercover investigation revealed, there's very little risk that these employers will get caught.

This is bad for workers and their families -- and for the economy. Without a solid wage floor and strong wage protections, our janitorial, hospitality, retail, home health care, restaurant and construction jobs will not boost the economy in any way.

Last summer, GAO issued two reports lambasting DOL's Wage & Hour Division for its abject failure to enforce basic minimum wage, overtime, and child labor rules. One of these reports was a devastating set of case studies on DOL enforcement, highlighting the agency's failure to pursue worker complaints and its utter disregard for deadlines and employer evasions. Now we learn that with its report to be released in May, GAO will document that those most vulnerable to underpayment of wages -- low wage workers -- found little solace at the Department of Labor.

Thankfully, though, the tide is turning, with the new Secretary of Labor, Hilda Solis, declaring at her swearing-in ceremony, "there's a new sheriff in town!" Secretary Solis has emphatically stressed that enforcing our wage and hour laws is a top priority, and President Obama's 2010 budget proposes the first real increase in Wage and Hour Division funding in nearly a decade.

Meanwhile, during a period of relative inaction at the federal level, several state labor departments and related agencies picked up the mantle and enacted innovative enforcement strategies aimed at the most persistent sweatshops. Community workers centers and unions often joined these efforts, providing the "eyes and ears" for the agencies, and in some cases bringing lawsuits against scofflaw employers. In janitorial and construction jobs, creative labor-management partnerships resulted in employer-funded efforts to ensure wage compliance by all firms, by leveraging enforcement by state agencies and private actors.

This kind of redundancy in enforcement brings needed reinforcement to law-abiding firms in industries that have operated with impunity for too long. And these public and private initiatives provide solid models for reinvigorated federal enforcement.

But there is much to do. The newly re-energized DOL should use the full array of tools and penalties at its disposal to crack down on problem industries, repeat violators, and companies that brazenly perpetrate "independent contractor" scams costing the government billions each year in tax theft. Congress can aid this effort by fully funding the Administration's budget request for DOL and enacting common-sense improvements to the Fair Labor Standards Act that will better enable workers to pursue their legal remedies.

At times like these, when workers are at their most vulnerable and economic pressures create incentives to cut corners among even the best of employers, it is critical that the Department aggressively embrace and advance its mission of promoting the interests of and opportunities for America's workers. That means making sure that law-breaking employers fear the DOL as much as an IRS audit. When that happens, the wage floor will mean something to low-wage workers, their families, and our economy.

The authors are the Legal Co-Director and Executive Director, respectively, of the National Employment Law Project.