

# Broken Laws, Unprotected Workers

Violations of Employment  
and Labor Laws in America's Cities

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# Contents

|   |    |
|---|----|
| Executive Summary   | 2  |
| <b>1: Introduction</b>  | 7  |
| <b>2: Pulling Back the Veil: A Landmark Survey of the Low-Wage Labor Market</b> | 11 |
| <b>3: The Prevalence of Workplace Violations in America's Cities</b>            | 19 |
| <b>4: The Role of Job and Employer Characteristics</b>                          | 29 |
| <b>5: The Role of Worker Characteristics</b>                                    | 41 |
| <b>6: Wage Theft in America's Cities</b>  | 49 |
| <b>7: The Solution: Fulfilling the Promise of Worker Protections in America</b> | 51 |
| <b>Appendix A: Data and Methods</b>   | 55 |
| Endnotes  | 60 |
| References  | 63 |

# Executive Summary

This report exposes a world of work in which the core protections that many Americans take for granted—the right to be paid at least the minimum wage, the right to be paid for overtime hours, the right to take meal breaks, access to workers’ compensation when injured, and the right to advocate for better working conditions—are failing significant numbers of workers. The sheer breadth of the problem, spanning key industries in the economy, as well as its profound impact on workers, entailing significant economic hardship, demands urgent attention.

In 2008, we conducted a landmark survey of 4,387 workers in low-wage industries in the three largest U.S. cities—Chicago, Los Angeles, and New York City. We used an innovative, rigorous methodology that allowed us to reach vulnerable workers who are often missed in standard surveys, such as unauthorized immigrants and those paid in cash. Our goal was to obtain accurate and statistically representative estimates of the prevalence of workplace violations. All findings are adjusted to be representative of front-line workers (i.e. excluding managers, professional or technical workers) in low-wage industries in the three cities—a population of about 1.64 million workers, or 15 percent of the combined workforce of Chicago, Los Angeles and New York.

## **Finding 1: Workplace Violations Are Severe and Widespread in Low-Wage Labor Markets**

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We found that many employment and labor laws are regularly and systematically violated, impacting a significant part of the low-wage labor force in the nation’s largest cities. The framework of worker protections that was established over the last 75 years is not working. Here we summarize only key violations; Table 3.1 lists all the violations measured in our study.

### **Minimum wage violations:**

- Fully 26 percent of workers in our sample were paid less than the legally required minimum wage in the previous work week.\*
- These minimum wage violations were not trivial in magnitude: 60 percent of workers were underpaid by more than \$1 per hour.

### **Overtime violations:**

- Over a quarter of our respondents worked more than 40 hours during the previous week. Of those, 76 percent were not paid the legally required overtime rate by their employers.
- Like minimum wage violations, overtime violations were of substantial magnitude. The average worker with a violation had put in 11 hours of overtime—hours that were either underpaid or not paid at all.

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\* In this summary we are not able to elaborate the complexity of employment and labor laws; see the main report for details on federal and state legal standards and coverage.

### **“Off-the-clock” violations:**

- Nearly a quarter of the workers in our sample came in early and/or stayed late after their shift during the previous work week. Of these workers, 70 percent did not receive any pay at all for the work they performed outside of their regular shift.

### **Meal break violations:**

- The large majority of our respondents (86 percent) worked enough consecutive hours to be legally entitled to at least one meal break during the previous week. Of these workers, more than two-thirds (69 percent) received no break at all, had their break shortened, were interrupted by their employer, or worked during the break—all of which constitute a violation of meal break law.

### **Pay stub violations and illegal deductions:**

- In California, Illinois and New York, workers are required to receive documentation of their earnings and deductions, regardless of whether they are paid in cash or by check. However, 57 percent of workers in our sample did not receive this mandatory documentation in the previous work week.
- Employers are generally not permitted to take deductions from a worker’s pay for damage or loss, work-related tools or materials or transportation. But 41 percent of respondents who reported deductions from their pay in the previous work week were subjected to these types of illegal deductions.

### **Tipped job violations:**

- Of the tipped workers in our sample, 30 percent were not paid the tipped worker minimum wage (which in Illinois and New York is lower than the regular state minimum wage).
- In addition, 12 percent of tipped workers experienced tip stealing by their employer or supervisor, which is illegal.

### **Illegal employer retaliation:**

We found that when workers complained about their working conditions or tried to organize a union, employers often responded by retaliating against them. Just as important, many workers never made complaints in the first place, often because they feared retaliation by their employer.

- One in five workers in our sample reported that they had made a complaint to their employer or attempted to form a union in the last year. Of those, 43 percent experienced one or more forms of illegal retaliation from their employer or supervisor. For example, employers fired or suspended workers, threatened to call immigration authorities, or threatened to cut workers’ hours or pay.
- Another 20 percent of workers reported that they did not make a complaint to their employer 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. Half were afraid of losing their job, 10 percent were afraid they would have their hours or wages cut, and 36 percent thought it would not make a difference.

### **Workers' compensation violations:**

We found that the workers' compensation system is not functioning for workers in the low-wage labor market.

- Of the workers in our sample who experienced a serious injury on the job, only 8 percent filed a workers' compensation claim.
- When workers told their employer about the injury, 50 percent experienced an illegal employer reaction—including firing the worker, calling immigration authorities, or instructing the worker not to file for workers' compensation.
- About half of workers injured on the job had to pay their bills out-of-pocket (33 percent) or use their health insurance to cover the expenses (22 percent). Workers' compensation insurance paid medical expenses for only 6 percent of the injured workers in our sample.

### **When workers are exempt from workplace laws:**

- Some workers are either partially or completely exempt from employment and labor laws—either because of archaic exemptions of specific industries and occupations, or because they are considered to be independent contractors.
- We surveyed one group of workers that is often considered exempt from coverage: “in-home” child care workers who provide care in their own homes. When we analyzed their working conditions (separately from the rest of the sample), we found that 89 percent earned less than the minimum wage. This finding underscores the need to ensure that all workers who are in an employment relationship receive full legal protection.

## **Finding 2: Job and Employer Characteristics Are Key to Understanding Workplace Violations**

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Workplace violations are ultimately the result of decisions made by employers—whether to pay the minimum wage or overtime, whether to give workers meal breaks, and how to respond to complaints about working conditions. We found that workplace violations are profoundly shaped by job and employer characteristics.

- Violation rates varied significantly by industry. For example, minimum wage violation rates were most common in apparel and textile manufacturing, personal and repair services, and in private households (all of which had violation rates in excess of 40 percent). Violation rates were substantially lower in residential construction, social assistance and education, and home health care (at 12 to 13 percent). Industries such as restaurants, retail and grocery stores, and warehousing fell into the middle of the range, with about 20 to 25 percent of their workers experiencing a minimum wage violation.
- Violation rates also varied significantly by occupation. For example, childcare workers had very high minimum wage (66 percent) and overtime (90 percent) violation rates. More representative were occupations such as cashiers, who had a minimum wage violation rate of 21 percent and an overtime violation rate of 59 percent.



- Workers who were paid a flat weekly rate or paid in cash had much higher violation rates than those paid a standard hourly rate or by company check.
- Workers at businesses with less than 100 employees were at greater risk of experiencing violations than those at larger businesses. But workers in big companies were not immune: nearly one in six had a minimum wage violation in the previous week, and of those who worked overtime, 53 percent were not paid time and a half.
- 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. This suggests that employers’ decisions about whether or not to comply with the law are part of a broader business strategy shaping the workplace.

### Finding 3: All Workers Are at Risk of Workplace Violations

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Workplace violations are not limited to immigrant workers or other vulnerable groups in the labor force—everyone is at risk, although to different degrees.

- Women were significantly more likely than men to experience minimum wage violations, and foreign-born workers were nearly twice as likely as their U.S.-born counterparts to have a minimum wage violation.
- The higher minimum wage violation rate for foreign-born respondents was concentrated among women—especially women who are unauthorized immigrants.
- Foreign-born Latino workers had the highest minimum wage violation rates of any racial/ethnic group. But among U.S.-born workers, there were significant race differences: African-American workers had a violation rate triple that of their white counterparts (who had by far the lowest violation rates in the sample).
- Higher levels of education, longer job tenure, and English proficiency (for immigrants) each offered some protection from minimum wage violations. But even college-educated workers and those who had been with their employers for five or more years were still at significant risk.
- Overtime, off-the-clock and meal break violations generally varied little by worker characteristics. On the whole, job and employer characteristics were more powerful predictors of the workplace violations considered in this study.

### Weekly Wage Theft in America’s Cities

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Wage theft not only depresses the already meager earnings of low-wage workers, but also adversely impacts their communities and the local economies of which they are a part.

- *Workers:* 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 average of \$2,634 annually due to workplace violations, out of total earnings of \$17,616. That translates into wage theft of 15 percent of earnings.

- *Communities:* We estimate that in a given week, approximately 1,114,074 workers in the three cities combined have at least one pay-based violation. Extrapolating from this figure, front-line 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.

## Fulfilling the Promise of Worker Protections in America

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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.

Three principles should drive the development of a new policy agenda to protect the rights of workers.

- **Strengthen government enforcement of employment and labor laws:** Public policy should leverage the resources and power that reside in agencies responsible for enforcing worker protections. This will require additional staffing, but more important, new strategies are needed to address the reality that workplace violations are becoming standard practice in many low-wage industries.
- **Update legal standards for the 21st century labor market:** Weak employment and labor laws open the door to low-road business strategies focused on illegally cutting labor costs. Raising the minimum wage, updating health and safety standards, ending exclusions that deny workers coverage, and strengthening the right of workers to organize through labor law reform—all are key improvements that would raise compliance in the workplace and improve the competitive position of employers who play by the rules.
- **Establish equal status for immigrants in the workplace:** The best inoculation against workplace violations is ensuring that workers know their rights, have full status under the law to assert them, have access to sufficient legal resources, and do not fear retaliation. But for unauthorized immigrant workers today, this can be a near impossibility. Any policy initiative to reduce workplace violations must prioritize equal protection and equal status in national immigration reform, and ensure status-blind enforcement of employment and labor laws.



# 1

## Introduction

In February 2009, a leading chain of gourmet grocery stores in New York City agreed to pay nearly \$1.5 million in unpaid wages to 550 workers. Behind those numbers lie a grim set of business practices. Amish Markets denied its employees overtime pay, despite requiring many to work more than 40 hours a week. Some employees were paid only \$300 a week for 60 to 70 hours of work, which translates into four to five dollars an hour, well below the state's minimum wage. Individual workers reported additional abuses: being fired after injuring a leg on the job, having delivery tips stolen by management, and being fired for talking to the state Department of Labor.<sup>1</sup>

In the same month on the other side of the country, the L.A. city attorney filed criminal charges against owners of four car washes, charging them with failure to pay the minimum wage and provide employees with breaks. Dozens of workers said they were paid a flat rate of \$35 to \$40 a day for shifts that usually lasted more than eight hours, with as little as 15

minutes a day for lunch; some worked for customer tips alone. The workers did not receive medical care for lacerations and acid burns caused by the machinery and chemicals they used. All told, these car wash workers could be owed close to half a million dollars in wages.<sup>2</sup>

And last year in Illinois, a large temporary staffing agency settled a class action suit with over 3,300 workers, totaling close to half a million dollars. Usually hired by the day, workers were placed in minimum wage jobs doing assembly, packaging and janitorial work. But when they accumulated more than 40 hours in a week working for different client companies, they didn't receive overtime—instead, the temp agency “split” their checks to avoid triggering mandatory overtime pay. Workers also reported that regardless of the actual amount of hours they worked in a given day, their time was rounded down to eight hours by the agency.<sup>3</sup>

Unfortunately, these cases are not unusual, nor are they limited to small businesses like gourmet groceries or car washes. In 2008, for example, Wal-Mart announced it would settle 63 cases in 42 states charging that the company forced its employees to work “off the clock”—that is, requiring unpaid work after employees had clocked out at the end of their official shifts. The settlement totaled \$352 million in unpaid wages and involved hundreds of thousands of current and former employees.<sup>4</sup> Earlier the same year, a federal judge ordered the Saigon Grill restaurant in New York City to pay 36 of its delivery workers \$4.6 million in owed wages; they had routinely worked 13-hour shifts for as little as \$1.60 an hour.<sup>5</sup>

Also last year, a harrowing investigation by the *Charlotte Observer* documented systemic violations of health and safety laws by one of the largest poultry processing companies in North Carolina, House of Raeford. Faced with worker injuries such as chronic musculoskeletal disorders, broken bones and chemical burns, the company responded by hiding injury rates from the federal Occupational Safety and Health Administration, ignoring requests for medical help, and threatening to fire injured workers.<sup>6</sup>

Low-wage workers are not the only ones at risk of such workplace violations. For example, a group of Federal Express drivers has spent years pursuing a legal claim for employee status; illegally misclassified as “independent contractors,” they received no benefits, lost the protection of most employment and labor laws, and had to pay all of their job-related expenses such as fuel, vehicle maintenance, and insurance. In October 2008, a court-appointed official awarded more than 200 FedEx drivers in California \$14.4 million to compensate for these abuses.<sup>7</sup>



At the start of the 21<sup>st</sup> century, America’s workplace laws are failing to protect the nation’s workers. These are laws that most of us consider absolute and inviolate and that 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.

Yet there is 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. The many workplace violations documented by community groups and government agencies in recent years, as well as a small but growing body of research, suggest the need to take a closer look at the state of America’s system of worker protections.

However, very few studies have been able to look across a broad set of industries or geographic regions to estimate the proportion of workers experiencing workplace violations, or the proportion of employers committing them. As a result, we lack robust benchmarks of the 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, whether at the federal, state or local level.

This report presents new research findings that begin to fill the gap. In 2008, we surveyed more than 4,000 workers in low-wage industries in the three largest U.S. cities—Chicago, Los Angeles, and New York City. Using a rigorous survey methodology that allowed us to reach vulnerable workers who are often missed in standard surveys, we attempted to answer the following questions: How common

are workplace violations, such as the percentage of workers earning less than the minimum wage or working overtime without pay? Which industries and occupations have high concentrations of violations? And who are the workers most affected? We think of this survey as a census of the invisible, because from the standpoint of public policy, government regulation and immigration policy, these jobs (and the workers who hold them) are all too often off the radar screen.

We found that there are significant, pervasive violations of core workplace laws in many low-wage industries. Workers are being paid less than the minimum wage and not receiving 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.

These problems are not limited to the "underground economy" or to a few "bad apples"; we found that both large and small employers violate the law, in industries such as retail, residential construction and home health care that are at the core of urban economies.

Nor are these abuses limited to unauthorized immigrants or other especially vulnerable workers. Although women, immigrants, and people of color are disproportionately affected by workplace violations, we found that where a worker is employed—that is, in which industry and in what type of job—is generally a much better predictor of violations than the worker's demographic characteristics.

Moreover, not all employers violate the law. Our study suggests that, even within high-violation industries, there are responsible employers who manage to be competitive while complying with core employment and labor laws. Both those employers, and the workers who regularly experience workplace violations, urgently need a new national commitment to full enforcement of labor standards.



Enforcement alone is not enough, however. America's system of employment and labor laws is badly out of date and riddled with weak standards. Some occupations and industries are either partly or completely exempted from coverage. Health and safety protections have not been updated in years, and the minimum wage is worth less today (controlling for inflation) than it was 40 years ago. Many employers are treating workers as independent contractors or hiring them through subcontractors, straining a legal framework predicated on a traditional employment relationship.

The high rates of workplace violations that we document in this report raise an urgent, resounding warning that even existing protections are failing millions of workers in low-wage industries. Our data were collected in 2008, but since then there is reason to believe that the situation has deteriorated further. Legal services organizations and community groups are reporting that the recession has intensified exploitation, as employers are ever more focused on cutting costs, and workers feel increased pressure to accept sub-minimum wages and unpaid overtime in the face of high unemployment.<sup>8</sup>

Rebuilding our economy on the back of illegal working conditions is not only morally but also economically untenable. When unscrupulous employers break the law and drive down labor standards, they rob families of badly needed money to put food on the table. They rob communities of spending power. They rob state and local governments of vital tax revenues. And they rob the nation of the good jobs and workplace standards needed to compete in the global economy.



# 2

## Pulling Back the Veil: A Landmark Survey of the Low-Wage Labor Market

Studying violations of workplace laws is a challenging task. Employers are unlikely to admit that they are paying workers less than the minimum wage, denying workers meal breaks, or otherwise breaking the law. Businesses with the worst conditions may be operating underground and thus difficult to find. Workers who need to support their families are understandably reluctant to talk to researchers about their employers, because of possible retaliation, their immigration status, or because they are working off the books.

The result is that existing data are inadequate to assess the current state of employer compliance with U.S. employment and labor laws. Standard government surveys such as the decennial Census do not gather the detailed data one would need to accurately identify workplace violations. And enforcement agencies usually only document the relatively small number of cases that come before them, leaving a significant part of the labor market unmeasured.<sup>9</sup> It is impossible to determine, for example, whether the cases of overtime violations brought to the U.S. Department of Labor in a given year represent a small or large share of the actual violations.<sup>10</sup>

For this study, we surveyed workers themselves, building on an emerging body of research that has established the viability of gathering reliable data on employment and labor law violations from workers.<sup>11</sup> Specifically, in 2008 we conducted a large-scale, representative survey of 4,387 low-wage workers in the three biggest U.S. cities.

We adopted two key methodological innovations to overcome the inadequacies of previous studies. First, we used a cutting-edge sampling methodology 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 an extensive questionnaire that allowed us to rigorously assess whether employment and labor laws were being broken, without relying on workers' own knowledge of these laws.

The result is a landmark survey that offers policymakers, regulatory agencies, community groups, legal services lawyers and researchers a window into the current state of worker protections in urban low-wage labor markets.

## Whom Did We Survey?

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### The three cities

The 2008 Unregulated Work Survey focused on the three largest cities in America—Chicago, Los Angeles and New York City—which together represent a labor force of more than 11 million workers.<sup>12</sup> The large but concentrated size of these three labor markets provided us the opportunity to survey a diverse population of low-wage workers in a defined geographical area, and to capture a wide range of the sectors, industries and occupations that make up the 21<sup>st</sup> century U.S. economy.

### The study population

From January through August of 2008, we surveyed a total of 4,387 workers across the three cities—Chicago (Cook County), Los Angeles (Los Angeles County) and New York City (the five boroughs). To qualify for the survey, workers had to be:

- a. age 18 or older, and currently working for an employer located in one of the three cities;
- b. a “front-line” worker, i.e. not a manager, professional or technical worker; and
- c. working in a low-wage industry as their primary job (see Appendix A for the detailed list of eligible jobs).

We designed the survey to be broad enough to capture a range of industries and occupations across the urban economy, yet targeted enough to exclude upper-level occupations such as lawyers or stock brokers (most of whom are not covered by many of the laws of interest here).

A note on timing. We fielded the survey at the start of the recession in 2008, but in all three cities, the recession had not yet fully set in when we were conducting our interviews. Unemployment rates—the most relevant measure in terms of labor market conditions—were just starting to edge upward in each of the three cities, and did not reach critical levels until late 2008 and early 2009, after we had completed our survey. Our assessment, therefore, is that the workplace violation rates documented in this study were not significantly influenced by the recession.

## How Did We Conduct Our Survey?

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Our goal was to obtain accurate, statistically representative estimates of the prevalence of workplace violations. One key challenge we faced was how to reach the workers in the first place. Surveys that rely on telephone interviews or Census-style home visits are unlikely to gain the participation of the full population of low-wage workers, many of whom are missing from official databases, vulnerable because of their immigration status, and/or reluctant to take part in a survey because of fear of retaliation by their employers. Trust is also an issue when asking for details about a worker’s job, the wages they receive, and whether or not they are paid off the books.

These problems have recently received significant attention from statisticians and social scientists. In this survey we use an innovative sampling strategy that was developed to overcome the barriers of surveying “hidden” or “hard-to-reach” populations: Respondent-Driven Sampling (RDS), originally



developed by Cornell University sociologist and co-author Douglas Heckathorn, and subsequently elaborated in collaboration with other scholars.

Appendix A provides a detailed description of the RDS method and how we implemented it in this survey, but the basic concept is straightforward: sampling is done through social networks. In our case, recruiting started with a small number of workers who fit the study criteria; after they were interviewed they recruited other workers in their existing social networks; in turn, those workers completed the survey and then recruited others; and so on. The sample increases through successive waves of recruitment.

A key advantage of this method is that workers are recruited by trusted friends and acquaintances who already have participated in the survey and can vouch for its confidentiality. This provides a powerful way to overcome the barriers of fear and disclosure discussed above.

We took several steps to ensure that our sample is representative of the larger population of front-line workers in low-wage industries in the three cities. First, by collecting data on the social networks of the respondents, and in particular taking into account the size and interconnectivity of those networks, the RDS methodology is able to adjust for the fact that some individuals have more social connections than others, and thus are more likely to be recruited into the survey. Second, the RDS methodology is also able to adjust for the fact that different groups of workers have patterns of recruitment that vary both in which types of workers they recruit and in the effectiveness of their recruitment. Finally, we also included an adjustment to ensure that the distribution of industries and occupations in our sample fully reflected the composition of each city's low-wage labor market.

## Fielding the survey

The survey was closely coordinated across the three cities: the same instrument was used, and the RDS methodology was implemented in the same way, with detailed fielding protocols ensuring full comparability. Each city was 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. All outreach materials were translated into multiple languages, and the surveys themselves were conducted in English, Spanish, Russian, Polish, Bengali, Hindi, Urdu, Mandarin, Cantonese, Korean, Portuguese, French and Haitian Creole. Including surveyors, translators, field coordinators and researchers, a total of 62 staff fielded this survey across the three cities (see Appendix A for more details on the fielding and methodology).

## How Did We Measure Workplace Violations?

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The 2008 Unregulated Work Survey is unique in that it measures a range of violations of employment and labor law, using an original battery of detailed, in-depth questions. Our interviews typically lasted between 60 and 90 minutes.

The survey instrument was designed to gather information which would allow us to detect violations of laws guaranteeing the minimum wage and overtime pay; full and timely payment of wages owed; provision of legally required meal and rest breaks; protection against retaliation by employers for complaints about working conditions or attempting to organize; and access to workers' compensation in the case of an on-the-job injury (each of these types of violations is described in more detail in the next section). Due to time and measurement constraints, however, we were not able to measure violations

of health and safety, family medical leave, and most anti-discrimination laws, although these too are critical worker protections.

The questionnaire did *not* rely on workers having any direct knowledge about their rights under employment and labor law, or about whether they had experienced a workplace violation. Instead, our strategy was to gather raw “inputs” from workers—the necessary data about their hours, earnings and working conditions, as well as relevant employer actions. We then used these data to determine whether or not a law had been violated.<sup>13</sup>

For example, we did not ask workers whether they were being paid the minimum wage. Instead, we gathered day-by-day data on exactly how many hours the respondent worked the week before the survey, the amount of money he or she received, whether the employer made any deductions (e.g. for uniforms or meals), and whether the respondent worked off the clock. We then calculated the worker’s effective hourly wage, and determined whether or not it was below the minimum wage. This approach—gathering raw data and then calculating whether a workplace violation occurred—was used for the majority of the measures that we report.

Finally, in calculating the various violation measures, we were careful never to double-count. For example, if a respondent worked five overtime hours but was not paid for those hours, we recorded an overtime violation; once these five hours were “tagged” as unpaid, they did not contribute to any other violation (for example, they could not also trigger a minimum wage violation).

## The Workers and Their Characteristics

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We close this section with an initial look at the 4,387 workers in our sample. Table 2.1 offers an overview of key demographic and employment characteristics, combined across the three cities. Like the low-wage workforce in cities and towns across the United States, our sample has more women than men; significant numbers of persons of color, especially Latino workers;<sup>14</sup> and a range of age groups and education levels, although about three-quarters of the sample has reached only a high school degree or less.

Consistent with recent trends in the low-wage labor market, immigrants comprise a large part of our sample—30 percent of the sample was U.S.-born, with the remainder comprised of naturalized citizens, and authorized and unauthorized immigrants. The sizeable number of the latter category in our sample is an indicator of our success in capturing this hard-to-reach part of the labor market.

Given that our focus was on low-wage industries, not surprisingly, workers in our sample earn very low wages. The median wage (in 2008 dollars) for our sample was \$8.02 an hour, with few respondents earning significantly more than this amount: more than three-quarters of our sample earned less than \$10.00 an hour.

Finally, this sample represents a range of industries (types of businesses) and occupations (job tasks or functions). Reflecting the larger economy, most workers in our sample are employed in the service sector—in industries such as restaurants, retail stores, and home health care—but there is also a sizable segment employed in residential construction, manufacturing, warehousing and transportation. Similarly, many of the occupations in our sample are service jobs, such as cashiers, cooks, childcare workers,

waiters and sales workers, but construction laborers and factory workers are also well represented. In short, our sample represents a rich and diverse mix of the industries and occupations that comprise America's urban economies.

**Table 2.1: Characteristics of Workers in the 2008 Unregulated Work Survey**

|   |   | Percent of workers |
|---|---|--------------------|
| <b>Gender</b>                                     | Male  | 44.4               |
|   | Female  | 55.6               |
| <b>Age</b>  | 18-25   | 28.5               |
|   | 26-35   | 25.3               |
|   | 36-45   | 21.2               |
|   | 46+   | 25.0               |
| <b>Race/ethnicity</b>                             | Latino/Latina   | 63.0               |
|   | Black   | 13.5               |
|   | Asian/other   | 17.1               |
|   | White   | 6.3                |
| <b>Education</b>                                  | Less than high school, no GED                                   | 45.1               |
|   | High school graduate or GED                                     | 30.9               |
|   | Some college or higher  | 24.0               |
| <b>Nativity and legal status</b>                  | U.S.-born citizen   | 30.0               |
|   | Foreign-born authorized<br>(includes naturalized citizens)      | 31.2               |
|   | Foreign-born unauthorized                                       | 38.8               |
| <b>Main industry during previous week of work</b> | Restaurants & hotels  | 16.5               |
|   | Private households  | 13.7               |
|   | Apparel & textile manufacturing                                 | 12.5               |
|   | Retail & drug stores  | 10.0               |
|   | Food & furniture manufacturing,<br>transportation & warehousing | 9.5                |
|   | Security, building & grounds services                           | 7.5                |
|   | Social assistance & education                                   | 6.3                |
|   | Residential construction  | 5.9                |
|   | Grocery stores  | 5.9                |
|   | Personal & repair services                                      | 5.6                |
|   | Home health care  | 4.9                |
|   | Other (finance & other health care)                             | 1.7                |

Table continues on next page >

| Characteristics of Workers in the 2008 Unregulated Work Survey continued... |  |              |
|---|--|--------------|
| <b>Main occupation during previous week of work</b>                         | Cooks, dishwashers & food preparers                | 10.3         |
|   | Sewing & garment workers                           | 10.0         |
|   | Building services & grounds workers                | 9.5          |
|   | Factory & packaging workers                        | 8.7          |
|   | Child care workers                                 | 8.2          |
|   | General construction                               | 7.9          |
|   | Home health care workers                           | 6.5          |
|   | Retail salespersons & tellers                      | 5.8          |
|   | Maids & housekeepers                               | 5.6          |
|   | Cashiers   | 5.5          |
|   | Waiters, cafeteria workers & bartenders            | 5.1          |
|   | Stock/office clerks & couriers                     | 5.0          |
|   | Car wash workers, parking lot attendants & drivers | 4.3          |
|   | Beauty, dry cleaning & general repair workers      | 3.9          |
|   | Security guards                                    | 2.8          |
|   | Teacher's assistants                               | 0.9          |
| <b>Hourly wage during previous work week (in 2008 dollars)</b>              | Median hourly wage                                 | \$8.02       |
| <b>Total number of workers in the sample</b>                                |  | <b>4,387</b> |

Source: Authors' analysis of 2008 Unregulated Work Survey.

## The Scope and Scale of the Survey Findings

Readers will naturally ask themselves what percentage of the overall workforce is represented in this study. All of the workplace violation prevalence rates and other findings reported in the following sections have been weighted so that they are representative of the larger population of front-line workers (i.e. excluding managers, professional or technical workers) in low-wage industries in Chicago, Los Angeles and New York City in 2008.

By our estimate, that population includes about 1.64 million workers combined across the three cities, which is about 31 percent of all front-line workers and about 15 percent of all workers in the three cities (see Table A.2 in Appendix A). By any standard, then, this study includes a significant part of the American urban labor market.

This report presents results for all three cities combined; subsequent publications (to be issued later in 2009) will report city-specific violation estimates.

## Future Research

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Although this study is the first to systematically document the prevalence of workplace violations in major U.S. cities, more research is needed. Some types of labor law violations, most importantly, those involving workplace health and safety and discrimination, were not included in our survey. And there is an urgent need for data obtained directly from employers, regulatory agencies, unions, and other stakeholders in American workplaces, in addition to surveys of workers, to help illuminate the connections between workplace conditions and competition in low-wage industries. Finally, our report is geographically limited. Although we studied the nation's three largest cities, with sizable labor markets and diverse economies, we hope that future researchers will measure the prevalence of labor law violations in other parts of the United States.



# 3

## The Prevalence of Workplace Violations in America's Cities

The American workplace is governed by a core set of employment and labor laws that establish minimum standards for wages, health and safety on the job, fair treatment, and the right to organize. Our findings show that these laws and standards are systematically violated, impacting a significant part of the low-wage labor force in the nation's largest cities. The framework of worker protections that was established over the last 75 years is not working. As we demonstrate in the following pages, low-wage workers regularly experience violations of laws mandating minimum wage and overtime pay, and are frequently forced to work off the clock or during their breaks.

Table 3.1 summarizes the workplace violations experienced by our respondents. We computed these violation rates using two distinct measures. The first measure is designed to specify what proportion of all the workers in our survey experienced a violation, whereas the second measure specifies the proportion of workers experiencing a violation who were "at risk" for that violation. For example, in the case of weekly overtime pay laws, a worker is only at risk of a violation if she or he works more than 40 hours a week. Table 3.1 shows, in separate columns, both the percentage of all workers surveyed who experienced each violation and the percentage of workers "at risk" who experienced each violation. In this section, we present both violation measures; later sections focus on the risk-set measures alone.<sup>15</sup>

**Table 3.1: Workplace Violation Rates**

| Violation  | Percent of workers with violations |                                  |
|--|------------------------------------|----------------------------------|
|  | All workers surveyed*              | Workers at risk of a violation** |
| <b>Minimum wage violations in week prior to survey</b>                                   |                                    |                                  |
| Worker was paid below the minimum wage   | 25.9                               | same                             |
| <b>Overtime violations in week prior to survey</b>                                       |                                    |                                  |
| Worker had unpaid or underpaid overtime  | 19.1                               | 76.3                             |
| <b>Off-the-clock violations in week prior to survey</b>                                  |                                    |                                  |
| Worker not paid for off-the-clock work   | 16.9                               | 70.1                             |
| <b>Meal break violations in week prior to survey</b>                                     |                                    |                                  |
| Worker had any of the below meal break violations  | 58.3                               | 69.5                             |
| Worker was denied meal break   | 18.0                               | 21.8                             |
| Meal break was interrupted by employer or supervisor                                     | 11.3                               | 15.6                             |
| Worker worked through meal break   | 12.0                               | 16.7                             |
| Meal break was shorter than legally required   | 43.3                               | 50.3                             |
| <b>Other pay violations in week prior to survey</b>                                      |                                    |                                  |
| Worker was paid late   | 4.3                                | same                             |
| Worker did not receive a paystub   | 56.8                               | same                             |
| Worker was subjected to an illegal pay deduction   | 2.3                                | 40.5                             |
| Tips were stolen by employer or supervisor   | 1.6                                | 12.2                             |
| <b>Violations in the 12-month period prior to survey</b>                                 |                                    |                                  |
| Worker had any of the below pay violations in last 12 months                             | 43.6                               | same                             |
| Worked off-the-clock without pay in last 12 months                                       | 27.8                               | same                             |
| Paid late in last 12 months  | 24.6                               | same                             |
| Paid less than owed in last 12 months  | 16.6                               | same                             |
| Not paid at all in last 12 months  | 5.6                                | same                             |
| Regular and repeated verbal abuse on the basis of a protected category in last 12 months | 3.4                                | same                             |
| <b>Retaliation violations for most recent complaint or organizing effort</b>             |                                    |                                  |
| Worker experienced retaliation by employer for making complaint or organizing a union    | 4.6                                | 42.8                             |
| <b>Workers' compensation violations for most recent on-the-job injury</b>                |                                    |                                  |
| Worker experienced an illegal action by employer   | 4.7                                | 50.3                             |
| <b>State specific violations in week prior to survey***</b>                              |                                    |                                  |
| Tipped worker did not receive the tipped minimum wage (NY/IL)                            | 5.8                                | 29.6                             |
| Worker did not get required daily overtime rate (CA/NY)                                  | 11.0                               | 85.4                             |
| Worker was denied or got a shortened rest break (CA)                                     | 77.3                               | 81.7                             |

\* Calculated as a percent of all workers in our sample.

\*\* Calculated as a percent of workers who were at risk of a violation.

\*\*\* The "All workers surveyed" rates for the state-specific violations only include workers in the state where the law is relevant.

Source: Authors' analysis of 2008 Unregulated Work Survey.



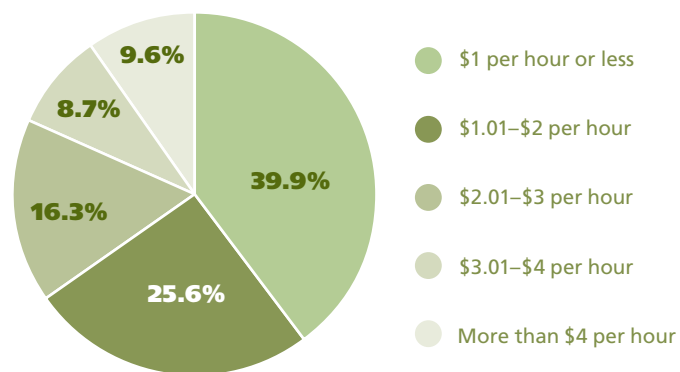
## Minimum Wage Violations

Minimum wage laws constitute the basic standard of pay for front-line workers in the U.S. labor market. Employers are required to pay workers at or above the minimum wage set by federal or state law, whichever is higher.<sup>16</sup> At the time of our survey, the states of New York, Illinois and California all had minimum wage rates higher than the federal standard. The hourly minimum wage was \$7.15 in New York, \$7.50 in Illinois, and \$8.00 in California. These minimum wage laws apply to workers regardless of whether they are employed full- or part-time, or whether they are paid by the hour, by the piece or in some other manner. Minimum wage laws also cover unauthorized workers, as do all of the other laws considered in this study.

As noted above, to measure the prevalence of minimum wage violations, we did not rely on our respondents' own knowledge of these laws, but instead gathered detailed information from each worker about the work week immediately prior to his or her interview. We calculated each respondent's hourly wage rate for the job(s) in which 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 this calculated hourly wage rate to the relevant state minimum wage to determine whether or not there was a minimum wage violation.<sup>17</sup> For example, workers in New York City who were paid less than \$7.15 an hour at any of their jobs in the previous work week were identified as having a minimum wage violation.

As Table 3.1 shows, over one-quarter (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: as Figure 3.1 shows, 60 percent of workers in our sample were underpaid by more than \$1 per hour. The median underpayment was \$1.43 less than the minimum wage.

**Figure 3.1: Amount Paid Below the Hourly Minimum Wage for Workers with a Minimum Wage Violation**



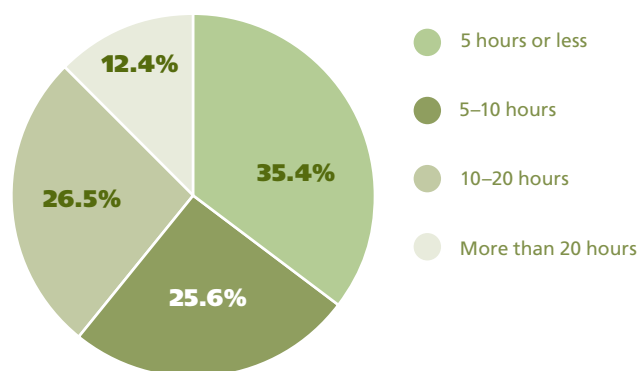
Source: Authors' analysis of 2008 Unregulated Work Survey.

## Overtime Violations

The Fair Labor Standards Act (FLSA) stipulates that covered employees must be paid "time and a half" (one-and-a-half times their regular rate of pay) for all hours worked over 40 during each week for a single employer. (Some states also regulate daily overtime, a point discussed below).

Over a quarter of our respondents worked more than 40 hours during the previous work week for a single employer and were therefore at risk for an overtime violation. As Table 3.1 indicates, 76 percent of these "at risk" workers were not paid the legally required overtime rate by their employers. The overtime violation rate among all workers in our sample (that is, regardless of whether they worked overtime or not in the previous week) was 19 percent.<sup>18</sup>

**Figure 3.2: Number of Hours Worked Overtime (Beyond 40 Hours) for Workers with an Overtime Violation**



Source: Authors' analysis of 2008 Unregulated Work Survey.

Nonpayment or underpayment for overtime work takes a variety of forms. Seventy-three percent of respondents who had an overtime violation were paid only their regular hourly rate for the hours they worked over 40, another 19 percent were not paid at all for those hours, and 8 percent were paid less than their usual hourly rate or were promised "comp time." Like minimum wage violations, overtime violations were far from trivial in magnitude. Among those workers with an overtime violation, the average respondent had worked 11 overtime hours in the previous week, and 12 percent had worked more than 20 overtime hours (see Figure 3.2).

## "Off-the-clock" Violations: Unpaid Time Before or After a Regular Shift

In addition to unpaid overtime, many front-line workers in the low-wage labor market perform work that is effectively unpaid. This is "off-the-clock" work, or work that takes place before or after a regularly scheduled shift and for which no pay is provided.<sup>19</sup> Off-the-clock work is technically a type of minimum wage violation, but we chose to measure it separately in this study because it involves workers not being paid at all for time worked. By law, employees must be paid for all of the hours they work. That means any work performed before or after official start and end times must be compensated in accordance with minimum wage laws. In our survey, we asked workers whether they came in before their official shift or stayed late after their official ending time and, if so, whether or not they received payment for this time. If workers came in early and/or stayed late *and* were not paid at all for work they performed during those time periods, they had an off-the-clock violation.

About one-quarter of workers surveyed (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 "at risk" 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 typically worked a median of one hour per week without pay.

## Meal Break Violations

The states of New York, Illinois and California require employers to provide workers 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.<sup>20</sup> The law does not require the employer to pay for the meal break, but if the employee works during the break, he or she must be compensated. Based on each state's specific regulations, we determined whether workers received all of their required meal breaks and if these breaks were of the required length.

A large majority of our respondents (86 percent) worked enough consecutive hours to be legally entitled to a meal break. However, as Table 3.1 indicates, more than two-thirds of these “at risk” workers (69 percent), and 58 percent of the total sample, experienced a meal break violation in the previous work week.

Meal break violations took a variety of forms. 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 Pay Violations

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In addition to minimum wage, overtime, off-the-clock, and meal break violations, we collected data on several other pay-related violations (see Table 3.1). First, we asked workers if they had received their pay on time for the previous work week, and found that 4 percent had not. Second, we asked workers if they had received a paystub or other documentation of their earnings and deductions. According to New York, Illinois and California state law, all workers—regardless of whether they are paid in cash or by check—are required to receive documentation of their earnings and deductions. However, 57 percent of workers in our sample did not receive this mandatory documentation. Third, we asked about deductions from pay during the previous work week. In New York, Illinois and California, employers are generally not permitted to take deductions from a worker’s pay for damage or loss, work-related tools, materials or transportation, or uniforms.<sup>21</sup> Among respondents who reported deductions from their pay, 41 percent were subjected to illegal deductions.

Finally, we examined pay-related violations specifically affecting tipped workers. It is illegal for employers or managers to appropriate any portion of the tips provided by customers in restaurants or other settings where tips are customary. However, 12 percent of tipped workers in our sample experienced such “tip stealing” during the previous work week.

## Workplace Violations During the Last 12 Months

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For all of the violation rates discussed so far, we calculated whether or not a violation occurred during the week prior to the interview, based on information we collected about each worker’s hours and earnings. In addition, we asked workers a series of questions about their experiences over the previous 12 months across all the jobs they had held. The purpose of these questions was to measure the prevalence of workplace violations that occur relatively infrequently and thus might be missed by questions limited to a single work week. These estimates are likely less reliable than those for the previous work week, because they rely on workers remembering incidents that occurred over a much longer time period.

Forty-four percent of respondents experienced at least one pay-related violation (off-the-clock work, late payment, being paid less than owed, or not being paid at all) in the 12-month period prior to their interview. Twenty-eight percent had worked off-the-clock without pay at least once in the last year. When workers experienced this violation, they did so frequently, on average 25 times in the last year.

Twenty-five percent of workers had been paid late at some point in the last year; this group experienced five incidents of late payment, on average, over the year. Seventeen percent of workers had been paid less than they were owed by their employers at least once in the last 12 months; on average, this took place five times for those who experienced such underpayment. Finally, 6 percent of workers in our sample were not paid at all for work they had performed at least once in the previous year; among these workers, nonpayment of wages occurred an average of three times in the last year.

We also asked workers about ways in which nonpayment or late payment occurred during the previous 12 months. Most often, workers were simply told that they could not be paid because the employer did not have the money. In other cases, workers were paid with checks that bounced, or their employers disappeared or closed up shop before they received their pay. A small number of workers said they were paid with goods or gifts instead of money.

Another violation we measured over the 12-month period prior to the survey interview was verbal abuse on the job. Regular and repeated verbal abuse by an employer or supervisor is illegal in Chicago, Los Angeles and New York City if such abuse involves race, religion, gender, sexual orientation, national origin, age and/or disability.<sup>22</sup> Three percent of workers in our sample experienced verbal abuse based on these protected categories in the 12 months prior to their interview.

## Illegal Retaliation by Employers

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Workers who complain to their employer or to a government agency about their working conditions, as well as those who attempt to organize a union, are protected by law from retaliation by their employer for these activities.<sup>23</sup> Threatening to fire a worker, actually firing or suspending workers, cutting hours or pay, harassing or abusing workers, or giving workers a worse work assignment—all are illegal forms of employer retaliation if they occur as a direct result of a complaint or union organizing effort.

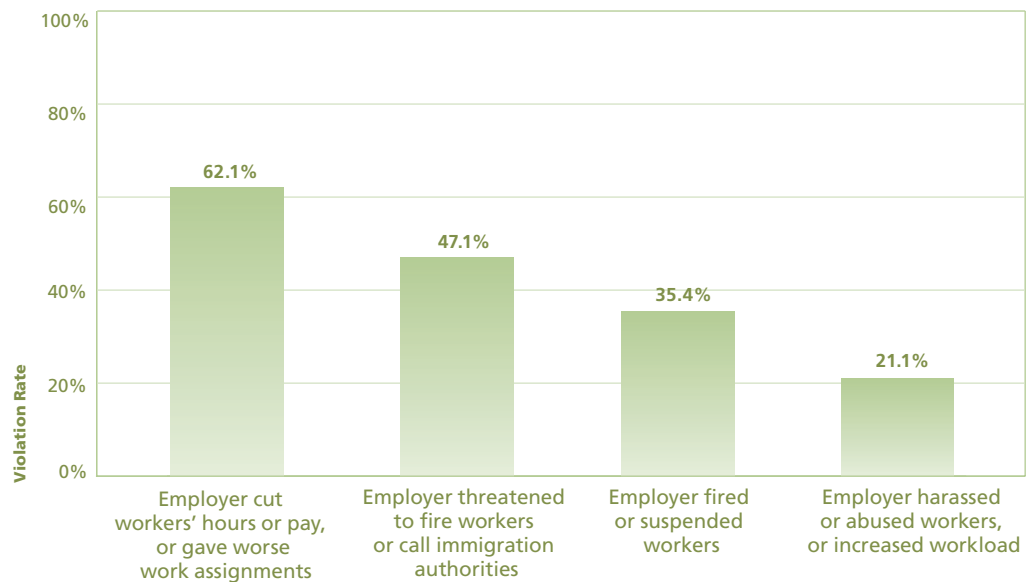
We asked respondents whether they had made a complaint in the last year to their employer, to their supervisor or to a government agency. If they had, we then gathered information about the most recent complaint. If they had not complained, we asked if they had any problem(s) on the job and, if so, why they chose not to complain about the problem(s).

Despite the existence of legal protection from retaliation, many workers chose not to make complaints to their employers, even when they encountered substandard conditions in the workplace. Twenty percent of workers in our sample either made a complaint in the last year or attempted to form a union. But another 20 percent indicated that they did not complain during the past 12 months even though they had experienced a serious problem such as dangerous working conditions, discrimination or not being paid the minimum wage. Over half (51 percent) of these workers said that they did not make a complaint because they were afraid of losing their job, another 10 percent were afraid they would have their hours or wages cut, and 36 percent thought it would not make any difference if they complained (not shown). Fear of retaliation and expectations of employer indifference, then, figure strongly in workers' decisions about whether or not to make a complaint.

Those who did complain identified a variety of on-the-job problems (not shown). Their complaints included: not being paid for all hours worked (13 percent of all complaints), dangerous working conditions (12 percent), being paid below the minimum wage (7 percent), not being paid on time (6 percent), and not being paid for overtime (6 percent).

Of those workers who either complained about a workplace issue or attempted to form a union in the past 12 months, 43 percent experienced retaliation from their employer or supervisor as a direct result of their most recent complaint or organizing effort. Figure 3.3 shows the various ways in which employers illegally retaliated against workers—including actions such as cutting workers’ hours and pay, threatening to call immigration authorities, firing workers, and increasing workloads.

**Figure 3.3: Types of Illegal Retaliation by Employers\***



Source: Authors' analysis of 2008 Unregulated Work Survey.

\* Calculated only for workers who had experienced illegal retaliation for making a complaint or organizing a union during the year previous to the survey. Workers could report more than one type of retaliation.

## Workers' Compensation

Workers' compensation laws vary among the states. Generally, all employers are required to pay into the state's workers' compensation fund and carry workers' compensation insurance in order to cover costs incurred when a worker becomes sick or injured on the job for work-related reasons. These costs include medical bills as well as wages lost due to time away from work because of the injury or illness.

Twelve percent of our respondents experienced a serious on-the-job injury<sup>24</sup> during the last three years of work. For these workers, we gathered information about the most recent work-related injury and about the employer's response to that injury, in order to determine whether a violation of workers' compensation law had occurred.

We found that the workers' compensation system is very rarely used by our respondents. Only 8 percent of the workers in our sample who experienced a serious injury during the previous three years had filed a workers' compensation claim for their most recent injury. This finding clearly indicates that the workers' compensation system is not functioning as intended for front-line workers in the low-wage labor market.

Further, our data suggest that this is due at least in part to the ways in which employers respond to cases of on-the-job injury. Fully 43 percent of seriously injured respondents reported that they were required to work despite their injury; an additional 30 percent said their employer refused to help them with the injury; 13 percent were fired shortly after the injury; 10 percent said their employer made them come into work and sit around all day; 4 percent were threatened with deportation or notification of immigration authorities; and 3 percent were told by their employers not to file a workers' compensation claim. Only 8 percent of employers instructed injured workers to file a workers' compensation claim.

Not all of the employer responses to on-the-job injuries reported above are illegal. Table 3.1 shows workers' compensation violation rates, but only for illegal employer actions such as: firing or threatening to fire an injured worker, calling immigration authorities in response to an on-the-job injury of an unauthorized worker; or instructing an injured worker not to file for workers' compensation insurance.<sup>25</sup> Across the three cities, fully 50 percent of those respondents who suffered an injury in the past three years experienced a violation of workers' compensation law for their most recent injury.

We also gathered information on who paid for injured workers' medical expenses. Fifty-five percent of respondents who experienced a serious injury at work sought medical attention for that injury, but within this group, only 40 percent indicated that their employers paid for all or part of their medical bills. About half of the workers who sought medical attention after an on-the-job injury had to pay their bills out-of-pocket (33 percent) or used their health insurance to cover the expenses (22 percent). Workers' compensation insurance paid the medical expenses for only 6 percent of the workers in our sample who visited a doctor for an on-the-job injury or illness.

## State-specific Violations

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Some state-specific laws do not apply to all three of the cities surveyed. Here we briefly discuss violation rates for the tipped minimum wage in New York and Illinois, the daily overtime laws in California and New York, and the rest break laws in California.

In many states (and under federal law), there is a special provision in minimum wage law for workers who receive tips as a regular part of their wages. In addition to the tips that they receive from customers, tipped workers must be paid a minimum base wage by their employer for the hours they work; however, this base wage is less than the minimum wage for non-tipped workers.<sup>26</sup> New York and Illinois have a tipped worker minimum wage, but California does not.

For New York and Illinois only, we calculated the tipped minimum wage violation rate by comparing each tipped worker's base wage to the legally required wage.<sup>27</sup> Eighteen percent of workers in our sample in New York City and Chicago received tips in the previous week. These tipped workers were employed in a variety of jobs, the most common being restaurant workers, carwash workers, hair stylists, and other personal service workers. Thirty percent of these tipped workers experienced violations of the tipped minimum wage.

In addition to the weekly overtime laws discussed above, both California and New York (but not Illinois) have additional daily overtime pay laws. In New York State, employers are required to pay workers one extra hour (at the minimum wage) if they work more than 10 hours in a single day for a single employer. In California, daily overtime laws are more extensive and complex. If a worker works more than eight hours in a single day for a single employer, that employer is required to pay 1.5 times the regular wage; this increases to double the regular wage after 12 hours of work in a single day. In addition, if a worker in California works seven days in a given week for a single employer, on the seventh day, that employer is required to pay the worker 1.5 times the regular wage for the first eight hours and double the hourly rate for every hour beyond the eighth. However, among our respondents in New York City and Los Angeles who met their states' respective daily overtime criteria, the large majority—85 percent—did not receive the legally required wage.<sup>28</sup>

Finally, California requires employers to give workers rest breaks during their shifts. The requirements specify the length of these breaks, along with how often workers should receive them. We measured rest break violations—which include being denied a break or receiving a shortened break—and found that 82 percent of workers who were eligible for at least one rest break in the previous work week experienced a violation (77 percent of the full sample in Los Angeles).

## When Workers Are Exempt from Workplace Laws

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Up to this point, we have analyzed violations of employment and labor laws for workers who are covered by those laws. But some workers are either partially or completely exempt from coverage—either because of archaic exemptions of specific industries and occupations, or because they are considered to be independent contractors.<sup>29</sup>

In our survey, we captured one group of workers that is likely to be considered independent contractors: in-home child care workers. If workers take care of one or more children in their own homes, for legal purposes, they are often assumed to be running their own businesses. And it is true that some in-home child care providers are indeed independent contractors who truly set their wages and have control over their working conditions. But others are clearly in an employment relationship, either with the parents of the children they care for, with a government agency (in cases where the parents are receiving a child care subsidy), or both. Yet under current application of employment and labor law, both cases would likely be treated the same: exempt from coverage.<sup>30</sup>

We were not able to determine which of the in-home child care workers in our sample were independent contractors and which were not, so we excluded all of them from our analyses. But we did analyze their working conditions (separately from the rest of the sample) in order to explore the impact of their exemption from legal coverage. We found that in-home child care workers had working conditions that would have resulted in very high workplace violation rates, had they been covered by employment and labor law. Most notably, we calculated that 89 percent of in-home child care workers earned less than their state's minimum wage. This finding underscores the need to ensure that all workers who are clearly in an employment relationship receive full protection under our system of workplace protections (we return to this point in section 7).

## Summary

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Front-line workers in the nation's three largest cities frequently are paid below the minimum wage, not paid for overtime, work off-the-clock without pay, and have their meal breaks denied, interrupted or shortened. In fact, more than two-thirds (68 percent) of the workers in our sample experienced at least one type of pay-related workplace violation in their previous week of work.<sup>31</sup> More than one-quarter of the workers in our sample were paid less than the minimum wage for their previous work week. Perhaps the most striking statistic is that among workers who worked more than 40 hours in their previous work week, more than three-fourths were not paid the legally required overtime rate.

Our data also show that employer retaliation is common: among those workers in our sample who made complaints or attempted to organize a union, 43 percent experienced retaliation from their employer or supervisor. In addition, we found that the workers' compensation system is not functioning

for workers in the low-wage labor market. The system is very seldom used by injured workers and (likely not unrelated) many employers either directly or indirectly discourage workers from filing claims.

In short, the core workplace laws established during the last century are being regularly violated by employers in the low-wage labor market. In the rest of this report we explore these violations in more detail, examining the industries and occupations in which they most often are found, as well as the workers who are most affected.



# 4

## The Role of Job and Employer Characteristics

Workplace violations ultimately are the result of decisions made by employers—whether to pay the minimum wage or overtime, whether to give workers meal breaks, or how to respond to complaints about working conditions. For this reason, we explore some key characteristics of our respondents’ employers in this section of the report, asking: Which types of businesses tend to violate employment and labor laws

the most? Which occupations are hardest hit? Does the size of the business play a role? And are there specific employer practices that are associated with or enable workplace violations? In short, this section examines workplace violations through the lens of job and employer characteristics, analyzing differences in workplace violation rates by industry, occupation, employer size, as well as by pay arrangement.<sup>32</sup>

**Table 4.1: Workplace Violation Rates by Job and Employer Characteristics**

|                        |                         | Percent of workers with violations |                          |                               |                            |
|------------------------|-------------------------|------------------------------------|--------------------------|-------------------------------|----------------------------|
|                        |                         | Minimum wage violation rate        | Overtime violation rate* | Off-the-clock violation rate* | Meal break violation rate* |
| <b>All respondents</b> |                         | 25.9                               | 76.3                     | 70.1                          | 69.5                       |
| <b>Pay type</b>        | Hourly                  | 14.8                               | 60.7                     | 64.8                          | 67.5                       |
|                        | Non-hourly              | 46.2                               | 92.3                     | 78.9                          | 73.7                       |
| <b>Pay method</b>      | Paid in cash            | 34.1                               | 87.8                     | 74.6                          | 72.9                       |
|                        | Paid by company check   | 17.2                               | 61.5                     | 64.4                          | 67.4                       |
| <b>Company size</b>    | Less than 100 employees | 28.5                               | 82.4                     | 73.6                          | 73.5                       |
|                        | 100 employees or more   | 15.2                               | 52.8                     | 64.9                          | 63.8                       |

\* Calculated as a percentage of all workers who were at risk for a violation during the previous work week.

Source: Authors' analysis of 2008 Unregulated Work Survey.

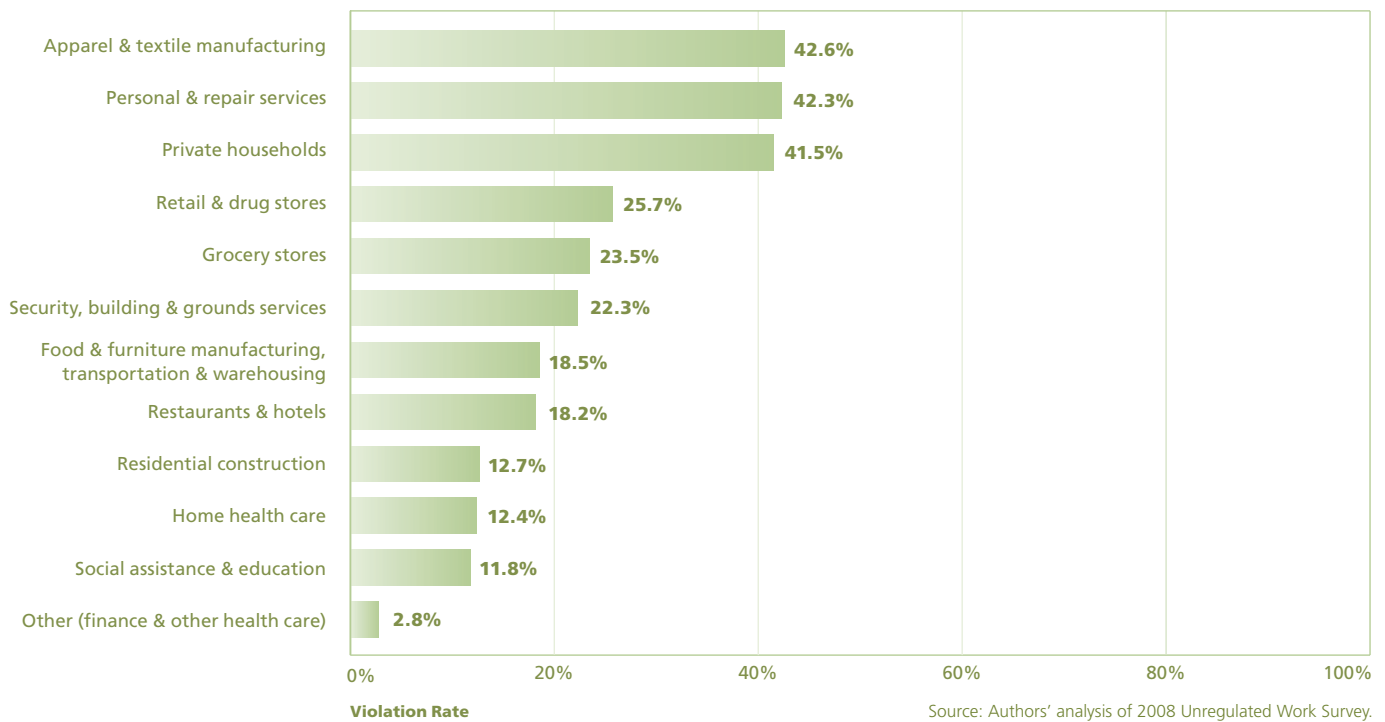
## Minimum Wage Violations

Minimum wage violation rates vary significantly by industry, as Figure 4.1 shows.<sup>33</sup> Violations were most common in apparel and textile manufacturing, personal and repair services, and in private households. In all three industries, more than 40 percent of workers were paid less than the minimum wage. Minimum wage violation rates were substantially lower in residential construction (13 percent); social assistance and education (12 percent); and home health care (12 percent). Industries such as retail, drug and grocery stores fell into the middle of the distribution, with about a quarter of their workers experiencing a minimum wage violation.

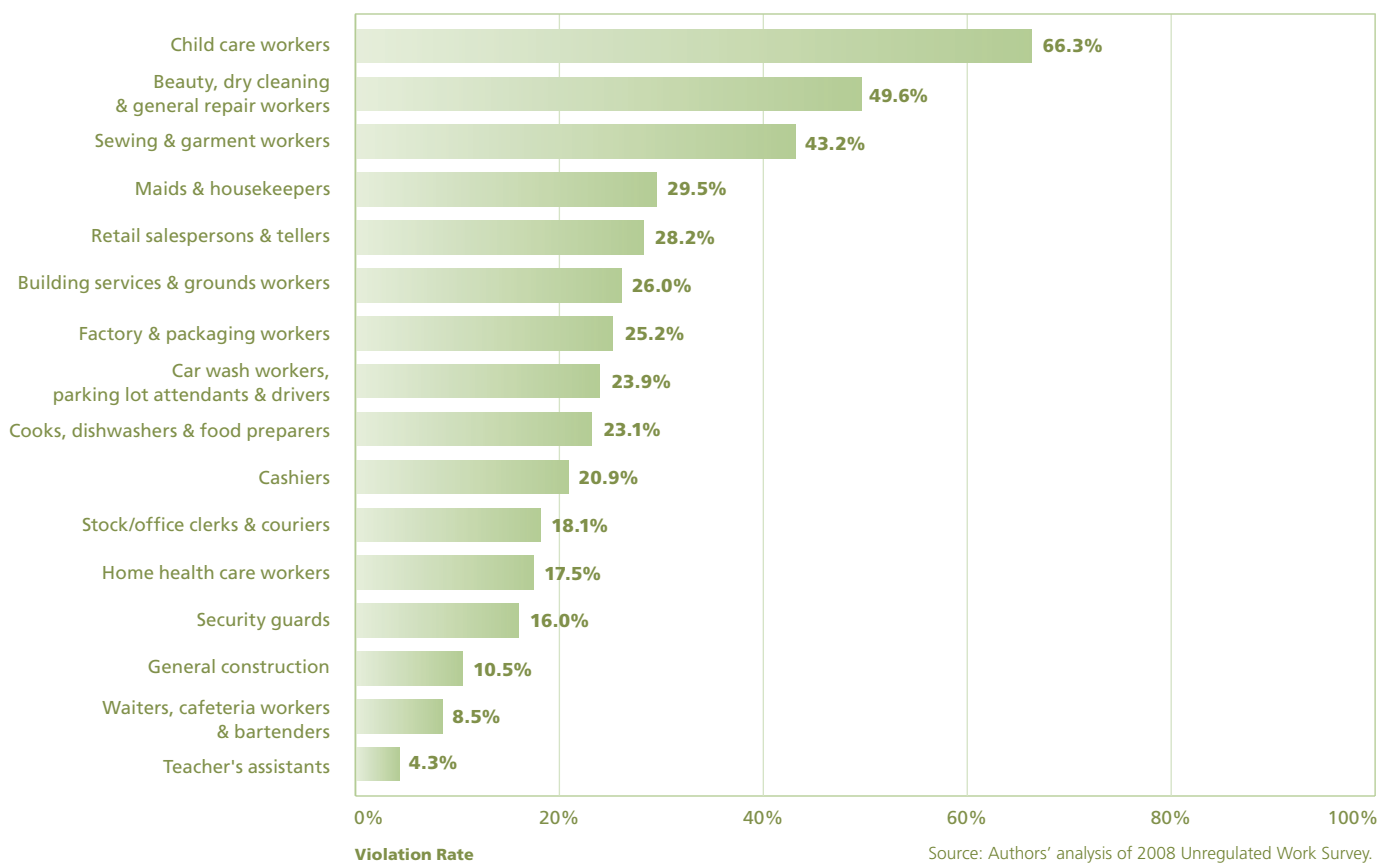
As Figure 4.2 shows, minimum wage violation rates also vary by occupation. Child care workers, many of whom work in private households, had a violation rate of 66 percent. Similarly, half of beauty, dry cleaning and general repair workers and 43 percent of sewing and garment workers had a minimum wage violation. By contrast, workers in the following occupations had relatively low minimum wage violation rates: general construction workers (11 percent); waiters, cafeteria workers and bartenders (8 percent); and teacher's assistants (4 percent). Occupations that fell into the middle of the distribution included building services, factory and car wash workers, with about a quarter experiencing a minimum wage violation.

Although many employers in low-wage industries pay their workers a regular hourly wage, others use weekly, daily or other pay types.<sup>34</sup> Many workers are paid on a flat weekly basis, so that their pay does not increase with the number of hours they work. A prep cook might be paid \$300 weekly and be expected to work between 35 and 50 hours each week, depending on how busy the restaurant is and how the manager schedules work shifts. Other workers are paid on a flat daily basis. In the residential construction industry, for example, a day laborer might receive \$80 for a day's work, regardless of the number of hours involved. In apparel and textile manufacturing, workers are often paid by the piece—for example, a garment worker might be paid seven cents for each shirt sleeve she sews. Overall, 64 percent of our sample was paid an hourly wage; of the remaining 36 percent, most were paid either a flat weekly or a flat daily amount.

**Figure 4.1: Minimum Wage Violation Rates by Industry**



**Figure 4.2: Minimum Wage Violation Rates by Occupation**



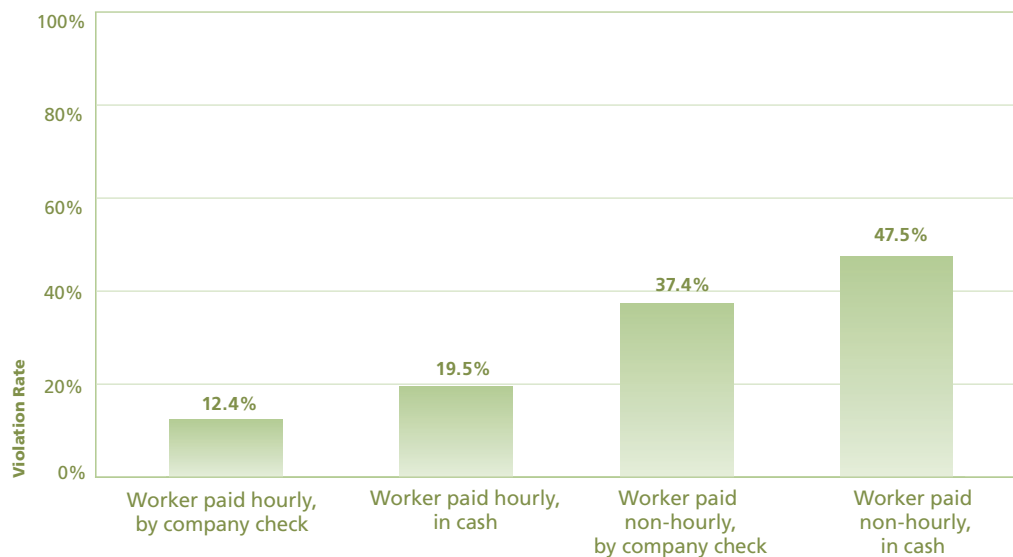
As Table 4.1 shows, workers in our sample who had non-hourly pay types had substantially higher minimum wage violation rates (46 percent) than those who were paid an hourly wage (15 percent). This is not surprising, since when employers use non-hourly pay types, workers' wages are only loosely tied to the number of hours they work and any increase in hours can result in wages falling below the legal minimum.

Piece rates are also strongly associated with high minimum wage violations. In order to earn the minimum wage, employers often mandate that piece-rate workers reach unachievable levels of productivity, as has been well documented for the garment industry, for example.<sup>35</sup>

In our sample, higher minimum wage violation rates for non-hourly workers are evident within (as well as across) industries and occupations. For example, retail salespersons and bank tellers who were paid by the hour had a minimum wage violation rate of 10 percent, while those who were paid on a non-hourly basis had a violation rate of 57 percent.

Minimum wage violation rates also vary sharply depending on whether workers are paid in cash or by company check.<sup>36</sup> Although it is not illegal for employers to pay employees in cash, the law requires that employees be provided an itemized statement of earnings and deductions for each pay period. As noted in the previous section, 57 percent of workers in our sample did not receive the required statement from their employer—and among workers who were paid in cash, fully 93 percent did not receive such a statement.

**Figure 4.3: Minimum Wage Violation Rates by Pay Arrangement**



Source: Authors' analysis of 2008 Unregulated Work Survey.

Without the transparency afforded by pay statements, workers often are unable to determine whether they have received the wages they are due. As Table 4.1 shows, workers who were paid in cash had double the minimum wage violation rate of those paid by company check (34 percent and 17 percent, respectively).

Pay type (hourly versus non-hourly) and pay method (cash versus company check) are related but not the

same. One might expect that workers who were paid a regular hourly wage would generally be paid by company check; but in fact, more than a third of hourly workers in our sample were paid in cash. That said, when both pay type and pay method were nonstandard, minimum wage violations were especially high for workers in our sample. As Figure 4.3 shows, workers who were paid on an hourly basis and by company check had the lowest minimum wage violation rate, at 12 percent. By contrast non-hourly workers who were paid in cash had a violation rate four times this level (48 percent).

Finally, company size has a significant relationship to minimum wage violation rates. As Table 4.1 shows, workers employed in companies with less than 100 employees had a violation rate almost double that of workers in larger companies (29 percent and 15 percent, respectively).

All of the job and employer characteristics discussed have a statistically significant effect on minimum wage violation rates in our sample. In addition, many of these characteristics are related to one another. Some industries are more likely than others to pay workers in cash, or to pay flat weekly rates—and those very industries have the highest minimum wage violation rates. The private household industry is an example: 96 percent of workers in this industry were paid in cash and 63 percent had non-hourly pay arrangements; and not surprisingly, the industry had one of the highest minimum wage violation rates in our study, at 41 percent. Similarly, the apparel and textile manufacturing industry had a minimum wage violation rate of 43 percent, and nearly half of its workforce was paid in cash and on a non-hourly (largely piece-rate) basis. By contrast, the home health care industry (which does not include home health care workers employed by private households) had one of the lowest minimum wage violation rates in our sample (12 percent); this industry had very few non-hourly workers (3 percent) or workers paid in cash (2 percent).

## Overtime Violations

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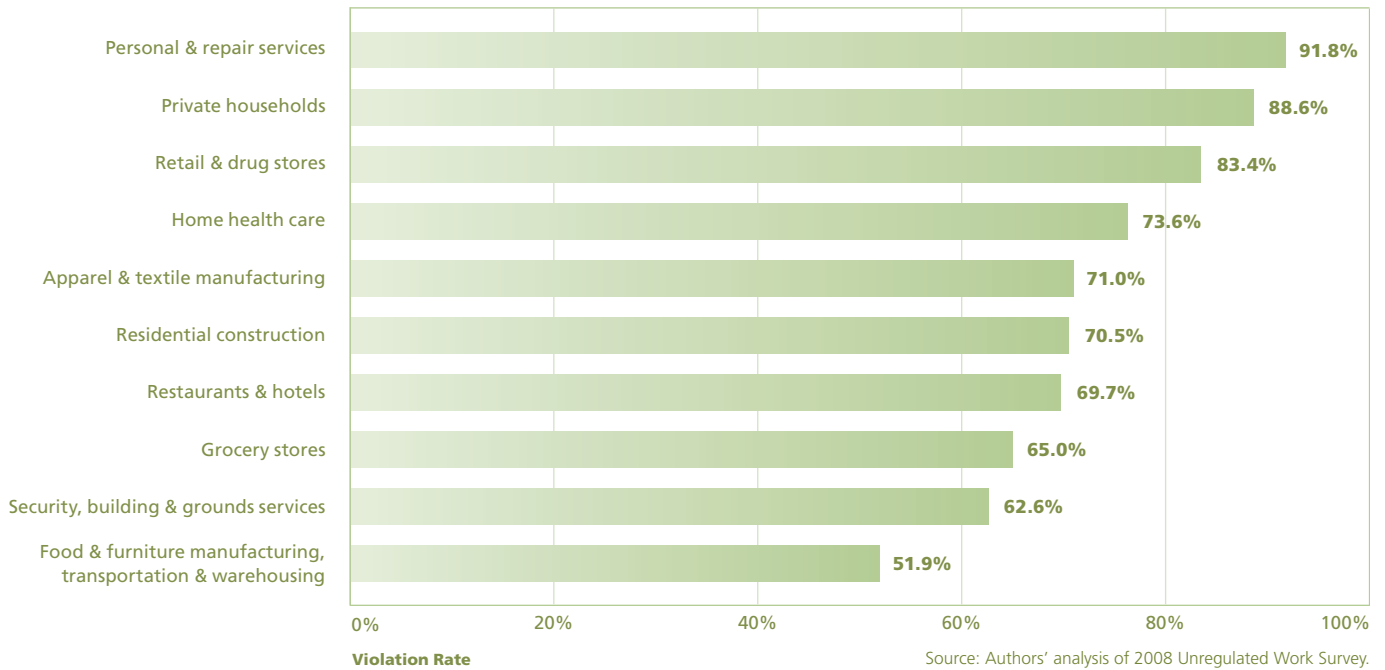
Overtime violations can occur in a number of ways.<sup>37</sup> For example, some employers only pay workers their regular hourly rate—or “straight time”—for overtime hours, rather than the time-and-a-half rate required by law. Other employers fail to pay employees anything at all for their overtime hours. For example, a full-time child care worker might be paid \$400 a week to care for small children and to perform various light housekeeping duties. She routinely may be expected to extend those hours beyond the 40-hour threshold when family members return home late, though her salary remains the same. Still other employers may give workers small amounts of pay for overtime—say, an extra \$20 for five additional hours on Saturday, after a full week’s work.

As we saw in the previous section, 76 percent of respondents in our sample who worked more than 40 hours during the previous work week for a single employer did not get paid for overtime as required by law. Figure 4.4 shows that overtime violation rates are high across all the industries in our sample, ranging from 52 percent in the food and furniture manufacturing, transportation and warehousing industries, to 92 percent for workers in the personal and repair services industry. Private household workers also had very high overtime violation rates (89 percent).

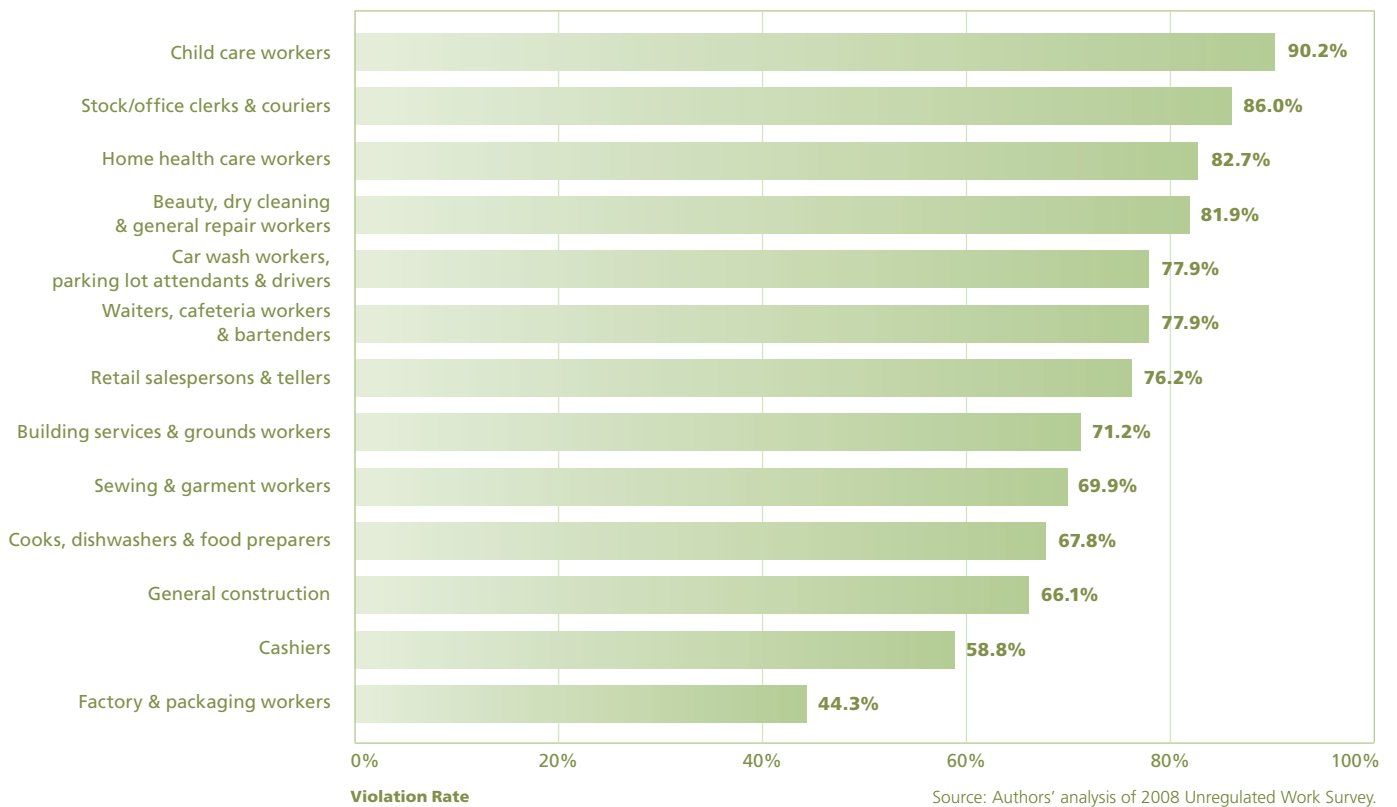
Figure 4.5 shows that overtime violation rates are high across all the occupations in our sample, but there also is substantial variation in violation rates. Rates are particularly high for child care workers, with a violation rate of fully 90 percent among those who worked more than 40 hours during the previous work week.

Table 4.1 shows the relationship between pay type and overtime violations. As was the case for minimum wage violations, non-hourly workers in our sample experienced disproportionately high overtime violation rates. Among those who worked more than 40 hours during the previous work week for a single employer, 92 percent of non-hourly workers had an overtime pay violation. This high violation rate is not surprising, since flat weekly or flat daily pay rates, by definition, do not vary with hours worked.

**Figure 4.4: Overtime Violation Rates by Industry\***



**Figure 4.5: Overtime Violation Rates by Occupation\***



\* Calculated as a percent of workers who worked more than 40 hours for a single employer during the previous work week.

But hourly workers also face very high overtime violation rates: 61 percent were not paid or were underpaid for their overtime hours in the previous work week. Similarly, when employers pay workers in cash, violations of overtime pay laws are markedly high: 88 percent of these workers experienced an overtime pay violation, compared to 62 percent of those who were paid by company check.

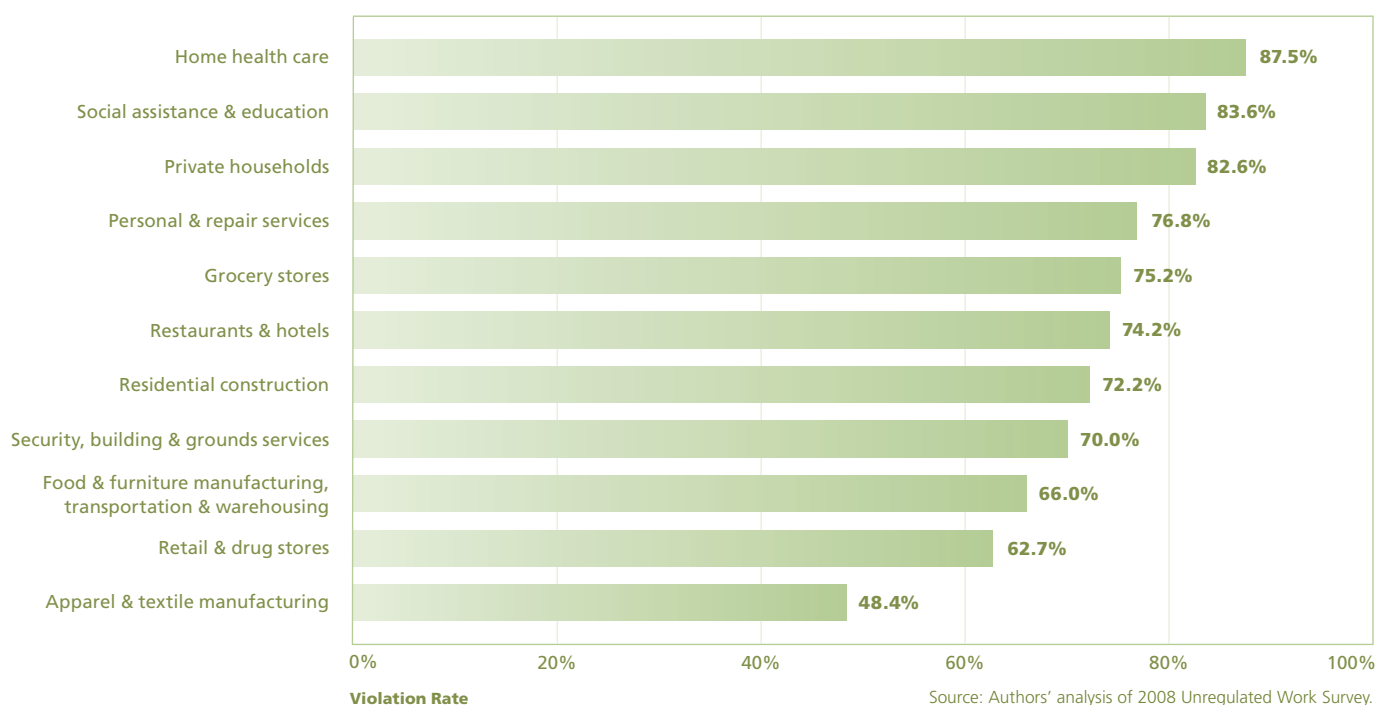
Overtime violation rates also vary with company size. As Table 4.1 shows, front-line workers in companies with less than 100 employees had an overtime violation rate of 82 percent.<sup>38</sup> By contrast, workers in companies with 100 or more employees had a violation rate of 53 percent.

## Off-the-clock Violations

A large majority (70 percent) of workers in our sample who worked before and/or after their shift in the previous work week were not paid for that part of their working time. Figures 4.6 and 4.7 show these off-the-clock violation rates by industry and occupation. As was the case for overtime violations, workers employed by private households had very high off-the-clock violation rates (83 percent). The rate was even higher (88 percent) for workers in the home health care industry. The same pattern is evident when the data are divided by occupation: again, the highest off-the-clock violation rate was for home health care workers (90 percent).

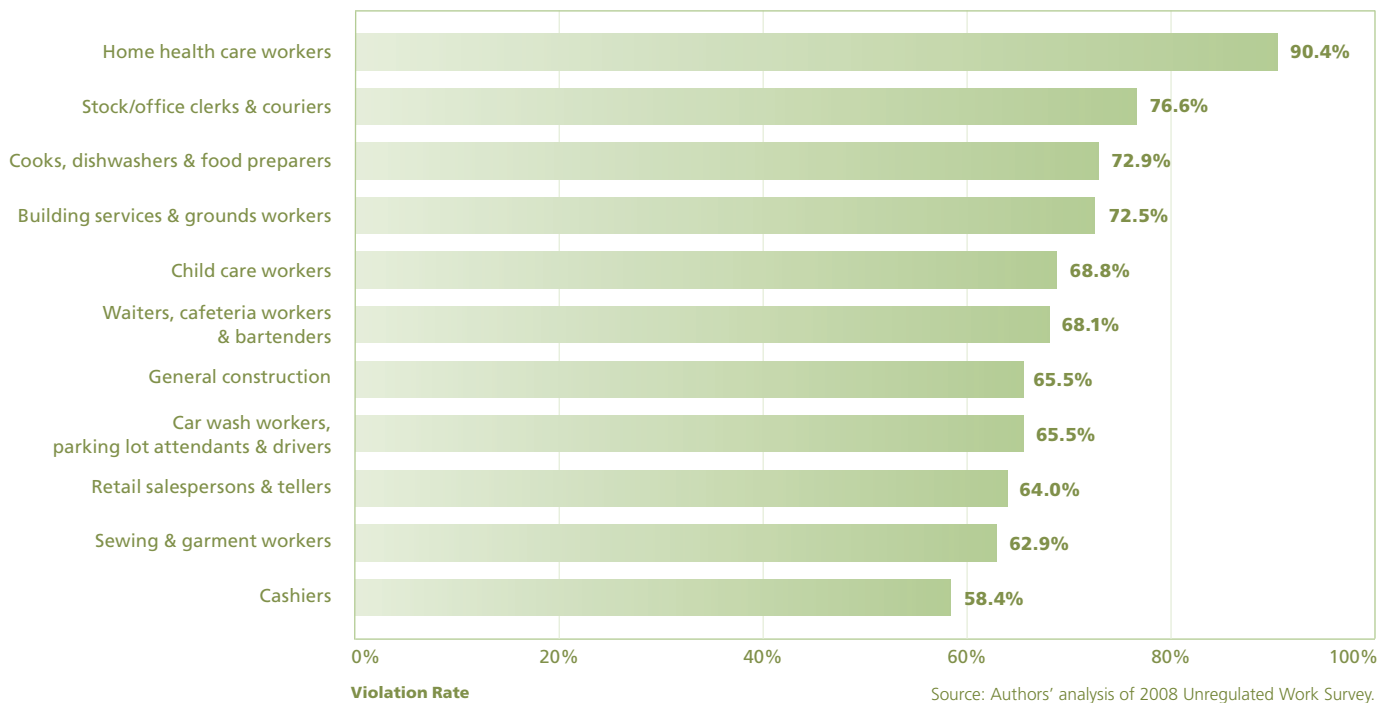
As Table 4.1 shows, workers with non-hourly pay type (such as flat daily or weekly pay) had higher off-the-clock pay violation rates than those paid by the hour.

**Figure 4.6: Off-the-clock Violation Rates by Industry\***



\* Calculated as a percent of workers who worked before and/or after their official shift during the previous work week.

**Figure 4.7: Off-the-clock Violation Rates by Occupation\***



\* Calculated as a percent of workers who worked before and/or after their official shift during the previous work week.

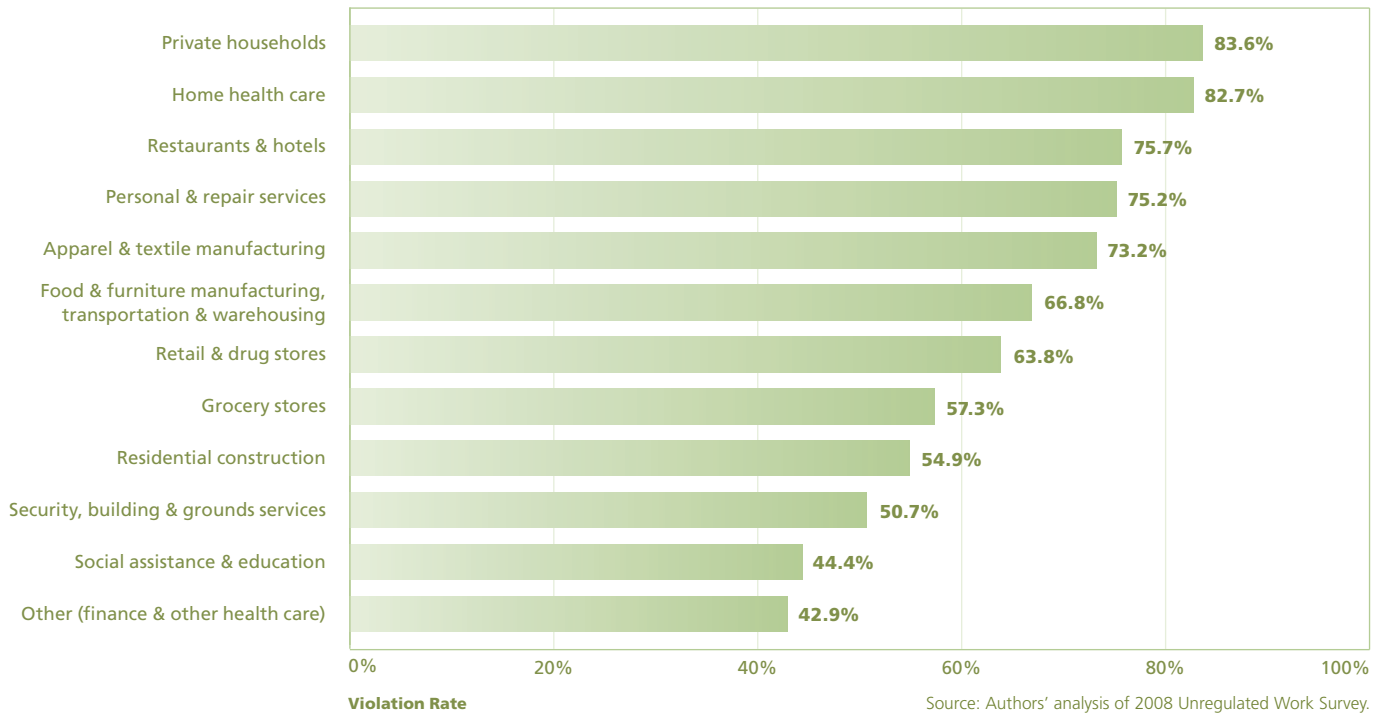
## Meal Break Violations

Figures 4.8 and 4.9 show meal break violation rates by industry and occupation. Among respondents who worked enough hours to qualify for a meal break, 69 percent had their breaks denied, shortened or interrupted. Violation rates were especially high for workers in care-giving occupations and industries (private households, home health care, and child care workers). Waiters, cafeteria workers and bartenders, as well as other restaurant and hotel workers, also experienced relatively high meal break violation rates, as did security guards and beauty, dry cleaning and general repair workers.

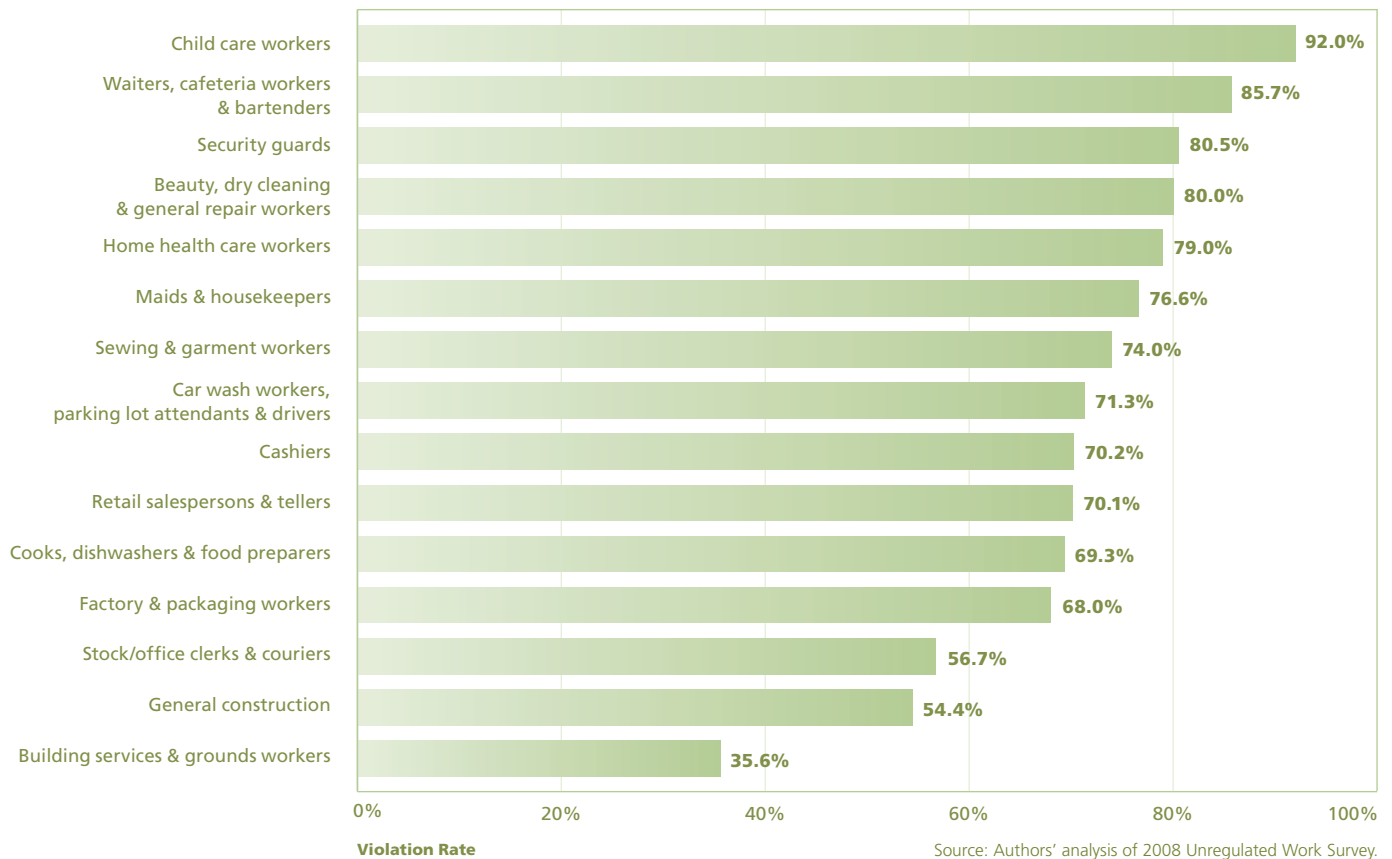
Finally, Table 4.1 shows that meal break violations rates vary by company size. Nearly three-quarters of those employed by companies with less than 100 workers had a meal break violation, compared with 64 percent of those employed by larger companies.



**Figure 4.8: Meal Break Violation Rates by Industry\***



**Figure 4.9: Meal Break Violation Rates by Occupation\***



\* Calculated as a percent of workers who were legally entitled to at least one meal break during the previous work week.

## Workplace Practices Associated with Lower Violation Rates

Overall, our findings paint a picture of routine violations of labor and employment laws across the wide range of industries, occupations and workplaces in our sample. But the low-wage labor market is not monolithic: sociologists and economists have long documented that there is significant variation in employers’ business strategies, even within specific industries.<sup>39</sup> Our survey provides additional evidence along these lines. We asked the workers in our sample about a range of employer practices at their workplace, and 49 percent indicated that their employers offered them health insurance, provided paid vacation days, paid sick days, or had given them a raise in the past year.

As Table 4.2 shows, these workplace practices—offering health insurance, providing paid vacation and sick days, and raising wages—are associated with lower violation rates, especially for minimum wage violations. These are strong correlations, and they are not surprising. Employers that offer health benefits, provide paid time off, and give regular raises are following a business model where investing in workers leads to greater productivity, lower turnover, and other benefits for the company.<sup>40</sup> Compliance with employment and labor laws is aligned with these workplace practices. But as our data suggest, the alignment is not perfect, pointing to the need for future research on how compliance with or violation of workplace laws intersects with other business strategies.

**Table 4.2: Workplace Violation Rates by Other Employer Practices**

|   |     | Percent of workers with violations |                          |                               |                            |
|---|-----|------------------------------------|--------------------------|-------------------------------|----------------------------|
|   |     | Minimum wage violation rate        | Overtime violation rate* | Off-the-clock violation rate* | Meal break violation rate* |
| <b>All respondents</b>  |     | 25.9                               | 76.3                     | 70.1                          | 69.5                       |
| <b>Employer gave worker a raise in the 12-month period prior to the survey</b>                          | No  | 31.8                               | 80.7                     | 72.7                          | 70.3                       |
|   | Yes | 13.7                               | 68.8                     | 66.6                          | 68.3                       |
| <b>Employer offered worker health insurance in the 12-month period prior to the survey</b>              | No  | 28.9                               | 80.3                     | 72.4                          | 70.3                       |
|   | Yes | 12.9                               | 58.1                     | 54.6                          | 63.4                       |
| <b>Employer gave worker paid sick and paid vacation time in the 12-month period prior to the survey</b> | No  | 27.9                               | 80.6                     | 71.6                          | 70.7                       |
|   | Yes | 12.1                               | 53.5                     | 55.2                          | 64.1                       |

\* Calculated as a percentage of all workers who were at risk for a violation during the previous work week.

Source: Authors’ analysis of 2008 Unregulated Work Survey.

## Summary

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Job and employer characteristics are strong determinants of workplace violations—and in fact, have a much greater impact on violation rates than do worker characteristics, as we will see in Section 6 below. Specifically:

- Workplace violation rates vary significantly by industry and occupation. For example, minimum wage violation rates ranged from as little as 3 percent in some industries to as much as 43 percent in others, and the range across occupations is similarly wide.
- Some industries and occupations are rife with multiple violations, suggesting that non-compliance with employment and labor laws may have become a standard business practice. For example, over 40 percent of all sewing and garment workers had a minimum wage violation and 70 percent had an overtime violation. High violation rates were also typical of the private household industry. In other cases, like residential construction, violation rates were lower.
- Employers can disguise pay-related violations by using non-hourly pay arrangements and/or paying workers in cash without providing a statement of earnings and deductions. Workers paid a flat weekly rate or paid in cash had much higher violation rates than those paid a standard hourly rate and paid by company check. Informal pay systems may facilitate minimum wage and other violations, while making it harder for workers to claim their rights under the law.
- Finally, workers employed by companies with less than 100 employees were at greater risk of experiencing violations than those employed by larger companies. But the problem of workplace violations is by no means limited to small firms. In our sample, nearly one out of six workers at large companies had a minimum wage violation in the previous week, and among those who worked overtime, over half were underpaid or not paid at all for the extra hours.



# 5

## The Role of Worker Characteristics

Workplace violations are not evenly distributed throughout the low-wage labor market, as we have seen, but vary with industry, occupation and other job and employer characteristics. These variations have a demographic dimension as well. Workers' gender, race/ethnicity, and nativity are all strongly related to the industries and occupations in which they are employed, and also may have independent effects on violation rates. In this section we examine workplace violations in relation to gender, race/ethnicity, education, age and nativity; and among the foreign-born, by date of

arrival in the U.S., English-language proficiency and immigration status.

Each type of workplace violation discussed here—being paid less than the minimum wage, not being paid properly for overtime work, working off the clock, and not receiving legally required meal breaks—has a distinctive pattern of distribution across these demographic variables; for this reason we discuss each one separately below.

## Minimum Wage Violations

As Table 5.1 shows, 30 percent of the women workers in our sample experienced minimum wage violations, compared to 20 percent of the men.<sup>41</sup> Minimum wage violation rates also varied with race and ethnicity: nearly a third of Latino workers in our sample experienced minimum wage violations, compared to 8 percent of white respondents. Nativity is also a salient factor here: 31 percent of foreign-born workers had minimum wage violations, nearly twice the rate for their U.S.-born counterparts.

**Table 5.1: Minimum Wage Violation Rates by Worker Characteristics**

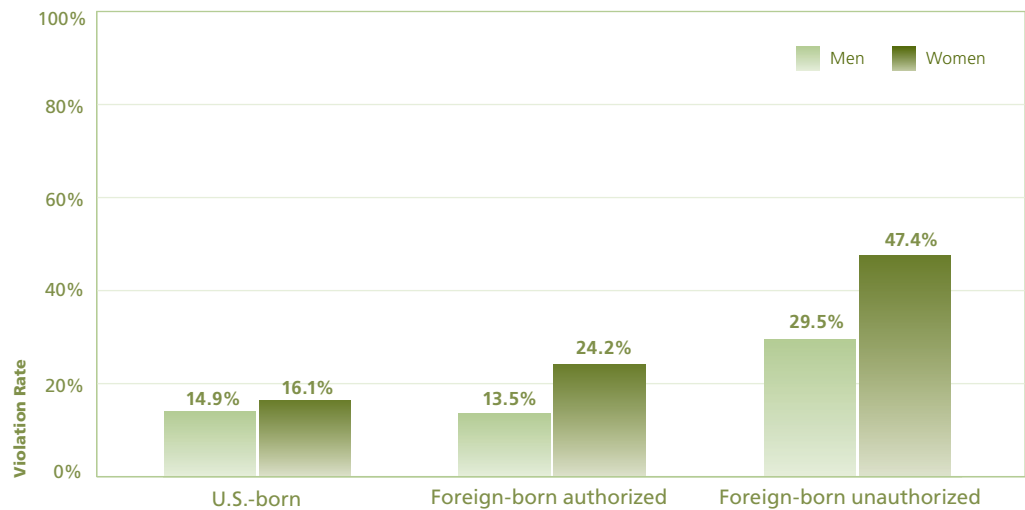
|  |                               | Percent of workers with violations |           |              |
|--|-------------------------------|------------------------------------|-----------|--------------|
|  |                               | All workers                        | U.S.-born | Foreign-born |
| <b>All respondents</b>                 |                               | 25.9                               | 15.6      | 31.1         |
| <b>Gender</b>                          | Male                          | 19.5                               | 14.9      | 21.9         |
|  | Female                        | 30.2                               | 16.1      | 37.4         |
| <b>Race/ethnicity</b>                  | Latino/Latina                 | 32.8                               | 16.6      | 35.1         |
|  | Black                         | 19.1                               | 18.4      | 30.2         |
|  | Asian/other                   | 15.1                               | N/A       | N/A          |
|  | White                         | 7.8                                | 5.6       | 10.1         |
| <b>Education</b>                       | Less than high school, no GED | 32.9                               | 24.6      | 37.2         |
|  | High school graduate or GED   | 23.1                               | 13.6      | 27.9         |
|  | Some college or higher        | 18.8                               | 10.4      | 23.1         |
| <b>Age</b>                             | 18-25                         | 27.0                               | 19.7      | 30.8         |
|  | 26-35                         | 25.1                               | 11.5      | 32.1         |
|  | 36-45                         | 24.6                               | 15.5      | 29.3         |
|  | 46+                           | 27.0                               | 15.0      | 33.0         |
| <b>Vocational training</b>             | None                          | 27.3                               | 16.4      | 32.9         |
|  | Completed training program    | 22.5                               | 13.9      | 26.8         |
| <b>Job tenure</b>                      | Less than 3 years             | 27.9                               | 17.1      | 33.5         |
|  | 3-4 years                     | 23.2                               | 14.5      | 27.7         |
|  | 5+ years                      | 17.6                               | 10.2      | 21.4         |
| <b>Foreign-born respondents:</b>       |                               |                                    |           |              |
| <b>Legal status</b>                    | Authorized                    |                                    |           | 21.3         |
|  | Unauthorized                  |                                    |           | 37.1         |
| <b>Years since arrival in the U.S.</b> | Less than 6 years             |                                    |           | 32.4         |
|  | 6+ years                      |                                    |           | 30.5         |
| <b>English proficiency</b>             | Speaks very well or well      |                                    |           | 23.7         |
|  | Speaks not well or not at all |                                    |           | 32.6         |

N/A indicates that the data were insufficient to permit reliable estimates.

Source: Authors' analysis of 2008 Unregulated Work Survey.

Gender, nativity and race/ethnicity are deeply intertwined, and the aggregate patterns shown in Table 5.1 do not fully reveal the complex interrelationships among these categories. For example, minimum wage violation rates for Latino workers vary significantly by gender: Latina workers had a violation rate of 40 percent, compared to 24 percent for their male counterparts (not shown). Similarly, as

**Figure 5.1: Minimum Wage Violation Rates by Gender, Nativity and Legal Status**



Source: Authors' analysis of 2008 Unregulated Work Survey.

Figure 5.1 shows, the high violation rates for foreign-born workers are concentrated among women, especially among unauthorized immigrants: nearly half (47 percent) of female unauthorized immigrants in our sample had minimum wage violations in the previous week, compared to 30 percent of their male counterparts. Authorized female immigrants also had a much higher minimum wage violation rate than their male counterparts; for the native-born, however, women and men had similar violation rates.<sup>42</sup>

As noted, U.S.-born workers in our sample had lower minimum wage violation rates than foreign-born workers. But here too the story is more nuanced, as shown in Table 5.1. For example, foreign-born Latinos had an especially high minimum wage violation rate of 35 percent, double the rate of U.S.-born Latinos and nearly six times the rate of U.S.-born whites. And race plays a marked role among U.S.-born respondents, where African-American workers had a violation rate three times that of white workers (this difference is statistically significant; a similar pattern holds when comparing U.S.-born Latino and white workers, but the difference is not statistically significant).

Education plays an important role in predicting minimum wage violation rates. Workers without a high-school degree or GED have violation rates that are significantly higher than those of workers with a high-school degree or who have attended college (see Table 5.1). This relationship holds for both U.S.-born and foreign-born workers. That said, higher education does not completely insulate workers from minimum wage violations. And while violation rates are lower for workers who had vocational training, the effect is not statistically significant.

Immigrants who speak English “well” or “very well” (as self-reported) had significantly lower minimum wage violation rates than those who speak “not well” or “not at all” (see Table 5.1). However, violation rates for immigrants varied surprisingly little between recent arrivals and those who are more settled in the U.S. As Table 5.1 shows, foreign-born respondents who had lived in the U.S. six or more years at the time of the survey had a minimum wage violation rate similar to that of newcomers.

Job tenure and age are often strong predictors of labor market outcomes, such as higher wages, benefits, promotions, and the like. But in our sample of workers, only job tenure had a statistically significant effect on minimum wage violations; age had virtually no effect (see Table 5.1).<sup>43</sup>

## Overtime Violations

Overtime violations vary much less among demographic groups than do minimum wage violations. For respondents who worked more than 40 hours for a single employer during the previous work week, the prevalence of overtime violations is very high across virtually all demographic groups, as Table 5.2 shows.

**Table 5.2: Overtime Violation Rates by Worker Characteristics**

|  |                               | Percent of workers with violations* |           |              |
|--|-------------------------------|-------------------------------------|-----------|--------------|
|  |                               | All workers                         | U.S.-born | Foreign-born |
| <b>All respondents</b>                 |                               | 76.3                                | 68.2      | 80.4         |
| <b>Gender</b>                          | Male                          | 74.5                                | 64.7      | 79.6         |
|  | Female                        | 78.8                                | 73.5      | 81.6         |
| <b>Race/ethnicity</b>                  | Latino/Latina                 | 77.6                                | 69.6      | 78.6         |
|  | Black                         | 63.9                                | 64.2      | 46.9         |
|  | Asian/other                   | 78.0                                | 66.3      | 84.9         |
|  | White                         | 82.3                                | N/A       | N/A          |
| <b>Education</b>                       | Less than high school, no GED | 81.7                                | 76.9      | N/A          |
|  | High school graduate or GED   | 78.5                                | 71.8      | N/A          |
|  | Some college or higher        | 74.7                                | 61.5      | N/A          |
| <b>Age</b>                             | 18-25                         | 76.2                                | 74.5      | 77.2         |
|  | 26-35                         | 70.5                                | 65.6      | 73.0         |
|  | 36-45                         | 79.6                                | 66.1      | 86.5         |
|  | 46+                           | 79.7                                | 74.4      | 82.4         |
| <b>Vocational training</b>             | None                          | 76.3                                | 68.0      | 80.6         |
|  | Completed training program    | 76.1                                | 68.8      | 79.8         |
| <b>Job tenure</b>                      | Less than 3 years             | 78.3                                | 72.7      | 81.1         |
|  | 3-4 years                     | 76.6                                | 67.6      | 81.5         |
|  | 5+ years                      | 66.9                                | 57.4      | 71.7         |
| <b>Foreign-born respondents:</b>       |                               |                                     |           |              |
| <b>Legal status</b>                    | Authorized                    |                                     |           | 67.2         |
|  | Unauthorized                  |                                     |           | 84.9         |
| <b>Years since arrival in the U.S.</b> | Less than 6 years             |                                     |           | 85.8         |
|  | 6+ years                      |                                     |           | 77.4         |
| <b>English proficiency</b>             | Speaks very well or well      |                                     |           | 70.0         |
|  | Speaks not well or not at all |                                     |           | 82.7         |

\* Calculated as a percent of workers who worked more than 40 hours for a single employer during the previous work week.

Source: Authors' analysis of 2008 Unregulated Work Survey.

N/A indicates that the data were insufficient to permit reliable estimates.



One of the few significant differences is by nativity: immigrant workers in our sample had an 80 percent overtime violation rate, compared to 68 percent for the U.S.-born.

While nativity, by itself, has a significant effect on overtime violation rates, there are also substantial differences *among* immigrants by documentation status. Unauthorized workers had very high overtime violation rates, with 85 percent of those who worked over 40 hours a week for a single employer reporting that they were not paid the legally required time-and-a-half pay rates for those extra hours, compared to 67 percent for authorized immigrant respondents.

Race, gender, job tenure, vocational training, education, English proficiency, and age do not appear to have any systematic relationship to overtime violation rates.

## Off-the-clock Violations

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The patterns for off-the-clock violations are similar to those for overtime. As Table 5.3 shows, foreign-born respondents had higher off-the-clock violation rates than their U.S.-born counterparts; however, this difference is relatively small and not statistically significant. What is most striking here is how little the off-the-clock violation rates vary across demographic groups; among those at risk for this violation, even white workers, males, and the U.S.-born in our sample have high violation rates. That said, we found that off-the-clock violations increase with workers' age; older workers have significantly higher violation rates than younger workers. This relationship was especially strong for foreign-born workers in our sample.

## Meal Break Violations

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Meal break violations also show very limited variation across demographic categories. Meal break violation rates were higher for women than for men, and higher for foreign-born than for U.S.-born respondents, and lower for older U.S.-born workers, as Table 5.4 shows. There were no other statistically significant differences for this violation.

**Table 5.3: Off-the-clock Violation Rates by Worker Characteristics**

|  |                               | Percent of workers with violations* |           |              |
|--|-------------------------------|-------------------------------------|-----------|--------------|
|  |                               | All workers                         | U.S.-born | Foreign-born |
| <b>All respondents</b>                 |                               | 70.1                                | 67.0      | 71.6         |
| <b>Gender</b>                          | Male                          | 67.4                                | 69.4      | 66.3         |
|  | Female                        | 71.5                                | 67.0      | 73.7         |
| <b>Race/ethnicity</b>                  | Latino/Latina                 | 68.0                                | N/A       | 68.2         |
|  | Black                         | 63.1                                | N/A       | 26.7         |
|  | Asian/other                   | 81.1                                | N/A       | N/A          |
|  | White                         | 69.8                                | N/A       | 74.2         |
| <b>Education</b>                       | Less than high school, no GED | 73.2                                | 69.4      | 75.0         |
|  | High school graduate or GED   | 68.1                                | 64.1      | 70.4         |
|  | Some college or higher        | 68.1                                | 69.2      | 67.6         |
| <b>Age</b>                             | 18-25                         | 61.1                                | 62.2      | 60.5         |
|  | 26-35                         | 72.5                                | 56.3      | 80.8         |
|  | 36-45                         | 77.2                                | 73.4      | 79.1         |
|  | 46+                           | 79.4                                | 79.8      | 79.2         |
| <b>Vocational training</b>             | None                          | 69.2                                | 65.9      | 70.9         |
|  | Completed training program    | 72.3                                | 67.9      | 74.5         |
| <b>Job tenure</b>                      | Less than 3 years             | 69.5                                | N/A       | 70.0         |
|  | 3-4 years                     | 77.9                                | N/A       | 82.6         |
|  | 5+ years                      | 73.2                                | N/A       | 74.3         |
| <b>Foreign-born respondents:</b>       |                               |                                     |           |              |
| <b>Legal status</b>                    | Authorized                    |                                     |           | 68.9         |
|  | Unauthorized                  |                                     |           | 76.3         |
| <b>Years since arrival in the U.S.</b> | Less than 6 years             |                                     |           | 65.8         |
|  | 6+ years                      |                                     |           | 74.5         |
| <b>English proficiency</b>             | Speaks very well or well      |                                     |           | 67.3         |
|  | Speaks not well or not at all |                                     |           | 74.6         |

\* Calculated as a percent of workers who worked before and/or after their official shift during the previous work week.

Source: Authors' analysis of 2008 Unregulated Work Survey.

N/A indicates that the data were insufficient to permit reliable estimates.

**Table 5.4: Meal Break Violation Rates by Worker Characteristics**

|  |                               | Percent of workers with violations* |           |              |
|--|-------------------------------|-------------------------------------|-----------|--------------|
|  |                               | All workers                         | U.S.-born | Foreign-born |
| <b>All respondents</b>                 |                               | 69.5                                | 64.4      | 72.1         |
| <b>Gender</b>                          | Male                          | 64.6                                | 59.5      | 67.2         |
|  | Female                        | 74.4                                | 72.4      | 75.4         |
| <b>Race/ethnicity</b>                  | Latino/Latina                 | 68.2                                | 67.5      | 68.9         |
|  | Black                         | 64.0                                | 64.4      | 59.8         |
|  | Asian/other                   | 68.2                                | 69.4      | 66.5         |
|  | White                         | N/A                                 | N/A       | N/A          |
| <b>Education</b>                       | Less than high school, no GED | 70.3                                | 66.7      | 72.1         |
|  | High school graduate or GED   | 74.2                                | 71.4      | 75.7         |
|  | Some college or higher        | 64.1                                | 53.0      | 69.8         |
| <b>Age</b>                             | 18-25                         | 71.8                                | 72.8      | 71.3         |
|  | 26-35                         | 70.8                                | 63.0      | 74.7         |
|  | 36-45                         | 69.2                                | 62.0      | 72.8         |
|  | 46+                           | 64.9                                | 54.2      | 70.3         |
| <b>Vocational training</b>             | None                          | 69.5                                | 64.9      | 71.9         |
|  | Completed training program    | 70.7                                | 63.8      | 74.2         |
| <b>Job tenure</b>                      | Less than 3 years             | 68.9                                | 65.5      | 70.6         |
|  | 3-4 years                     | 71.1                                | 62.8      | 75.4         |
|  | 5+ years                      | 71.0                                | 63.4      | 74.9         |
| <b>Foreign-born respondents:</b>       |                               |                                     |           |              |
| <b>Legal status</b>                    | Authorized                    |                                     |           | N/A          |
|  | Unauthorized                  |                                     |           | N/A          |
| <b>Years since arrival in the U.S.</b> | Less than 6 years             |                                     |           | 72.6         |
|  | 6+ years                      |                                     |           | 71.7         |
| <b>English proficiency</b>             | Speaks very well or well      |                                     |           | 71.3         |
|  | Speaks not well or not at all |                                     |           | 72.6         |

\* Calculated as a percent of workers who were legally entitled to at least one meal break during the previous work week.

Source: Authors' analysis of 2008 Unregulated Work Survey.

N/A indicates that the data were insufficient to permit reliable estimates.

## Summary

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Gender, nativity, race and ethnicity all play a role in shaping at least some of the workplace violations discussed here. But these dimensions are deeply intertwined, and need to be examined together in order to understand which groups of workers are most at risk of a violation.

- Women were significantly more likely than men to experience minimum wage violations, and foreign-born workers were nearly twice as likely as their U.S.-born counterparts to have a minimum wage violation.
- But the higher minimum wage violation rates for foreign-born respondents were concentrated among women—especially women who are unauthorized immigrants, nearly half of whom had a minimum wage violation in the previous week.
- Foreign-born Latino workers had the highest minimum wage violation rates of any racial/ethnic group. And among U.S.-born workers, there was a significant difference by race: the violation rate for African-American workers was triple that of their white counterparts (who had by far the lowest violation rates in the sample).
- Higher levels of education, longer job tenures, and proficiency in English (for immigrants) all offered some protection from minimum wage violations. That said, even college-educated workers and those who had been with their employers for five or more years were still at significant risk.
- Two factors had a surprisingly weak impact on violation rates: the worker's age (except for off-the-clock violations), and for immigrants, number of years in the U.S.
- In contrast to minimum wage violations, overtime and especially off-the-clock and meal break violations varied little across the various demographic categories.

# 6

## Wage Theft in America's Cities

In this report, we have documented that violations of core employment and labor laws are pervasive in America's largest urban labor markets. Minimum wage, overtime, meal break and other violations are not confined to the periphery of the economy or to

marginal employers. On the contrary, such violations are widespread across demographic categories and in key industries and occupations that are at the heart of urban economies in the 21<sup>st</sup> century.

## Assessing the Role of Job and Worker Characteristics

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As we have seen, a range of job and worker characteristics are correlated with workplace violations. Further analysis (see Appendix A for details) reveals that job and worker characteristics have *independent effects* on the violations we have documented in this report. Both matter, but they are not of equal importance. On the contrary, job and employer characteristics are far more powerful predictors of violation rates than are worker characteristics—especially when it comes to minimum wage, overtime and meal break violations.

Violation rates vary not only across industries and occupations but also with other factors, such as company size, pay arrangements, and compensation packages. Indeed, some employer practices, such as offering health insurance, providing paid sick and vacation days, and providing workers regular pay raises, are correlated with lower violation rates. More generally, our findings suggest that employers' business strategies shape their decisions about whether or not to comply with the law.

## The High Cost of Workplace Violations

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It should come as no surprise that the extensive violations of employment and labor laws documented in this report directly impact the earnings of low-wage workers. The various forms of nonpayment and underpayment of wages take a heavy monetary toll on these workers and their families. For the workers in our sample who experienced a pay-based violation in the previous week, the average amount of lost wages was \$51, out of average weekly earnings of \$339. That amounts to wage theft of 15 percent. Assuming a full-year work schedule, we estimate that these workers lost an average of \$2,634 annually due to workplace violations, out of total annual earnings of \$17,616.

Furthermore, we estimate that in a given week, approximately 1,114,074 workers in the three cities have at least one pay-based violation. Extrapolating from this figure, front-line 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. The largest portion of these lost wages is due to minimum wage violations (58 percent), followed by overtime violations (22 percent), rest break violations (10 percent), and off-the-clock violations (8 percent).<sup>44</sup>

Wage theft not only depresses the already meager earnings of low-wage workers, it also adversely impacts their communities and the local economies of which they are part. Low-income families spend the large majority of their earnings on basic necessities, such as food, clothing and housing. Their expenditures circulate through local economies, supporting businesses and jobs. Wage theft robs local communities of this spending, and ultimately limits economic growth.



# The Solution: Fulfilling the Promise of Worker Protections in America

This report exposes a world of work in which the core protections that many Americans take for granted—the right to be paid at least the minimum wage, the right to be paid for overtime hours, the right to take meal breaks, access to workers’ compensation when injured, the right to advocate for better working conditions—are failing significant numbers of workers. The sheer breadth of the problem, spanning key industries in the economy, as well as its profound impact on workers, entailing significant economic hardship, demands urgent attention—and action.

The three cities that we studied—Chicago, Los Angeles and New York City—are not unique. Across the country, community groups, legal advocates and regulatory officials are increasingly documenting the spread of workplace violations: in tomato farms in Florida, poultry processing plants in the Midwest and South, hotels in Miami, nursing homes in Dallas, day care centers in Kansas City, gas stations in Minneapolis, and residential construction in almost every town and city where there are day labor hiring sites.<sup>45</sup>

What, then, can be done? Our starting point is that everyone has a stake in addressing the problem of workplace violations. When low-wage workers and their families struggle in poverty and face constant economic insecurity, the strength and resilience of local communities suffers. When responsible employers are forced to compete with unscrupulous employers who violate core workplace laws by paying subminimum wages or cost-cutting on worker safety, the result is a race to the bottom that threatens to bring down standards throughout the labor market. And when significant numbers of workers are illegally underpaid, tax revenues are lost to the wider community.

In short, public policy has a fundamental role to play in protecting the rights of workers. Drawing on our own study as well as research and policy analysis by other organizations working in this area, we have identified three key principles that should drive the development of a strong policy agenda at the federal, state and local levels.<sup>46</sup>

## 1. Strengthen Government Enforcement of Employment and Labor Laws

Government enforcement is the cornerstone of any viable response to workplace violations—but just as the need for worker protections has become most acute, enforcement efforts at both the federal and state level have weakened. Public policy must recognize the significant resources and power that reside with the various agencies responsible for enforcing wage and hour, health and safety, prevailing wage, anti-discrimination, and right-to-organize laws. Tapping the often unrealized potential of these agencies will require additional funding to increase staffing, but even more important, a new set of strategies to address the reality that workplace violations are becoming standard practice in many low-wage industries.<sup>47</sup> Government 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 where 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. Data such as those contained in this report on the industries and occupations most at risk of violations can help agencies in targeting their proactive enforcement efforts.<sup>48</sup>
- **Increase the reach and effectiveness of enforcement by partnering with immigrant worker centers, unions, service providers, legal advocates and, where possible, responsible employers.**<sup>49</sup> Government alone will never have enough staff and resources to monitor every workplace in the country on a regular basis. Community partnerships can provide the vital “ears on the ground” to identify where workplace violations are most concentrated, as exemplified by recent innovative state-level collaborations with community groups.<sup>50</sup>
- **Restore funding levels for enforcement agencies to increase the number of investigators and other staff.** 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.<sup>51</sup> Similarly, the budget of the Occupational Safety and Health Administration has been cut by \$25 million in real dollar terms between 2001 and 2007; at its current staffing and inspection levels, it would take the agency 133 years to inspect each workplace just once.<sup>52</sup> While the U.S. Department of Labor has recently added investigator staff, significantly more are needed to match the growth in the number of workplaces that has occurred over the past several decades.
- **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 their workers less than the minimum wage often outweigh the costs, even for those few who are apprehended. Enforcement agencies therefore need to fully pursue existing penalties for violations of wage and hour laws, health and safety regulations, and other established legal standards. But even more important, those penalties need significant strengthening and updating, to better ensure compliance and deterrence.



## 2. Update Legal Standards for the 21<sup>st</sup> Century Workplace

Strong enforcement is important, but so are strong legal standards that recognize the changing organization of work in the United States. Specifically, changes are needed on three fronts:

- **Strengthen legal standards:** The strength of laws and the strength of their enforcement are deeply intertwined: weak employment and labor laws send the wrong signal, opening the door to low-road business strategies to cut labor costs. When the bar is set too low, employers have little or no incentive to comply. Raising the minimum wage, updating health and safety standards, expanding overtime coverage, and strengthening the right of workers to organize through labor law reform—all are key improvements that will raise compliance in the workplace and improve the competitive position of employers who play by the rules.
- **Close coverage gaps:** Some employers exploit historical “coverage gaps” that exclude certain categories of workers from protection; these gaps must be closed once and for all. For example, as discussed above, home health care and domestic workers are not fully covered by employment and labor laws.
- **Hold employers responsible for their workers:** Employment and labor laws must be updated when unscrupulous employers devise new strategies for evading their legal obligations—such as misclassifying workers as independent contractors and subcontracting work to fly-by-night operators who break the law. The principle should be that employers are responsible for the workplace standards they control, whether directly or indirectly.

## 3. Establish Equal Status for Immigrants in the Workplace

The best inoculation against workplace violations is workers who know their rights, have full status under the law to assert them, have access to sufficient legal resources, and do not fear exposure or retaliation when bringing claims against their employers. Achieving this is always a substantial challenge—but for unauthorized immigrant workers, it can be a near impossibility. While in theory, unauthorized workers are covered by most employment and labor laws, in practice, they are effectively disenfranchised in the workplace, by the lack of legal status, fear of deportation, and the willingness of all too many employers to exploit their vulnerability. The result is the high prevalence of workplace violations among unauthorized immigrants that we document in this report. Any policy initiative to reduce workplace violations must therefore act on two fronts:<sup>53</sup>

- **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 informal economy, leading to greater insecurity for immigrant families and less economic integration. A guiding principle for reform must be that immigrant workers receive equal protection and equal status in the workplace.<sup>54</sup> This means guaranteeing all immigrants the full protection and remedies under U.S. employment and labor law. Any immigration reform that creates a second class of workers will only worsen the problems exposed in this report, ultimately hurting all U.S. workers.

- **Ensure status-blind enforcement of employment and labor laws by maintaining a strong firewall between workplace and immigration inspections:** Agencies enforcing minimum wage, prevailing wage, overtime, and other workplace laws can and should create a firewall between themselves and immigration authorities, so that workers do not fear deportation when bringing a wage claim or workplace grievance. Without this protection, unauthorized workers will be driven further underground, too fearful to claim their right to workplace protections.



Government enforcement is only part of the solution. Just as important is that public policy helps to foster the efforts of immigrant worker centers and unions to represent and organize low-wage workers, enhances the capacity of legal services organizations to support workers in claiming their rights, and facilitates the efforts of private attorneys to advance strategic litigation. Public policies also need to support responsible employers. Above all, strong, vibrant employment and labor laws must be integrated into the broader policy agenda to rebuild good jobs and economic opportunity in 21<sup>st</sup> century America.



# **Appendix A: Data and Methods**

An exhaustive, in-depth technical report describing the methods used in this study is available upon request from the authors; in this appendix we give a non-technical overview of our survey methodology.

## Defining the Survey Population

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Our goal in this study was to survey workers in low-wage industries in Chicago, Los Angeles and New York City.<sup>55</sup> More precisely, in order to be included in our study, workers had to be:

- a. age 18 or older, and currently working for an employer within the limits of Los Angeles County, Cook County (Chicago), or the five boroughs of New York City;
- b. “front-line” workers, i.e. not managers, professionals or technical workers (many of these groups are not covered by key laws such as those regarding minimum wage and overtime); and
- c. working in a low-wage industry as their primary job.

To determine which industries to include in our sampling universe, we used an analysis of the 2006 Current Population Survey (CPS) conducted by the Center for Economic Policy Research, to identify the median hourly wage in each city for all workers age 18 or older who were not self-employed: in Chicago, \$14.85; Los Angeles, \$14.00; New York City \$15.38 (in 2006 dollars). We then defined “low-wage industries” as those whose median wage for front-line workers was less than 85 percent of the city’s median wage: in Chicago, \$12.62; in Los Angeles, \$11.90; in New York City \$13.07 (in 2006 dollars). This 85 percent threshold is one of several commonly used measures used to identify low-wage industries or jobs.<sup>56</sup>

The sample size used in the CPS is too small to allow estimates of median wages at the detailed industry level. We therefore used 2000 Census data to generate a list of industries in each city that fell below 85 percent of the city’s median hourly wage; the resulting industry and occupation distribution for our sample is shown in Table 2.1.

## Sampling Methodology

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As described in Section 2, standard surveying techniques—phone interviews or Census-style door-to-door interviews—rarely are able to fully capture the population that we are most interested in: low-wage workers who may be hard to identify from official databases, who may be vulnerable because of their immigration status, or who are reluctant to take part in a survey because they fear retaliation from their employers. Trust is also an issue when asking for the details about a worker’s job, the wages they receive, whether they are paid off the books or not, and their personal background.

In light of these difficulties, we adopted an innovative sampling method that operates through respondents’ own social networks. All of the workers in the low-wage worker population have friends, family, or co-workers that they come into regular contact with and rely on for support; thus our approach relied on a system in which survey respondents recruited people they already knew into the survey, a recruitment technique known as chain-referral sampling.

The best known sampling method using this form of recruitment is snowball sampling, an approach that yields only convenience samples which are not representative of the target population. Snowball sampling cannot replicate the desirable properties of probability sampling methods that allow one to

make inferences about the population based on sample data. This method therefore would not have fulfilled the aims of our study.

To overcome this limitation, we adopted a newer form of chain-referral sampling, developed by co-author Douglas Heckathorn in the late 1990s.<sup>57</sup> This method was subsequently further developed in collaboration with other scholars. Called *Respondent-Driven Sampling* (RDS), it is based on a mathematical model of the social networks that connect survey respondents. Since some individuals or groups tend to have more social connections than others, they are more likely to be recruited into a survey. To make the results of an RDS-based survey representative of the whole population (and not just workers with large social networks), we weighted our data based on respondents' social network size—that is, based on their probability of being captured by our survey technique—as well as other features of the network which can affect the sampling process.

In addition, RDS features an important difference from snowball and other traditional chain-referral methods: it employs a dual-incentive structure. This approach involves remunerating respondents not only for the time they spend responding to the survey, but also for each eligible population member they recruit into the survey. To increase the breadth of the social network captured by the sample (and to prevent a cottage industry of survey recruitment), the number of recruitments that each respondent can make is limited through a coupon-based quota system.

Our RDS survey began with an initial set of population members to be surveyed, which we located through our contacts in each city. These “seeds” were then given a fixed number of uniquely numbered dollar-bill sized coupons to pass on to other eligible population members. These recruits then brought the coupons to one of several survey sites, where the number on the coupon was recorded, the recruit was surveyed, and then the respondent was given a fixed number of coupons with which to recruit other workers.<sup>58</sup> This process was repeated over a period of several months, yielding large numbers of respondents in each city (see Table A.1). As the recruitment progressed, the sample became increasingly diverse, eventually becoming independent of the initial sample of “seeds.”

**Table A.1: Summary of Survey Fielding**

|  | Chicago           | New York City     | Los Angeles       |
|--|-------------------|-------------------|-------------------|
| Fielding period  | January—June 2008 | March—August 2008 | April—August 2008 |
| Number of sites  | 4                 | 5                 | 7                 |
| Number of interviewers, translators and researchers on staff | 18                | 22                | 22                |
| Monetary incentive for being surveyed                        | \$30              | \$50              | \$30              |
| Number of valid surveys completed                            | 1,140             | 1,432             | 1,815             |

Source: Authors' analysis of 2008 Unregulated Work Survey.

An important part of the RDS method is clearly communicating to recruiters which types of workers are eligible for the survey. We converted the list of industries being sampled into simple job titles to use as criteria for recruitment into the survey. This information was communicated to respondents with flyers in multiple languages that included drawings of the target jobs that were distributed to all recruiters along with their coupons.

## Respondent-driven Sampling in the Field

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In each city, our research teams identified interview sites that were well recognized and welcoming to low-wage workers. Our sites included spaces in community colleges, churches, social service agencies and community-based organizations—neutral spaces that offered privacy and anonymity to workers. Recruitment coupons served as an ID, so that workers did not have to show identification at building entrances.

As shown in Table A.1, Chicago entered the field in January 2008 and exited at the end of June 2008. This was a firm deadline since Illinois increased its state minimum wage on July 1, 2008; we wanted to avoid having our survey straddle a minimum wage increase, since many of our core violation measures are linked to that legal standard. New York City entered the field at the beginning of March and exited in the first week of August. Los Angeles entered the field at the beginning of April—here we delayed the start of the process to allow time for the January 1, 2008 increase in the California minimum wage to be absorbed in the labor market—and exited the field at the very end of August. Altogether, we completed 4,387 surveys.

## Post-stratification Adjustments to the Data

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One feature of the RDS methodology is the ability to conduct detailed tracking of recruitment patterns throughout the entire sampling period, in order to identify and adjust for deviations from pure random recruitment from respondents' social networks. For example, recruitment might be driven by strong social identities, such as race, ethnicity or age, so that respondents recruit disproportionately within their own group.

The RDS methodology anticipates that personal networks are not randomly distributed, and therefore adjusts for small to moderate levels of network clustering (people having ties to others like them), in the form of post-sampling weights. For example, if the sample contained more members of a given group than would be expected under purely random sampling, then cases in that group are given less weight in analyses of the data. However, if network clustering becomes pronounced on one or more dimensions, then it is necessary to use additional, external sources of data in order to weight the final sample to be representative of the intended population.

In our study, we identified high levels of non-random recruitment among several racial/ethnic groups (the specific groups varied by city), as well as between US-born and foreign-born workers. (We did not find high levels of non-random recruitment on other dimensions, such as the workers' industry and occupation, employer, or most important, the experience of workplace violations).

That meant that RDS generated representative samples within the various race/ethnic/nativity groups, but not across the sampling universe as a whole—in effect, our study generated multiple sub-samples. To address this problem, we generated RDS violation rate estimates within each of the sub-samples (which are representative), and then recombined them using a weighting system based on estimates of the relative sizes of the race/ethnic/nativity groups in order to generate an overall estimate.

Specifically, we adjusted each city's sample to match the racial/ethnic and nativity distribution of the 2007 American Community Survey (ACS), with one modification.<sup>59</sup> Since standard government surveys tend to undersample unauthorized immigrants,<sup>60</sup> we developed an adjustment to the ACS race/ethnicity/nativity distribution drawing on estimates of the number of unauthorized workers in each city in 2005.<sup>61</sup>

These adjustments, combined with the success of the RDS methodology in capturing hard-to-reach populations, are designed to ensure that our sample is representative of front-line workers in low-wage industries in each city. Such post-stratification adjustments are standard in complex social surveys; all surveys are subject to sampling error, and thus are almost universally adjusted using demographic distributions generated by the Census or other large surveys. This is a mechanism to enable the extra information available in supplementary surveys (in our case the ACS) to be incorporated in the estimates, improving accuracy.

In Table A.2, we summarize our estimates of the number of workers in each city that our sample represents—altogether, about 1.64 million workers, which we estimate represent roughly 31 percent of the front-line workers, and 15 percent of all workers, across the three cities.

**Table A.2: Profile of Cities Surveyed**

|   | Three cities combined | Chicago | New York City | Los Angeles |
|---|-----------------------|---------|---------------|-------------|
| Estimated number of front-line workers in low-wage industries | 1,640,747             | 310,205 | 586,322       | 744,220     |
| Percentage of all front-line workers                          | 31.4                  | 25.1    | 31.0          | 34.4        |
| Percentage of all workers                                     | 15.1                  | 12.2    | 14.2          | 17.0        |

Source: Authors' analysis of 2008 Unregulated Work Survey.

## Modeling the Impact of Worker and Job Characteristics on Violation Rates

In Section 6 above, we discussed the relative weight of job/employer characteristics compared to worker characteristics in accounting for the overall variation in workplace violation rates. That discussion is based on a series of logistic regression models we used to estimate the effects of selected independent variables on minimum wage, overtime, off-the-clock, and meal break violation rates.

Specifically, we considered two groups of independent variables. The job characteristics group consisted of industry, occupation, pay arrangement, company size, whether or not the employer was a temp agency, and whether or not the worker belonged to a union. The worker characteristics group consisted of gender, race, nativity, documentation status, education, age, job tenure, and whether or not the worker had received vocational training.

Our strategy was to estimate (a) the unique contribution of the group of job characteristics variables, above and beyond the impact of worker characteristics, and (b) the unique contribution of the group of worker characteristics variables, above and beyond the job characteristics. Both groups of variables were generally significant.<sup>62</sup> But the strength of their impact differed substantially. Job characteristics were 4.0 times stronger than worker 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.<sup>63</sup>

# Endnotes

- 1 Bhattarai (2009).
- 2 Larrubia (2008).
- 3 Illinois Circuit Court (2009).
- 4 Greenhouse and Rosenbloom (2008).
- 5 Bennett (2008).
- 6 Hall, Alexander and Ordoñez (2008) and St. Onge et al. (2008).
- 7 Associated Press (2008).
- 8 See Advincula (2009), Arriero (2009), Matza (2008), Schwartz (2009), and Southern Poverty Law Center (2009).
- 9 According to a report by the United States Government Accountability Office (2009), the U.S. Department of Labor did not even keep track of all the complaints that came before it in recent years.
- 10 The exceptions here are: (1) the random compliance surveys conducted by the U.S. Department of Labor in 1999 (United States Department of Labor 2001), and (2) the misclassification of independent contractors, where state agencies have been able to use administrative data to robustly estimate the extent of misclassification (Carré and Wilson (2004), DeSilva et al. (2000), and United States General Accountability Office (2006)).
- 11 See Asian American Legal Defense and Education Fund and YKASEC (2006), Bernhardt et al. (2008), Bernhardt, McGrath and DeFilippis (2007), Bobo (2008), Cordero-Guzmán, Smith and Grosfoguel (2001), Domestic Workers United & Datacenter (2006), Fiscal Policy Institute (2007a, 2007b), Flaming, Haydamack and Joassart (2005), Gordon (2005), Greenhouse (2008), Hale and Wills (2005), Hondagneu-Sotelo (2001), Levin and Ginsburg (2000), Make the Road by Walking and Retail, Wholesale, and Department Store Union (2005), McGrath (2005), Mehta et al. (2002), Milkman (2006), Ness (2005), New York Taxi Workers Alliance (2003), Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition (2005, 2006, 2009), Southern Poverty Law Center (2009), Theodore, Valenzuela and Meléndez (2006), Tucker-Welch (2004), Valenzuela et al. (2006), Weil and Pyles (2005, 2007), and Workers Defense Project (2009). At the international level, see Piore (2007) and Schrank and Piore (2007).
- 12 Authors' calculations from the U.S. Bureau of the Census, American Community Survey, pooled years 2005-2007, for Chicago (Cook County), Los Angeles (Los Angeles County) and New York City (the five boroughs). Found at: [http://factfinder.census.gov/home/saff/main.html?\\_lang=en](http://factfinder.census.gov/home/saff/main.html?_lang=en).
- 13 With the help of employment and labor law lawyers, we created an exhaustive and detailed inventory of state and federal laws relevant to a particular workplace standard (such as the minimum wage) in California, Illinois, and New York. We then used these legal rules to determine whether or not the workers in our sample experienced a given workplace violation (see Section 3 for more details).
- 14 Respondents self-identified their race/ethnicity to the interviewers, and could choose multiple races/ethnicities. All respondents who listed Latino/Latina in combination with other races/ethnicities were coded as Latino/Latina; therefore, the remaining categories are all non-Hispanic. In addition, because our sample includes only small numbers of Pacific Islanders, American Indians, Native Hawaiians, Alaska Natives, and people of mixed race, we included these groups, along with self-identified Asians, in the "Asian/other" category shown in the table.
- 15 All of the violation rates reported in this section are statistically significant, meaning they are significantly different from zero. In the RDS method, the level of significance is determined using a special form of bootstrapping process (see Heckathorn (2002) and Salganik (2006)).
- 16 Employers are legally required to pay their non-exempt workers at least the minimum wage. Not all workers are covered, and some aspects of coverage vary by state. For example, Illinois' minimum wage law exempts domestic workers, but they are covered by the federal minimum wage. For more details on exemptions from the minimum wage, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 17 Nearly every worker we surveyed was at risk of a minimum wage violation, with the exception of child care workers who work in their own homes.
- 18 If workers worked more than 40 hours in the previous week, we asked how much they were paid for those hours. If the stated amount was less than time and a half their regular wage, they were counted as having an overtime violation. For more details on the laws governing overtime, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 19 Off-the-clock work can be defined more broadly than how we have defined it here, and can happen during the middle of a workday when workers are instructed to "punch out" but continue to work. Our survey only captures off-the-clock work that occurred before or after a shift.
- 20 For more detail regarding state laws, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 21 There are some variations by state; for more details about deductions, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 22 These protections stem from a mix of federal and state laws; see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 23 Legal protections vary depending on the subject of a worker's complaint and whether they complained alone or with co-workers. For more details about retaliation law and our measures, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 24 We defined a serious injury as one that needed medical attention, whether or not the worker actually received such attention.
- 25 Workers' compensation law is different in each state. California has the most comprehensive law. For more information, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 26 New York's base wage differs depending on the amount of tips earned and the industry and occupation of the worker. In Illinois, tipped workers must be paid 60 percent of the state's full minimum wage, which during our survey period equaled \$4.50 per hour. California, however, is one of the seven states that require the same minimum wage rate (of \$8.00 an hour in the case of California) for tipped and non-tipped workers.
- 27 Tipped workers in Illinois and New York can have two types of minimum wage violations. First, if their base pay and tips added together do not equal the minimum wage, they have a standard minimum wage violation. Second, if their employer does not pay the tipped worker base minimum wage, they have a tipped minimum wage violation. By contrast, in California, tipped workers are treated like all other workers, and so are only at risk for regular minimum wage violations.



- 28 In order to avoid double-counting violations, this violation rate does not include workers who worked more than 40 hours in a week—these are counted in the 40-hour overtime violation measure.
- 29 We account for industry- and occupation-specific exemptions in calculating all violation rates in this report. For more details on exemptions, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 30 For more information on independent contractors and misclassification, see Carré et al. (2000), National Employment Law Project (n.d.), and Ruckelshaus and Goldstein (2002).
- 31 This measure includes the following violations: minimum wage, tipped minimum wage, overtime, off-the-clock, being paid in tips only, illegal deductions and rest-break violations.
- 32 This study is not able to provide an accurate estimate of the impact of unionization on the prevalence of workplace violations. Many unionized industries were excluded from our sample because they had median wages that were higher than our low-wage threshold, and were therefore not included in our sample from the outset (see Appendix A for details on our sampling universe). In addition, the small number of unionized workers who made it into our sample were concentrated in a very small set of industries, which resulted in a skewed industry distribution. Therefore, any analysis of differences in violation rates between unionized and non-union workers in our sample would yield statistically biased results that could not be used to infer conclusions about the impact of unionization on workplace violations.
- 33 When interpreting estimates in the tables and graphs in this section, the reader should refer to the text for guidance regarding which differences are statistically significant. In particular, the reader should be aware that differences of a few percentage points are very likely not statistically significant, and instead may result from stochastic variation in the sampling process. In the RDS method, the level of significance is determined using a special form of bootstrapping process (see Heckathorn (2002) and Salganik (2006)). As is customary, we interpret differences in violation rates between two or more groups or categories as statistically significant when  $p \leq 0.05$ . In such cases, the estimates' 95 percent confidence intervals fail to overlap, a procedure that is equivalent to a Student's *t*-test. For Figures 4.1, 4.2, 4.4, 4.5, 4.6, 4.7, 4.8 and 4.9, we only showed results for industries and occupations whose sample size was greater than or equal to 50.
- 34 See Bernhardt, McGrath and DeFilippis (2007), Hondagneu-Sotelo (2001), New York Jobs with Justice and Queens College Labor Resource Center (2005), and Valenzuela et al. (2006).
- 35 See Bonacich and Appelbaum (2000), Collins (2003), Hale and Wills (2005), Hum (2003), and Ross (2004).
- 36 The cash category also includes those paid by personal check and those paid in both cash and by check. The company check category also includes those paid by direct deposit. Both categories contain small numbers of workers who reported being paid by other methods.
- 37 For example, see the detailed industry profiles in Bernhardt, McGrath and DeFilippis (2007).
- 38 This difference is not explained entirely by the pay types used by these firms. Although small firms are more likely to pay non-hourly, pay type explains only part of the discrepancy between the violation rates of small and large firms.
- 39 See Appelbaum and Batt (1994), Appelbaum, Bernhardt and Murnane (2003), Beynon et al. (2002), and Kochan, Katz and McKersie (1994).
- 40 Appelbaum and Batt (1994) and Kochan and Osterman (1994).
- 41 When interpreting estimates in the tables and graphs in this section, the reader should refer to the text for guidance regarding which differences are statistically significant. In particular, the reader should be aware that differences of a few percentage points are very likely not significant, and instead may result from stochastic variation in the sampling process. In the RDS method, the level of significance is determined using a special form of bootstrapping process (see Heckathorn (2002) and Salganik (2006)). As is customary, we interpret differences in violation rates between two or more groups or categories as statistically significant when  $p \leq 0.05$ . In such cases, the estimates' 95 percent confidence intervals fail to overlap, a procedure that is equivalent to a Student's *t*-test.
- 42 Authorized immigrants include both those who are naturalized citizens and those with permanent resident status or other types of legal documentation.
- 43 This may be partly because workers who do advance in the labor market as they get older leave our sampling universe, which only includes low-wage jobs. However, in other parts of the labor market, age is often a good predictor of better outcomes, even for workers who remain in front-line occupations for their entire careers.
- 44 In our survey, 68 percent of workers had at least one pay-based violation in the previous work week. We applied this percentage to the total number of front-line workers in low-wage industries in our three cities, i.e. 1,640,747 (see Table A.2 in Appendix A).
- 45 For an inventory of studies that document workplace violations, see Bernhardt et al. (2008) and McGrath (2005).
- 46 Pieces of this section are adapted from Bernhardt, McGrath and DeFilippis (2007) and National Employment Law Project (2008). It also draws on Ruckelshaus (2008).
- 47 For in-depth analyses of public enforcement, see Wial (1999), Weil (2005, 2007), and Weil and Pyles (2005, 2007).
- 48 In addition, agencies such as the U.S. Department of Labor should institute annual compliance surveys for the full range of low-wage industries. Such surveys were conducted by the U.S. Department of Labor in the late 1990s, testing for violations of minimum wage and overtime laws, and still constitute some of the most robust data available. For example, in 1999 only 35 percent of apparel plants in New York City were in compliance with wage and hour laws; in Chicago, only 42 percent of restaurants were in compliance; in Los Angeles, only 43 percent of grocery stores were in compliance; and nationally, only 43 percent of residential care establishments were in compliance (United States Department of Labor 2001).
- 49 For in-depth analyses of immigrant worker centers, see Fine (2006), Gordon (2005), Jayaraman and Ness (2005), Martin, Morales and Theodore (2007), Ness (2005), Narro (2005, 2009), and Theodore, Valenzuela and Meléndez (2009).
- 50 In a similar vein, government agencies that enforce workers' rights need to better coordinate their efforts to achieve maximum impact, given that unscrupulous employers often violate multiple laws.
- 51 National Employment Law Project (2008).
- 52 The American Federation of Labor and Congress of Industrial Organizations (2007).
- 53 See Smith and Ruckelshaus (2007) for an in-depth treatment of labor standards policies related to immigration reform.

- 54 On the centrality of equal status and equal protections, see Beardall (2006), Gordon (2007), National Employment Law Project (2003), National Immigration Law Center (2007), Read (2006), and Smith (2006).
- 55 We wrestled with the question of whether or not to include independent contractors such as taxi drivers and street vendors in our survey. In the end we decided to constrain the sample to include employees only; opening the sampling frame to any type of independent contractor would have made it almost impossible to construct a manageable questionnaire (that is, one that would work for both employees with wage income, as well as independent contractors, who we would need to ask detailed questions about both business income and costs). However, we hope that future surveys will focus on low-wage independent contractors, such as taxi drivers and port truckers, who are effectively in an employment relationship and whose working conditions are very similar to the population of workers we surveyed here.
- 56 The Organisation for Economic Co-operation and Development has used both the measure of 85 percent of the median wage (Organisation for Economic Co-operation and Development 1994) and the measure of two-thirds of the median wage (Organisation for Economic Co-operation and Development 1996); see also Freeman and Schettkat (2000), who use two-thirds of the mean wage.
- 57 Heckathorn (1997, 2007).
- 58 The number of coupons given to respondents varied over the course of the survey; on average, respondents recruited two other workers into the sample.
- 59 These adjustments were made within major occupation groups, in order to ensure a high level of accuracy in the weighting.
- 60 For example, see Hoefer, Rytina and Baker (2008), who estimate a nonimmigrant undercount rate of 10 percent.
- 61 Data on the number and characteristics of unauthorized immigrants in our three cities were generously provided by Jeffrey Passel of the Pew Center for Hispanic Research.
- 62 The one exception is that worker characteristics as a group were not significant in predicting overtime violations.
- 63 We measured the significance and the size of the effect of each group of variables by recording the change in the deviance statistic ( $-2 \log$  likelihood measure) when a group of variables was added into the models. We assessed significance at the .05 level using a chi-square test. We assessed the relative strength of the effects of the two groups of variables by forming the ratio of the change in deviance. Full results are available upon request from the authors.

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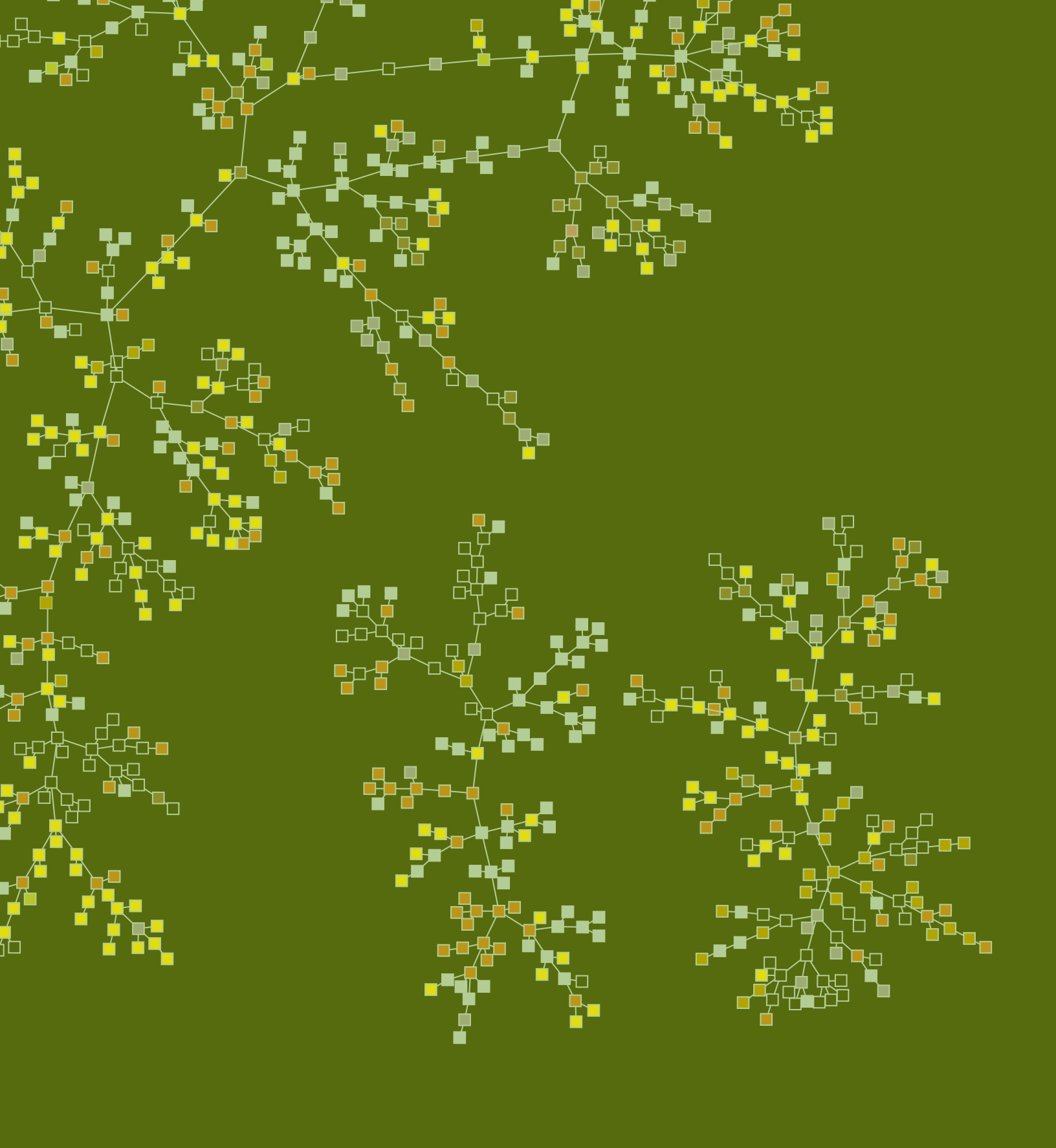
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The graphic on the back cover is taken from one of the survey's RDS recruitment chains. Each square represents a worker and the different colors represent the workers' industry.

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