

Governor Paterson's Economic Security Cabinet  
Town Hall Meeting, Brooklyn Borough Hall  
July 28, 2008

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On behalf of:

The National Employment Law Project  
Legal Aid Society of New York  
Make the Road New York  
MFY Legal Services  
The New York Immigration Coalition  
Tompkins County Workers' Center

Thank you, Governor Paterson, Commissioner Smith, and Commissioner Hansell for convening today's town hall meeting. My name is Raj Nayak, and I am an attorney at the National Employment Law Project, a national research and advocacy organization that responds to the core problems of the U.S. labor market in the twenty-first century. I am here delivering remarks on behalf of NELP and our allies at the Legal Aid Society of New York, Make the Road New York, MFY Legal Services, the New York Immigration Coalition, and the Tompkins County Workers Center.

As you know, New York's working families are struggling to make ends meet in today's economy. They have to contend with rising unemployment rates coupled with the skyrocketing cost of living – particularly for essentials like energy and food.<sup>1</sup> Workers in low-wage industries – many of whom are immigrants and people of color – have been hit especially hard, since they count on every dollar to support their families.

In these tough economic times, we urge Governor Paterson and the Economic Security Cabinet to take two important steps that would significantly improve the lives of low-wage workers: (1) increase the state Department of Labor's resources for enforcing core worker protections; and (2) support a raise in the minimum wage for New York's working families. I will discuss each of these proposals in turn.

### **1. Increase Resources to Enforce Core Worker Protections**

New York's workers are increasingly facing violations of their most basic rights to a minimum wage and overtime. Across the state, it has become standard practice to pay workers less than minimum wage in a variety of low-wage industries ranging from construction, agriculture, and industrial laundries to home health care, restaurants, grocery stores, and building services.

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<sup>1</sup> While the seasonally-adjusted Consumer Price Index for All Urban Consumers (CPI-U) rose 1.1 percent in June, the same index increased only 0.3 percent when food and energy increases are excluded. See Bureau of Labor Statistics, Consumer Price Index Summary, June 2008, <http://www.bls.gov/news.release/cpi.nr0.htm>.

Numerous studies have clearly documented these violations.<sup>2</sup> Last summer, NELP researchers released one such report – which we are submitting with our testimony – providing details about these violations in thirteen of New York’s low-wage industries.<sup>3</sup>

All New Yorkers bear the costs of this problem. Especially given the tough economic times, workers suffer if they are not getting paid at least the bare minimum that the law requires – and minimum wage and overtime violations can translate into thousands of dollars annually for an individual worker. Immigrant communities are hard especially hit, with the highest rates of workplace violations but the fewest resources to address them. Law-abiding employers are forced into a race to the bottom when their competitors pay less than minimum wage, setting off a downward spiral that erodes labor standards throughout the economy. And local governments lose significant tax revenues when workers are underpaid.

Over the last year and a half, Commissioner Smith and the state Department of Labor have taken significant steps toward addressing this problem.<sup>4</sup> The agency has adopted substantial policy reforms intended to help workers who file minimum wage and overtime claims. They have also created a Bureau of Immigrant Workers Rights to help the Labor Department work hand-in-hand with immigrant workers and worker centers. In addition, the Labor Standards Division and its Low-Wage Industry Task Force have pursued proactive enforcement actions that send a clear signal to employers that wage-and-hour violations are not acceptable. All told, the Labor Department assessed \$25 million in back wages and damages in 2007, of which \$18 million were assessed by the Task Force alone. Last week, the Task Force announced that it had assessed \$5.3 million in minimum wage and overtime violations at a single Queens sweatshop.

As a result of these efforts, the Department of Labor is putting real money back into the pockets of the workers who have earned it. Given the state of the economy, it is vital that the state Department of Labor have *more* resources for enforcement – not less. But unfortunately, state budget cuts have already forced the Labor Department to consider eliminating some investigators and downsizing the Task Force.

We commend Governor Paterson for his Labor Department’s accomplishments, and for his recent public support for increased wage-and-hour enforcement – as reported by the Daily News in

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<sup>2</sup> For a list of numerous studies documenting the scope of wage-and-hour violations in New York City and across the country, see Siobhán McGrath, A Survey of the Literature Estimating the Prevalence of Employment and Labor Law Violations in the U.S. (2006), [http://nelp.3cdn.net/1ef1df52e6d5b7cf33\\_s8m6br9zf.pdf](http://nelp.3cdn.net/1ef1df52e6d5b7cf33_s8m6br9zf.pdf).

<sup>3</sup> Annette Bernhardt, Siobhán McGrath, and James DeFilippis, Unregulated Work in the Global City (2007), [http://nelp.3cdn.net/cc4d61e5942f9cfdc5\\_d6m6bgaq4.pdf](http://nelp.3cdn.net/cc4d61e5942f9cfdc5_d6m6bgaq4.pdf).

<sup>4</sup> Public agencies are key partners in efforts to improve wage-and-hour enforcement. See Protecting New York’s Workers: How the State Department of Labor Can Improve Wage-and-Hour Enforcement (2005), [http://nelp.3cdn.net/00fdb5eefc83b7c66\\_0um6b9tdl.pdf](http://nelp.3cdn.net/00fdb5eefc83b7c66_0um6b9tdl.pdf); National Employment Law Project, State Agencies Can Combat Wage Theft (2006), <http://www.nelp.org/docUploads/Justice%5Ffor%5FWorkers%2Epdf>; Jennifer S. Brand, Adding Labor to the Docket: The Role of State Attorneys General in the Enforcement of Labor Laws (2007), [http://www.law.columbia.edu/null?&exclusive=filemgr.download&file\\_id=1399&rtcontentdisposition=filename%3DBrand\\_Labor+Article.pdf](http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=1399&rtcontentdisposition=filename%3DBrand_Labor+Article.pdf); David Weil, *Crafting a Progressive Workplace Regulatory Policy: Why Enforcement Matters*, 28 Comp. Labor Law & Pol’y J. 125, [http://www.law.uiuc.edu/publications/cll&pj/archive/vol\\_28/issue\\_2/WeilArticle28-2.pdf](http://www.law.uiuc.edu/publications/cll&pj/archive/vol_28/issue_2/WeilArticle28-2.pdf).

May.<sup>5</sup> We urge the governor and the Economic Security Cabinet to propose increasing the budget for the Department of Labor to continue its efforts to protect New York's workers.

## **2. Raise the Minimum Wage**

In addition to enforcing our current minimum wage and overtime laws, Governor Paterson and the Economic Security Cabinet would substantially help workers around New York by supporting a raise in the state's minimum wage – currently just \$7.15 per hour.

New York's minimum wage has simply not kept up with the skyrocketing cost of living. Over the last 18 months alone, the purchasing power of the state minimum wage has declined 5.3%. A New Yorker working full time, year round for minimum wage earns just \$14,872 per year – which the Fiscal Policy Institute notes is less than the current federal poverty level for a family of three (\$17,160), and far less than a more realistic basic family budget, whether in a rural area upstate (\$34,480) or in higher-cost areas on Long Island (\$54,852).<sup>6</sup> In fact, FPI finds that the minimum wage would have to be \$9.50 by 2011 to put the state back on par with its historic minimum wage from 1970.<sup>7</sup> At that rate, families would have more opportunity to make ends meet.

Nor has our state minimum wage kept up with other states – many of which have already recognized the urgent need to raise the minimum wage. New York will soon be out of step with the other states in our region. Connecticut recently passed a law to raise the state's minimum wage to \$8.00 per hour on January 1, 2009 and to \$8.25 per hour in 2010. Governor Corzine is calling on New Jersey's legislature to raise the state's minimum wage to \$8.50 this year, which is in line with the recommendation of the state's Minimum Wage Advisory Commission. Likewise, Pennsylvania's Minimum Wage Advisory Board is expected to call for a significant increase for their state minimum wage as well.

In fact, other comparable states like California, Illinois, and Massachusetts have already passed laws to raise the minimum wage to at least \$8 per hour by January 1, 2009. Washington and Oregon will actually exceed \$8 per hour by then, given that they are two of ten states that automatically increase the minimum wage each year to keep up with the cost of living. All told, fourteen states have already eclipsed New York's minimum wage – including states like Iowa, Rhode Island, and Michigan.

In its recent report, FPI found that New York's prior minimum wage increases significantly benefitted our low-wage workers without hurting small businesses or low-wage employment.<sup>8</sup> In fact, they point out that raising the minimum wage can have “ripple effects” for workers who make more than the minimum wage as “employer adjust[] pay scales to maintain wage differentials.”<sup>9</sup>

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<sup>5</sup> Kenneth Lovett, *Rich Won't Get Poorer on My Watch*, N.Y. Daily News, May 28, 2002, [http://www.nydailynews.com/news/2008/05/28/2008-05-28\\_rich\\_wont\\_get\\_poorer\\_on\\_my\\_watch\\_sez\\_gov.html](http://www.nydailynews.com/news/2008/05/28/2008-05-28_rich_wont_get_poorer_on_my_watch_sez_gov.html) (“[Patterson] said the state Labor Department will be stepping up its efforts to investigate and fine employers who violate the law by not paying fair wages and benefits.”)

<sup>6</sup> See Fiscal Policy Institute, *Restoring the Purchasing Power of New York State's Minimum Wage 5* (July 10, 2008), [http://www.fiscalpolicy.org/FPI\\_NewYorkShouldRaiseTheMinimumWage\\_July2008.pdf](http://www.fiscalpolicy.org/FPI_NewYorkShouldRaiseTheMinimumWage_July2008.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 3-5.

<sup>9</sup> *Id.* at 6.

Therefore, we urge Governor Paterson and the Economic Security Cabinet to make New York a leader again by supporting efforts to restore the state's minimum wage to its historic value, to provide a strong minimum wage for tipped workers, and to increase both automatically each year to keep up with the cost of living.

Thank you, Governor Paterson, Commissioner Smith, and Commissioner Hansell for this opportunity. We would be happy to answer any questions today or in the future.

BRENNAN  
CENTER  
FOR JUSTICE  
REPORT:

UNREGULATED  
WORK IN  
THE GLOBAL CITY

Employment and Labor Law Violations in New York City

by Annette Bernhardt, Siobhán McGrath  
and James DeFilippis

**Executive Summary**

for full report, visit <http://www.brennancenter.org/globalcity>

Brennan Center for Justice at New York University School of Law

# EXECUTIVE SUMMARY

In this report, we describe a world of work that lies outside the experience and imagination of many Americans. It is a world where jobs pay less than the minimum wage, and sometimes nothing at all; where employers do not pay overtime for 60-hour weeks, and deny meal breaks that are required by law; where vital health and safety regulations are routinely ignored, even after injuries occur; and where workers are subject to blatant discrimination, and retaliated against for speaking up or trying to organize.

Such conditions exist here in New York City, in occupations and industries that span the breadth of the city's economy. They are not isolated, short-lived cases of exploitation at the fringe of the city's economy. Instead, the systematic violation of our country's core employment and labor laws – what we call “unregulated work” – is threatening to become a way of doing business for unscrupulous employers. And yet from the standpoint of public policy, these jobs (and the workers who hold them) are too often off the radar screen.

## THE STUDY

Drawing on intensive research conducted between 2003 and 2006, this report documents for the first time the landscape of unregulated work in New York City, identifying the types of laws that employers are violating, the range of industries that are most deeply involved, the variety of business strategies that result in violations, and the workers who are most affected. Using standard social science protocols, we integrated qualitative, quantitative and archival research: (a) in-depth interviews with 326 individuals, including workers, employers, staff members of regulatory agencies, service providers, unions and community-based organizations; (b) analysis of labor market datasets, as well as data on enforcement efforts by government agencies obtained through the Freedom of Information Act; and (c) analysis of hundreds of documents from newspaper sources, industry publications, business associations, and academic journals.

## THE VIOLATIONS

Our fieldwork identified eight broad categories of workplace violations being committed by some employers in New York City:

- *Wage and hour violations:* We documented employers paying less than the minimum wage, failing to pay overtime, not paying at all, forcing employees to work off the clock, not giving breaks, stealing workers' tips, and violating prevailing wage laws on public construction projects.
- *Health and safety violations:* We documented employers failing to provide guards on machinery, allowing extreme temperatures and improper ventilation, requiring employees to work on unsafe scaffolding, exposing them to chemical and airborne toxins, and failing to provide goggles, masks, and other protective equipment.
- *Workers' compensation violations:* We documented employers failing to carry workers' compensation insurance required by law, and preventing injured workers from filing workers' compensation claims.

- *Retaliation and violations of the right to organize:* We documented employers firing or punishing workers who sought to improve working conditions, as well as making pre-emptive threats to report workers to immigration authorities.
- *Independent contractor misclassification:* We documented employers misclassifying their workers as independent contractors in order to evade their legal obligation under employment and labor laws.
- *Employer tax violations:* We documented employers either fully or partially failing to pay required payroll taxes on cash wages.
- *Discrimination:* In our research, discrimination on the basis of race, gender, country of origin and criminal history manifested itself in firing, hiring, promotion, and in the explicit sorting of workers into stereotyped occupations.
- *Trafficking and forced labor:* While not the focus of our research, we documented instances of workers being trafficked and being prevented from leaving their jobs through passport seizure, debt bondage, threats, physical force, or captivity.

## THE EMPLOYERS

Based on analysis of our fieldwork as well as secondary data sources, we identified 13 distinct industry clusters in New York City where unregulated work consistently appears in one or more industry segments (the full report provides detailed data and analysis for each industry):

Groceries and supermarkets	Residential construction
Retail	Food and apparel manufacturing
Restaurants	Laundry and dry cleaning
Building maintenance & security	Taxis and dollar vans
Publicly-subsidized child care	Auto repair, garages and car washes
Domestic work	Personal services such as nail and beauty salons
Home health care	

Scanning across the industries, we found that workplace violations are not limited to small firms, but also occur in medium-sized and even large firms. Nor are violations limited to firms competing on the basis of cost cutting; in a significant number of industries, violations are also found among high-end establishments specializing in quality goods and services. This is also not primarily a story of trade-sensitive industries forced to drive down wages because of global competition; most of the industries listed are domestic service industries that are bound in place and that compete in regional product markets. And while private-sector industries dominate the landscape of unregulated work, publicly-funded industries such as home health care and subsidized child care are not immune.

One consistent finding, however, is that violations of employment and labor laws are much less common in unionized workplaces, especially those that are in an industry (or industry segment) where union density is high. Another consistent finding is that employers who are violating

one workplace law are often violating other laws as well – in some industries, these “bundles” of practices have become so routine that they appear to constitute a distinct business strategy.

## THE WORKERS

Not surprisingly, the workers most impacted by workplace violations are those with the least power to dictate their terms of employment: undocumented and documented immigrants, and in smaller numbers, people with criminal convictions and those transitioning off welfare. Moreover, unregulated jobs exhibit a high degree of occupational segregation on the basis of race, ethnicity, and especially gender. Long tenures within a particular industry are common, and the jump to better-paid, regulated jobs is difficult. Barriers include lack of legal status, education and fluency in English; criminal records; discrimination; and the structural lack of good jobs in low-wage industries.

## THE BROKERS

Various labor market intermediaries help to connect workers to unregulated jobs, most notably “storefront” employment agencies that have multiplied across the city over the past decade, especially in low-income and immigrant neighborhoods. Significant numbers of these agencies violate regulations, often in pernicious ways – by charging workers high fees, sending them to jobs that do not exist, refusing to refund fees, and screening applicants on the basis of race. Most troubling, they often knowingly place workers in jobs that violate employment and labor laws, in effect becoming part of the problem.

## EXPLAINING UNREGULATED WORK

Fully unpacking the causes of unregulated work in New York City requires analysis of political and economic changes far beyond the immediate borders of the city. Our initial inventory of the forces at work includes:

*Three Decades of Economic Restructuring:* Globalization, deindustrialization, deunionization and a deteriorating social contract have reshaped how and where work is performed, and what it is paid. In our analysis, workplace violations are a logical extension of these restructuring trends, since the same fundamental strategy is at work: competition based first and foremost on cutting labor costs. For example, global competition has pushed local apparel and food manufacturers to sweatshop conditions commonly associated with the 19th century. In the supermarket industry, it has been a story of large retailers pushing competitors to a low-wage business model. The subcontracting of laundry, janitorial and security services at this point is virtually complete, opening the door to substandard working conditions. And in industries such as restaurants, deunionization has increased the likelihood that some employers will pay below the minimum wage. Finally, growing inequality has swelled the ranks of high-income families purchasing services such as domestic work that lie largely outside the reach of regulation. At the same time, it has generated an entire subeconomy of unregulated work that produces goods and services for low-wage workers and their families.

*Inadequate Enforcement:* When employers have incentives to cross the line into breaking the law, strong enforcement of those laws serves as a critical brake on violations. Unfortunately, available data indicate considerable weakness in the extent to which federal and state authorities enforce minimum wage, overtime, health and safety, right to organize, and workers' compensation laws. In New York, the incoming Spitzer Administration has signaled that it will move the state Department of Labor towards better enforcement. But during the time when our research was conducted, the record suggests inadequate enforcement by the state agency, both in terms of resources (lack of staffing) and administrative will (for example, multi-year delays in processing cases, and settling claims for far less than what workers were owed).

*Inadequate Legal Standards:* In the 21st century workplace, traditional definitions of employer and employee are increasingly being challenged by a host of non-standard employment relationships. The ambiguous legal status of independent contractors, temporary workers and day laborers, as well as the growing use of subcontracted workers, have opened the door to working conditions that fall below the standards established by law – even as the standards themselves are being weakened.

*Dysfunctional Immigration Policy:* The labor market power of immigrant workers is profoundly shaped by U.S. immigration law, which at this point is widely recognized as outdated and dysfunctional, on the one hand allowing workers into the country while on the other denying many of them legal status. On paper, undocumented workers are covered by most employment and labor laws. But in practice, they are effectively disenfranchised in the workplace, by lack of documentation, fear of discovery, and employers' willingness to exploit that vulnerability.

## PRINCIPLES FOR PUBLIC POLICY

Everyone has a stake in addressing the problem of unregulated work. When workers and their families struggle in poverty, the strength and resiliency of local communities suffer. When unscrupulous employers evade or violate core laws governing the workplace, responsible employers are forced to compete against subminimum wages or cut corners on worker safety, setting off a race to the bottom that erodes standards throughout the labor market. And when significant numbers of workers are underpaid, vital tax revenues are lost. In short, public policy has a fundamental role to play in protecting the rights and lives of workers. Three principles should drive the development of a strong reform agenda at the federal, state and local level:

### 1. *Strengthen Government's Enforcement of Employment and Labor Laws*

Significant resources and power reside with the agencies responsible for enforcing wage and hour, health and safety, prevailing wage, anti-discrimination, taxation, and right-to-organize laws. Tapping the often unrealized potential of these agencies will require increased staffing, but even more importantly, aggressive enforcement in low-wage industries, coordination with stakeholders on the ground, and stronger penalties so that violations carry high costs.

## *2. Update Legal Standards for the 21st Century Workplace*

Raising the minimum wage, updating health and safety standards, expanding overtime coverage, and restoring the right of workers to organize – all are key improvements that will improve compliance in the workplace and boost the competitive position of employers who play by the rules. Employment and labor laws must also be updated to address new strategies by employers to evade responsibility for their workers, such as subcontracting and independent contractor misclassification. And historical exclusions of occupations such as home care workers from legal protection must be ended once and for all.

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

The best defense against workplace violations is workers who know their rights, have full status under the law to assert them, have access to legal services, and do not fear retaliation when bringing claims against their employers. Therefore, a guiding principle for national immigration reform must be that immigrant workers have equal protection and equal status in the workplace. In addition, agencies enforcing employment and labor laws must create a firewall between themselves and immigration agencies, so that workers do not fear deportation when bringing a wage claim. And all workers, regardless of immigration status, must be entitled to the full remedies available under law.

## GOING LOCAL

New York City is home to a broad array of local organizations that have deep relationships in impacted communities and that can help address the problem of workplace violations. In particular, immigrant worker centers and unions should be a key resource for government enforcement efforts, providing much-needed information about industry dynamics and employer evasion tactics. At the same time, city government has an array of tools that it should use to send the signal that unregulated work will not be tolerated in New York. The City can harness its extensive network of service providers to deliver outreach and education about rights in the workplace. It can commit funds to increase the legal services available to workers with wage claims. It can support the creation of more day labor centers; crack down on exploitative employment agencies; educate employers about their legal responsibilities; ensure safety at construction sites; and rigorously enforce the prevailing wage and living wage laws under its jurisdiction.

After a decades-long struggle to emerge from the fiscal crisis of the 1970s, New York City now sits at the cusp of sustained growth. Yet the working conditions described in this report force the question: will the city's resurgence be built on a set of workplace practices that violate not only the letter of the law, but also our most basic principles of dignity and justice? In the voices of the workers, legal advocates and other stakeholders that we interviewed over the past three years, we heard the hope and conviction that our city can, and must, do better.

## National Employment Law Project

### State Minimum Wage Rates 2008-09

<u>State</u>	<u>2008</u>	<u>2009</u>
Washington	\$8.07	+
California	\$8.00	\$8.00
Massachusetts	\$8.00	\$8.00
Oregon	\$7.95	+
Illinois	\$7.75	\$8.00 (7/1)
Vermont	\$7.68	+
Connecticut	\$7.65	\$8.00
District of Columbia	\$7.55	\$8.25 (7/24)
Michigan	\$7.40	\$7.40
Rhode Island	\$7.40	\$7.40
Hawaii	\$7.25	\$7.25
Iowa	\$7.25	\$7.25
Maine	\$7.25 (10/1)	\$7.50 (10/1)
New Hampshire	\$7.25 (9/1)	\$7.25
New Jersey	\$7.15	\$7.15
Alaska	\$7.15	\$7.15
Delaware	\$7.15	\$7.15
New York	\$7.15	\$7.25 (7/24)
Pennsylvania	\$7.15	\$7.25 (7/24)
Colorado	\$7.02	+
Ohio	\$7.00	+
Arizona	\$6.90	+
Nevada	\$6.85	++
Florida	\$6.79	+
Missouri	\$6.65	+
Idaho	\$6.55	\$7.25 (7/24)
Indiana	\$6.55	\$7.25 (7/24)
Kentucky	\$6.55	\$7.25 (7/24)
Maryland	\$6.55	\$7.25 (7/24)
Montana	\$6.55	+
Nebraska	\$6.55	\$7.25 (7/24)
North Carolina	\$6.55	\$7.25 (7/24)
North Dakota	\$6.55	\$7.25 (7/24)
Oklahoma	\$6.55	\$7.25 (7/24)
South Dakota	\$6.55	\$7.25 (7/24)
Texas	\$6.55	\$7.25 (7/24)
Utah	\$6.55	\$7.25 (7/24)
Virginia	\$6.55	\$7.25 (7/24)
New Mexico	\$6.50	\$7.50
Wisconsin	\$6.50	\$6.50
Arkansas	\$6.25	\$6.25
Minnesota	\$6.15	\$6.15
Georgia	\$5.15	\$5.15
Wyoming	\$5.15	\$5.15
Kansas	\$2.65	\$2.65
Alabama	n/a	n/a
Louisiana	n/a	n/a
Mississippi	n/a	n/a
South Carolina	n/a	n/a
Tennessee	n/a	n/a

### Notes

2008 minimum wage rates are current as of July 24, 2008, unless otherwise noted.

2009 minimum wage rates are effective January 1, 2009, unless otherwise noted.

“+” indicates that the state’s minimum wage will automatically increase to reflect the cost of living on January 1.

“++” indicates that Nevada’s minimum wage will automatically increase to reflect the cost of living on July 1.

“n/a” indicates that the state has no minimum wage established by state law.

Source: NELP analysis of state minimum wage laws.