

**Statement of the National Employment Law Project on the Subject of Employment and
Labor Protections for Day Laborers in New York City**

New York City Council Hearing on Day Laborers

January 15, 2003

**Prepared by Luna M. Yasui
The National Employment Law Project
55 John St., 7th Fl.
New York, NY 10038
(212) 285-3025 x105
lyasui@nelp.org
www.nelp.org**

About NELP

The National Employment Law Project (NELP) is a non-profit law and policy organization based in New York City. NELP has advocated on behalf of low-wage, unemployed and immigrant workers for nearly 30 years. The Immigrant Day Labor Advocacy Project is part of NELP's Immigrant Worker Project which provides technical support and legal resources to service providers, community based organizations, organized labor and policy makers interested in protecting and expanding the rights of immigrant workers.

Summary

New York City has historically relied on day laborers to perform manual labor such as construction work, landscaping and to provide domestic services. Today, formal and informal day labor sites are thriving in Williamsburg, Jackson Heights, Bensonhurst, Flushing and on Staten Island to name just a few areas. A Village Voice article estimates that approximately 3,000 day laborers seek work in roughly two dozen day labor sites throughout the five boroughs. See attached. Anecdotal testimony from day laborers and organizers indicate that the downturn in the economy has resulted in a growing number of workers turning to day labor as their only viable employment option.

Many of the City's day laborers are immigrants with limited job opportunities. Desperate for work, day laborers must often perform hazardous tasks for the lowest of wages. Fearful of retaliation, many day laborers are reluctant to report occupational hazards and injuries or unpaid wage claims. NELP supports the creation and funding of day labor centers to address the many workplace needs of day laborers in New York City. Organizations such as the Latin American Workers Project, the Workplace Project, and El Centro De Hospitalidad show that day labor centers offer invaluable resources in protecting the workplace rights of day laborers. As legal advocates, NELP is also aware that many workers, employers and advocates are unaware of the workplace rights of day laborers and other immigrant workers. NELP supports collaborative efforts between administrative agencies, city councilmembers, service providers, day laborers and advocates to educate each other and to begin addressing the needs of day laborers in New York City.

Overview of Workplace Rights of Day Laborers

Day laborers like many other workers in the United States, are protected by federal and state employment laws that govern wage and hour protections, workplace health and safety and the right to workplace organizing. The Fair Labor Standards Act (FLSA) protects the wage and hour rights of most day laborers. Generally, the FLSA provides for payment of at least the federal minimum wage for the first 40 hours worked in a workweek, overtime pay of time and one half pay for time worked over 40 hours in a workweek, restrictions on child labor and maintenance of employment records. The FLSA covers all employers engaged in interstate commerce or in the production of goods for commerce and annual gross sales or business volume of at least \$500,000. The Occupational Safety and Health Act (OSH Act) provide workplace health and safety protections. OSH Act authorizes the Department of Labor's Occupational Safety and Health Administration (OSHA) to adopt workplace health and safety regulations. Employers are responsible for meeting these guidelines to ensure healthful and safe work and work conditions. The National Labor

Relations Act (NLRA) prohibits employers from engaging in unfair labor practices against employees and unions seeking to organize them. Furthermore, the NLRA requires employers to bargain in good faith with organized workers over the terms and conditions of their employment.

Under New York's Labor Laws, day laborers have the right to earn at least the minimum wage of \$5.15/hr. Day laborers are entitled to overtime pay of one and a half times the regular rate of pay for each hour worked in excess of forty in a workweek. Employers are required to pay day laborers on a weekly basis and no later than seven calendar days after the end of the week in which the wages are earned. New York law limits deductions from wages to those that are required by law and those that benefit the employee and are authorized in writing by the employee. New York law also imposes record keeping requirements on day labor employers. With each payment of wages, an employer must provide each employee with a wage statement that contains: hours worked, rates paid, gross wages, allowances taken, deductions and net wages. All employees must be informed of their rate of pay and regular pay at the time of hire.

Pursuant to NY Labor Law §§ 198 and 663, employers are liable for unpaid wages, as well as reasonable attorney's fees and costs. An aggrieved employee can seek administrative remedies or sue to recover unpaid wages. Where the non-payment is found to be "willful", an additional amount of 25% of the total amount of wages is owed in liquidated damages. The statute of limitations for such actions is six years. Furthermore, In New York, non-payment of wages and failure to maintain records a criminal offense. An employer who does not pay wages or fails to maintain and preserve records for three years is guilty of a misdemeanor for the first offense. This crime is punishable by a fine between \$500 and \$20,000 or imprisonment for up to one year. Second or subsequent offenses within six years of the date of conviction for a prior offense constitute a felony punishable by a fine between \$500 and \$20,000 and/or imprisonment of up to one year and a day for each offense.

Wage and Hour Violations are Rampant in the Day Labor Industry

Despite the legal wage and hour protections afforded to day laborers, studies and anecdotal evidence also show pervasive wage and hour violations committed by day labor employers and temporary labor agencies. The short nature of the employment relationship, multiple barriers to enforcement resources and the lack of strong protective wage and hour laws render day laborers particularly vulnerable to non-payment of wages. Wage and hour problems confronting day laborers take many forms and include: complete non-payment of wages; payment of less than the agreed upon rate; payment by checks with insufficient funds and late payment of wages. Day labor employers often delay payments of promised wages until the completion of a job. Upon completion, day laborers are commonly left with less than promised or a void check. Lack of access to social and legal services that could assist them in enforcing their workplace rights leave few options for day laborers seeking to recover unpaid wages.

According to a survey of day laborers conducted in conjunction with the Workplace Project on Long Island, New York, daily earnings on average are \$66. Day laborers are typically working three days a week. Average weekly earnings were \$222.50. Day laborers face similarly dismal earnings across the country. A Chicago study focusing primarily on homeless day laborers found that 82% were paid an hourly wage of \$5.50 or less. Nearly two-thirds of the respondents (64.5%) were earning less than the federal minimum wage of \$5.15/hr. The study concluded that if a day laborer

were to work steadily and somehow manage to avoid the seasonal downturns that are a part of the industry, they would still earn less than \$9,000 a year. A comprehensive study of street corner day laborers conducted by the University of California in Los Angeles found the average monthly wage for a day laborer in Los Angeles during months with good weather and plentiful work was \$1,000. Monthly wages plummeted to \$350 during the off-season. With such abysmal earnings, day laborers are forced to work long hours to make ends meet. The desperation for work often leads to acceptance of hazardous employment.

Day Laborers Are at High Risk for Occupational Fatalities and Injuries

Day laborers often toil under hazardous conditions without the benefit of health and safety training or equipment. Due to the lack of notice requirements, most day laborers have no advance warning about possible exposure to hazardous materials or dangerous tasks. Desperate for work and fearing retaliation, day laborers often risk life and limb without ever reporting work hazards. Day laborers are often assigned to the dangerous tasks shunned by workers with more options. As a result, day laborers face a higher incidence of workplace injuries and fatalities. A stark example of health and safety abuses occurred soon after September 11th. For weeks, hundreds of day laborers, mostly immigrant women, were being hired off of street corners to clean the debris from stores and apartments in the World Trade Center Area. NELP staff, organizers from the Latin American Workers' Project and the New York Committee on Occupational Safety and Health spoke with hundreds of these workers and not a single worker was informed of the nature of the work, potential exposure to hazardous materials such as asbestos and fiberglass and not a single worker had been offered safety training. The vast majority of employers were not providing any health and safety equipment. Despite these dangerous work conditions, people needed to work. Those who complained of coughing up blood or irritated eyes were quickly replaced with another worker.

Many day laborers fall within the jurisdiction of the Federal Occupational Safety and Health Administration (OSHA). Limited investigative resources, the fleeting nature of day labor employment and the complaint driven nature of OSHA enforcement result in a virtual absence of health and safety enforcement for day laborers. In theory the complaints process that drives enforcement of the OSH Act makes it possible for any employee to report a health and safety violation. In practice, fear of retaliation, the short term nature of day labor have and limited enforcement resources have severely restricted OSHA monitoring of day labor worksites. OSHA's focus on larger projects and employers results in a lack of oversight of smaller employers more likely to employ day laborers. A New York Newsday analysis concluded that at least 202 immigrant workplace fatalities went completely unreviewed by safety inspectors. See attached.

In New York, all workers sustaining an injury arising in the course of their employment are eligible for workers' compensation benefits. Workers' compensation benefits are available to workers regardless of immigration status. Unfortunately, many immigrant workers are unaware of their eligibility for workers' compensation benefits. For many workers fear of employer retaliation prevents them from applying for benefits. There is an enormous need to raise awareness of the right to workers' compensation and to reduce the delays in the workers' compensation system.

Recommendations

1. City councilmembers should support the creation of and pledge funding for day labor centers that strive to provide a respectful space for day laborers to search for work and to

learn about how to protect their workplace rights. NELP urges city councilmembers to reach out to day labor advocates and community leaders in their districts to identify and raise funds for day labor centers.

- Day labor centers run by and for day laborers have been instrumental in protecting the workplace rights of day laborers. Centers enable day laborers and advocates to obtain crucial information about day labor employers. Such information can assist advocates in recovering unpaid wages. Most importantly, centers provide workers with a safe environment to share strategies about protecting their workplace rights.
- A center offers day laborers a space to search for work with dignity and respect. A physical space can protect day laborers from traffic, inclement weather and harassment from passers by.
- A center can facilitate worker outreach and education by providing day laborers and advocates with a place to conduct workshops on employment and labor rights, occupational safety and health, English classes and other job related skills.
- Day labor centers offer day laborers, advocates and community members with a space to come together and discuss issues of mutual concern.

2. Councilmembers can work with organizers and community leaders to disseminate accurate information about workplace rights and resources available to day laborers. Many day laborers are unaware of their workplace rights. Day laborers who need assistance are often cut off from social or legal services that can assist in protecting their rights. Councilmembers can identify available resources in their districts and neighboring areas and encourage service providers to address the needs of day laborers in their communities. Efforts should be made to identify and translate relevant materials for distribution.
3. City councilmembers should support City Council Intro. 326-2002 "Access Without Fear." This proposed bill would protect confidential information of New Yorkers seeking city services. Confidential information includes: Information about health or disability status, income tax records, sexual orientation, status as a crime victim, status as a victim of domestic violence, public assistance status, immigration status and other information protected by law from disclosure. Without the protections embodied in the proposed legislation, workers who are concerned about disclosing confidential information are discouraged from:
 - going to public hospitals if injured on the job.
 - reporting hazardous work conditions to the Department of Health.
 - making complaints to the City Comptroller's office about failure to receive prevailing wage rates.
 - filing employment discrimination complaints with the New York City Commission on Human Rights.
 - reporting crimes and cooperating with police investigations.
4. City councilmembers should take firm public stances supporting the right of day laborers to search for work with dignity. Desperate for work, day laborers endure egregious working conditions for fear of unemployment or other retaliation by employers. City councilmembers can alleviate some of this fear by creating a climate of respect for day laborers and all workers by speaking out against workplace exploitation, highlighting the

contributions of day laborers, educating the public about the rights of day laborers and encouraging day laborers to report dangerous work conditions and unpaid wage claims.

5. City councilmembers should oppose any collaborative initiatives between the Immigration and Naturalization Service and local police. Such collaborations would only increase the climate of fear within immigrant communities and discourage day laborers from accessing city services.

References for further information

Available from NELP at www.nelp.org

Fact Sheets for New York Workers

A series of fact sheets for workers on wage and hour rights, unemployment insurance, workers' compensation benefits, employment discrimination and family and medical leave.

From Orchards to the Internet: Confronting Contingent Work Abuse. A report from the National Employment Law Project and the Farmworker Justice Fund, Inc., finds that subcontracting, a growing trend, is detrimental to workers. From high-tech workers to farm workers, employers have been steadily increasing their use of subcontracting in an effort to cut costs and shift responsibility for wages and working conditions. (March 20, 2002)

The Legal Landscape for Contingent Workers in the United States. Contingent or non-standard work is now present in virtually every sector of the economy; in some industries (such as computer programming, financial services and telecommunications) these types of jobs are a relatively new development, while in others (garment, agriculture, taxi drivers) the jobs cannot be called "non-standard" because they have been the paradigm for a century or more. By Catherine K. Ruckelshaus, National Employment Law Project and Bruce Goldstein, Farmworker Justice Fund, Inc. (2001)

Other resources

Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance, United States General Accounting Office, Sept. 2002.

Workers in Contingent Employment Lack Insurance, Other Benefits, United States General Accounting Office, Mar. 1991.

Day Laborers in Southern California: Preliminary Findings from the Day Labor Survey, Abel Valenzuela, Jr., Ph.D, Center for the Study of Urban Poverty, Univ. of California, Los Angeles, May 30, 1999.

A Quantitative Analysis of 'Shape-Ups' on Long Island: A Report Prepared for the Workplace Project, John Leonardo, James O'Shea et. al, Hofstra University, Jan. 1997.

A Fair Day's Pay? Homeless Day Laborers in Chicago, Nikolas Theodore, Center for Urban Economic Development, Univ. of Illinois at Chicago, Feb. 22, 2000.

Contingent Workers Fight for Fairness, A Report From the National Alliance for Fair Employment. Available from www.fairjobs.org.