

# **Working Without Laws:**

**A Survey of Employment and  
Labor Law Violations in New York City**

**By Annette Bernhardt, Diana Polson and James DeFilippis**

With Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer,  
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# Executive Summary

This report exposes a world of work in which America's core labor and employment laws are failing to protect significant numbers of workers in the nation's largest city. These protections—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 being violated at alarming rates in the city's low-wage labor market. The sheer breadth of the problem, spanning key industries in the economy, as well as its profound impact on workers and their communities, entailing significant economic hardship, demand urgent attention.

In 2008, we conducted a landmark survey of 1,432 workers in low-wage industries in New York City. We used an innovative, rigorous methodology that allowed us to reach vulnerable workers who often are 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 (excluding managers, professional or technical workers) in low-wage industries in New York City—a population that we estimate numbers more than a half-million (586,322) workers.

## **Finding 1: Workplace violations are severe and widespread in New York's low-wage labor market**

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We found that many employment and labor laws regularly and systematically are violated, impacting a significant part of the low-wage workforce in New York City. Here we summarize only key violations; Table 3.1 lists all the violations measured in our study.

### **Minimum wage violations:**

- Fully 21 percent of workers in our sample were paid less than the legally required minimum wage in the previous workweek.\*
- These minimum wage violations were not trivial in magnitude: 51 percent of workers were underpaid by more than \$1 per hour.

### **Overtime violations:**

- More than one-third of our respondents had worked more than 40 hours during the previous week. Of those, 77 percent were not paid the legally required overtime rate by their employer
- Like minimum wage violations, overtime violations were substantial in magnitude. The average worker with a violation had worked 13 hours of overtime in the previous week—hours that either were underpaid or not paid at all.
- New York also has a daily overtime requirement when employees work more than 10 hours in a single day. The vast majority of workers (93 percent) who qualified for this daily overtime pay did not receive it.

\* 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 one-third (29 percent) of the workers in our sample came in early and/or stayed late after their shift during the previous workweek. Of these workers, 69 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 (90 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 (70 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:**

- According to New York state law, workers are required to receive documentation of their earnings and deductions, regardless of whether they are paid in cash or by check. However, 55 percent of workers in our sample did not receive this mandatory documentation in the previous workweek.
- In New York, employers generally are not permitted to take deductions from a worker’s pay for damage or loss, work-related tools or materials or transportation. But 33 percent of respondents who reported deductions from their pay in the previous workweek were subjected to these types of illegal deductions.

### **Tipped job violations:**

- In New York State, workers who receive tips have a separate, lower minimum wage requirement. Of the tipped workers in our sample, 37 percent were paid less than the tipped worker minimum wage in the previous workweek.

### **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 importantly, many workers never made complaints in the first place, often because they feared retaliation by their employer.

- Nearly one-quarter (23 percent) of the workers in our sample reported they had made a complaint to their employer or government agency, or attempted to form a union, in the last year. Of those, 42 percent experienced one or more forms of illegal retaliation from their employer. For example, employers cut workers’ hours and/or pay, fired or suspended workers or threatened to call immigration authorities.
- Another 23 percent of workers reported 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. Of these workers, 41 percent were afraid of losing their job and 40 percent thought it would not make a difference. Fear of retaliation and expectations of employer indifference, then, figure strongly in workers’ decisions about whether to make a complaint.

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

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

- Of the workers in our sample who recently experienced a serious injury on the job, only 11 percent filed a workers' compensation claim. In addition, fully 47 percent reported they were required to work despite their injury, and an additional 33 percent said their employer refused to help them with the injury.
- When the injured workers in our sample sought medical attention, 75 percent either had to pay their bills out of pocket or use their health insurance to cover expenses. Only 6 percent had their medical expenses paid by workers' compensation insurance.
- When workers told their employer about the injury, 16 percent experienced an illegal employer reaction; for example, employers fired or threatened to fire workers if they filed a claim, called or threatened to call immigration authorities, or instructed the workers not to file for workers' compensation.

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

- Some workers either are partially or completely exempt from employment and labor laws—because of archaic exemptions of specific industries and occupations, or because they are considered to be independent contractors.
- We surveyed one group of workers 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 88 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 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.

- Workplace violation rates vary significantly by industry and occupation. For example, minimum wage violation rates ranged from as little as 2 percent in some industries to as much as 53 percent in other industries, and the range across occupations was similarly wide.
- Some industries and occupations are rife with multiple types of violations; for example, laundry, dry-cleaning and private household workers faced very high rates of minimum wage, overtime and off-the-clock violations. Other industries and occupations had high rates of some violations but not others; for example, home health care workers had relatively few minimum wage violations but high rates of overtime, off-the-clock and meal break violations. Workers in industries such as restaurants, retail and manufacturing usually fell into the middle of the distribution. (See Figures 4.1 to 4.9 for complete industry and occupation results.)



- 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. In particular, non-hourly pay arrangements virtually guarantee that workers will experience overtime violations.
- 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; more than one out of 10 workers at large companies experienced a minimum wage violation, and among those who worked overtime, 58 percent were underpaid or not paid at all for the extra hours.
- 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 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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Women, immigrants and people of color are disproportionately likely to be employed in low-wage industries, and therefore are at greater risk of workplace violations. But violations are not limited to immigrant workers or other vulnerable groups in the labor force—everyone is at risk, albeit to different degrees.

We found that a range of worker characteristics were correlated with higher minimum wage violations:

- Foreign-born workers were more than twice as likely as their U.S.-born counterparts to have a minimum wage violation. The higher rates were concentrated among women—especially women who were unauthorized immigrants, 40 percent of whom had a minimum wage violation in the previous week.
- U.S.-born workers of color had minimum wage violation rates ranging from 8 percent to 17 percent, in stark contrast to U.S.-born white workers, who in our sample did not have any minimum wage violations in the previous workweek.
- Higher levels of education offered some protection from minimum wage violations, but even college-educated workers still were at significant risk.

By contrast, worker characteristics were only weakly correlated with overtime, off-the-clock and meal break violations. On the whole, job and employer characteristics were more powerful predictors of the workplace violations considered in this study than the demographic characteristics of the workers.

## Finding 4: Weekly wage theft in New York City

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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 half (54 percent) of our sample experienced at least one pay-related violation in the previous workweek. The average worker lost \$58 out of average weekly earnings of \$397. Assuming a full-time, full-year work schedule, we estimate that these workers lost an average of \$3,016 annually due to workplace violations, out of total earnings of \$20,644. That translates into wage theft of almost 15 percent of earnings.
- *Communities:* We estimate that in a given week, approximately 317,263 workers in New York City have at least one pay-based violation. Extrapolating from this figure, front-line workers in low-wage industries in the five boroughs lose more than \$18.4 million per week as a result of employment and labor law violations.

## How New York can strengthen worker protections

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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.

Policy reforms are needed at the federal level, but state and local governments have a significant role to play as well. This report lays out a comprehensive policy agenda to protect the rights of workers in New York (see Section 7), driven by two core principles:

- **Strengthen state and city enforcement of employment and labor laws:** New York is well-placed to tackle the problem of workplace violations, given the state's strong labor laws, significant enforcement resources and energized community advocates. In recent years, state enforcement has been improved substantially through the use of proactive investigations and outreach to community groups, but recent budget cuts have strained resources and slowed progress. New York State must recommit resources toward enforcement, institutionalize recent successes and enact new legislation to strengthen enforcement tools. New York City must do its part by enforcing the labor standards that fall under its authority. It also should dedicate resources to public education campaigns and support enforcement efforts by community-based organizations, worker centers and legal services providers.
- **Update legal standards for the 21st century labor market:** Strong enforcement is important, but so are strong legal standards that recognize the changing organization of work in the United States. 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. Raising the minimum wage, closing loopholes that exclude workers from key protections and ensuring state and city resources are used to create living wage jobs are all key improvements that would raise compliance in the workplace and improve the competitive position of employers who play by the rules.



# 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 lies 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 state investigators.<sup>1</sup>

In August 2008, the New York State Department of Labor completed a comprehensive investigation into 84 randomly selected car washes across the state. The results of that investigation are striking: 78 percent of the car washes in New York City had

violated both minimum wage and overtime laws, and 39 percent engaged in tip stealing from their workers. One of the major car wash chains in the region recently settled a multiyear suit, agreeing to pay \$3.4 million in lost wages and damages to 1,187 current and former employees.<sup>2</sup>

And in October 2008, a federal judge ordered Saigon Grill to pay \$4.6 million in back wages and damages to its delivery workers. The delivery men earned as little as \$1.60 an hour for working up to 13 hours a day, six or seven days a week. Illegal deductions were taken from their pay, in the form of fines and kickbacks. The scale of the wage theft in this case is astonishing—some workers were owed as much as \$328,000. A separate ruling by the National Labor Relations Board found the restaurant's owners had illegally fired 28 workers as retaliation for filing the wage theft lawsuit.<sup>3</sup>

Unfortunately, these cases are not unusual, nor are they limited to a few sectors or just small businesses. A decade into the 21st century, our country's employment and labor laws are failing to protect New York City'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. The severity of cases brought by workers and government agencies in recent years, like the ones described above, as well as a small but growing body of research, suggest the need to take a closer look at the state of worker protections in New York City.<sup>4</sup>



To date, very few studies have been able to estimate the proportion of workers experiencing workplace violations across the full range of industries in our economy. As a result, we lack robust data on the magnitude of the problem, the industries with the biggest offenders, or the workers who are most affected. The limited data, in turn, hamper effective policy responses.

This report presents research findings that begin to fill the gap. In 2008, we surveyed almost 1,500 workers in low-wage industries in New York City. Using a rigorous survey methodology that allowed us to reach vulnerable workers who often are 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) all too often are 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 a few unscrupulous employers; we found that both large and small employers violate the law, in a wide range of industries spanning the city's economy. Nor are these abuses limited to specific parts of the workforce. Although women, immigrants and people of color are disproportionately affected, we found that all workers in the low-wage labor market are at risk of workplace violations.

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

This study was done as part of a larger coordinated research effort that surveyed more than 4,300 workers in low-wage industries in Chicago, Los Angeles and New York City. A national report on our findings, *Broken Laws, Unprotected Workers*, combined data from all three cities and was released in the fall of 2009.<sup>5</sup> Here, we present findings for New York City only, in order to document the extent to which the city's employers are complying with state and federal laws. A cross-city comparison of violations lies outside the scope of this report, given the variation in legal standards, industry and workforce composition, but is planned for future research.



Better enforcement of worker protections is part of the solution, but alone won't solve the problem. Our system of employment and labor laws is badly out of date and riddled with weak standards. Some occupations and industries either are partly or completely exempted from coverage. Many health and safety standards 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.

But the high rates of workplace violations we document in this report raise an urgent, resounding warning that even existing protections are failing New York's workers. Our data were collected in 2008, but there is reason to believe that the situation has deteriorated further since then. Legal services organizations and community groups are reporting the recession has intensified exploitation, as employers are ever more focused on cutting costs and workers feel increased pressure to accept subminimum wages and unpaid overtime in the face of high unemployment.

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

## A Landmark Survey of the Low-Wage Labor Market in New York City

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 understandably are 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 largely are inadequate to assess the current state of employer compliance with U.S. employment and labor laws.<sup>6</sup>

In this study, we build on an emerging body of research that has established the viability of gathering reliable data on employment and labor

law violations from workers themselves—including a range of innovative studies in New York City.<sup>7</sup> Specifically, in 2008 we conducted a representative survey of low-wage workers in New York City as part of the larger 2008 Unregulated Work Survey Project (which consisted of coordinated surveys in Chicago, Los Angeles and New York City). 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.

## Whom did we survey?

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From January through August 2008, we surveyed a total of 1,432 workers in New York City. To qualify for the survey, workers had to be:

- a. age 18 or older, and currently working for an employer located in New York City (the five boroughs);
- 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).

We designed the survey to be broad enough to capture a range of industries and occupations across New York City’s economy, yet targeted enough to exclude upper-level occupations such as lawyers or stockbrokers (most of whom are exempt from the core requirements of the laws of interest here).

A note on timing. We fielded the survey in the first half of 2008, but 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 New York City 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 or because they are paid off the books.

These problems recently have 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 project member 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 increased through successive waves of recruitment.



A key advantage of this method is that workers were recruited by trusted friends and acquaintances who already had participated in the survey and could vouch for its confidentiality. This provided a powerful way to overcome barriers of fear and disclosure.

We took several steps to ensure that our sample is representative of the larger population of front-line workers in low-wage industries in New York City. 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 also is 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 New York City's low-wage labor market.

The survey was fielded at five sites across the city, including community colleges, community-based organizations and churches. 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 22 staff fielded this survey in New York City (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 laws 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 that 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 knowledge about their rights under employment and labor laws, 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 a law had been violated.<sup>8</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 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 we report.

**Table 2.1: Characteristics of Workers in the 2008 Unregulated Work Survey, New York City**

		Percent of workers
<b>Gender</b>	Male	43.0
	Female	57.0
<b>Age</b>	18-25	30.4
	26-35	21.3
	36-45	20.7
	46+	27.6
<b>Race/ethnicity</b>	Latino/Latina	55.0
	Black	12.5
	Asian/other	24.5
	White	8.0
<b>Education</b>	Less than high school, no GED	30.7
	High school graduate or GED	34.4
	Some college or higher	34.9
<b>Nativity and legal status</b>	U.S.-born citizen	29.9
	Foreign-born authorized (includes naturalized citizens)	45.7
	Foreign-born unauthorized	24.4
<b>Country of Origin</b>	United States	29.9
	Mexico	11.5
	Central America	22.4
	South America	12.3
	Asian	15.0
	Other Foreign-born	8.9
<b>Main industry during previous week of work</b>	Restaurants	19.3
	Retail & drug stores	16.8
	Private households	11.1
	Grocery stores	10.5
	Home health care	7.9
	Social services, child day care centers & schools	7.4
	Janitorial,* security & grounds services	6.2
	Beauty salons, nail salons, barber shops	4.2
	Laundry & dry cleaning	4.1

<b>Main industry during previous week of work</b>	Food & furniture manufacturing, transportation & wholesale	4.0
	Residential construction	3.4
	Apparel & textile manufacturing	2.6
	Other (other health care, banking, auto repair, carwashes)	1.6
	Courier & messenger services	0.8
<b>Main occupation during previous week of work</b>	Cooks, dishwashers & food preparers	11.1
	Retail salespersons & tellers	9.7
	Home health care workers	9.5
	Janitors,* building cleaners & grounds workers	8.7
	Stock & office clerks	8.1
	Child care workers (private household)	7.9
	Cashiers	7.6
	Waiters, bussers & bartenders	7.3
	Maids & housekeepers	4.7
	Laundry & dry-cleaning workers	4.1
	Hairdressers & cosmetologists	4.0
	Security guards	3.5
	Residential construction workers	3.4
	Factory & packaging workers	3.0
	Sewing & garment workers	2.4
	Delivery drivers, parking lot attendants, car wash & repair workers	1.9
	Teacher's assistants & child care workers (center-based)	1.8
Couriers & messengers	1.3	
<b>Hourly wage during previous work week (in 2008 dollars)</b>	Median hourly wage	\$8.36
<b>Total number of workers in the sample</b>		1432

Source: Authors' analysis of 2008 Unregulated Work Survey.  
\* Janitors in small commercial & residential buildings only.

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 1,432 workers in our sample. Table 2.1 offers an overview of key demographic and employment characteristics. 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>9</sup> and a range of age groups and education levels, although about two-thirds of the sample had 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 composed of naturalized citizens and authorized and unauthorized immigrants.<sup>10</sup> (The sizeable number of the latter category is an indicator of our success in capturing this hard-to-reach part of the labor market.) The upshot is that women, immigrants and people of color are disproportionately employed in low-wage industries in New York City—which, as we will see, puts them at significant risk of workplace violations.<sup>11</sup>

Not surprisingly, workers in our sample also earn very low wages. The median wage (in 2008 dollars) for our sample was \$8.36 an hour, with few respondents earning significantly more than this amount: 71 percent of our sample earned less than \$10 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 workers also are employed in residential construction, manufacturing, transportation and wholesale. Similarly, many of the occupations in our sample are service jobs, such as cashiers, cooks, child care workers, waiters and sales workers, but residential construction laborers and factory workers also are well represented. In short, our sample represents a rich and diverse mix of the industries and occupations that comprise America’s urban economies.

## The scope and scale of the survey findings

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Readers naturally will ask themselves what percentage of the overall workforce is represented in this study. All of the workplace violation 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 New York City in 2008. By our estimate, that population includes more than a half-million (586,322) workers, which is about 31 percent of all front-line workers and about 14 percent of all workers in the city’s five boroughs (see Table A.1 in Appendix A).

# 3

## The Prevalence of Workplace Violations in New York City

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.<sup>12</sup> But our findings show these laws and standards are violated systematically, impacting a significant part of the low-wage labor force in New York City. The framework of worker protections 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.

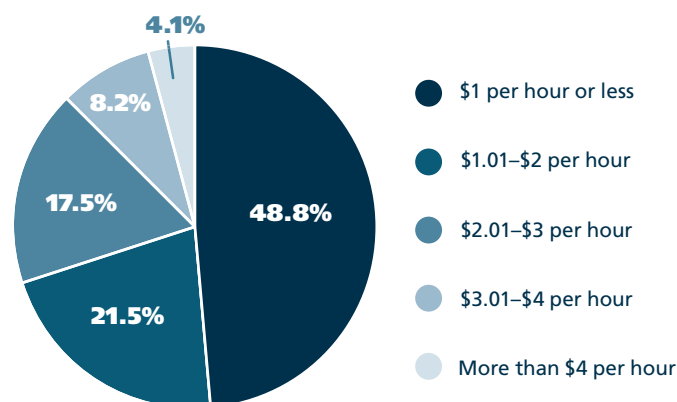
Table 3.1 summarizes the workplace violations experienced by our respondents. We computed these violation rates using two distinct measures. The first measure is designed to specify what proportion of all the workers in our survey experienced a violation, whereas the second measure specifies the proportion 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>13</sup>

## 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 covered workers at or above the minimum wage set by federal or state law, whichever is higher. At the time of our survey, New York state’s minimum wage rate, at \$7.15 per

hour, was higher than the federal standard. 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.

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



Source: Authors’ analysis of 2008 Unregulated Work Survey.

As noted in Section 2, to measure the prevalence of minimum wage violations, we did not rely on our respondents’ knowledge of employment and labor laws, but instead gathered detailed information from each worker about the workweek 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 with the state’s minimum wage to determine whether there

was a minimum wage violation. Thus, workers in New York City who were paid less than \$7.15 an hour at any of their jobs in the previous workweek were identified as having a minimum wage violation.

As Table 3.1 shows, about one-fifth (21 percent) of the workers in our sample were paid less than the minimum wage in the previous workweek. Moreover, these minimum wage violations were not trivial in magnitude: as Figure 3.1 shows, more than 50 percent of workers in our sample were underpaid by more than \$1 per hour.

## Overtime violations

Federal and state law requires that covered employees must be paid “time and a half” (one-and-a-half times their regular rate of pay) for all hours worked in excess of 40 during each week for a single employer.

More than one-third (36 percent) of our respondents worked more than 40 hours during the previous workweek for a single employer and were therefore at risk for an overtime violation. As Table 3.1 indicates, 77 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 26 percent.<sup>14</sup>

Nonpayment or underpayment for overtime work takes a variety of forms. Seventy-seven percent of respondents who had an overtime violation were paid only their regular hourly rate for the hours they worked in excess of 40; another 13 percent were not paid at all for those hours; and 10 percent were paid less than their usual hourly rate or were promised “comp time” in lieu of overtime (which is not legal under New York law). Like minimum wage violations, overtime violations were far from trivial

**Table 3.1: Workplace Violation Rates, New York City**

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	21.2	same
<b>Overtime violations in week prior to survey</b>		
Worker did not receive full weekly overtime pay	25.7	77.3
Worker did not receive full daily overtime pay	4.2	93.3
<b>Off-the-clock violations in week prior to survey</b>		
Worker was not paid for off-the-clock work	20.5	69.3
<b>Meal break violations in week prior to survey</b>		
Worker had any of the below meal break violations	59.7	69.7
Worker was denied meal break	22.0	25.9
Meal break was interrupted by employer or supervisor	14.3	19.3
Worker worked through meal break	16.1	21.5
Meal break was shorter than legally required	42.0	49.0
<b>Other pay violations in week prior to survey</b>		
Worker did not receive a paystub	54.6	same
Worker was subjected to an illegal pay deduction	1.8	32.7
<b>Tipped worker violations in week prior to survey</b>		
Tipped worker did not receive the tipped minimum wage	7.6	37.3
Tips were stolen by employer or supervisor	1.6	6.8
<b>Violations in the 12-month period prior to survey</b>		
Worker had any of the below pay violations in last 12 months	44.5	same
Worked off-the-clock without pay in last 12 months	32.3	same
Paid late in last 12 months	22.1	same
Paid less than owed in last 12 months	16.2	same
Not paid at all in last 12 months	4.4	same
Regular and repeated verbal abuse on the basis of a protected category in last 12 months	5.5	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	41.5
<b>Workers' compensation violations for most recent on-the-job injury</b>		
Worker experienced an illegal action by employer	1.3	16.0

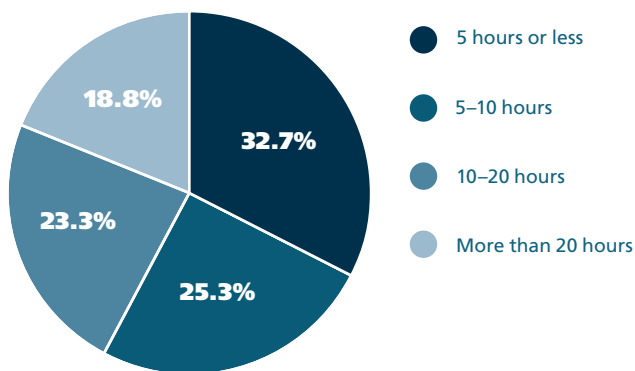
\* Calculated as a percent of all workers in our sample.

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

Source: Authors' analysis of 2008 Unregulated Work Survey.

in magnitude. Among those workers with an overtime violation, the average respondent had worked 13 overtime hours in the previous week, and 19 percent had worked more than 20 overtime hours (see Figure 3.2).

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



Source: Authors' analysis of 2008 Unregulated Work Survey.

In addition to the weekly overtime requirement, New York has a daily overtime requirement. Specifically, employers must pay workers one extra hour (at the state's minimum wage rate) if they work more than 10 hours in a single day for a single employer.<sup>15</sup> However, of our respondents who met the state's daily overtime criteria, the vast majority—93 percent—did not receive the legally required wage.<sup>16</sup>

### **“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 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>17</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 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.

Nearly a third of workers surveyed (29 percent) stated that they had worked before and/or after their regular shifts in the previous workweek, and were thus “at risk” for off-the-clock violations. Of these “at-risk” workers, 69 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 an average of two hours per week without pay.

### **Meal break violations**

New York state law requires most employers to provide workers an uninterrupted meal break during their shift.<sup>18</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. We determined whether workers received all of their required meal breaks and if these breaks were of the required length.

The large majority of our respondents (90 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 (70 percent) experienced a meal break violation in the previous workweek.



Meal break violations took a variety of forms. More than one-quarter (26 percent) of respondents with this violation received no meal break at all at some point during the previous week. Nearly half (49 percent) had a meal break that was shorter than the legally mandated length. Workers also reported being interrupted by their employer during the break (19 percent) or working during part of their meal break (22 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). We asked workers whether they had received a paystub or other documentation of their earnings and deductions. According to New York 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, 55 percent of workers in our sample did not receive this mandatory documentation. We also asked about deductions from pay during the previous workweek. In New York, employers generally are not permitted to take deductions from a worker's pay for damage or loss, work-related tools, materials or transportation or uniforms.<sup>19</sup> Among respondents who reported deductions from their pay, 33 percent were subjected to illegal deductions.

## Tipped workers

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We examined pay-related violations specifically affecting tipped workers. Under New York state law (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 they receive from customers, tipped workers must be paid at least 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>20</sup>

We calculated the tipped minimum wage violation rate by comparing each tipped worker's base wage to the legally required wage.<sup>21</sup> Twenty-one percent of workers in our sample received tips in the previous week. These tipped workers were employed in a variety of jobs, most often working in restaurants (47 percent), in beauty salons (17 percent) or in grocery stores (9 percent). Of these tipped workers, 37 percent experienced violations of the tipped minimum wage.

It also 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, 7 percent of tipped workers in our sample reported such "tip stealing" during the previous workweek.

## Workplace violations during the last 12 months

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For all of the violation rates discussed so far, we calculated whether 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 measures limited to a single workweek.

These estimates are likely less reliable than those for the previous workweek, because they rely on workers remembering incidents that occurred over a much longer time period. That said, 45 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. Thirty-two 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, 24 times in the last year.

Twenty-two percent of workers had been paid late at some point in the last year; this group experienced six incidents of late payment, on average, over the year. Sixteen 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 seven times for those who experienced such underpayment. Finally, 4 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 six times in the last year.

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 New York if such abuse involves race, religion, gender, sexual orientation, national origin, age and/or disability.<sup>22</sup> Five 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 are all 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 gathered information about the reason for their most recent complaint. Workers identified a variety of on-the-job problems, including not being paid for all hours worked (13 percent of all complaints), dangerous working conditions (8 percent), not being paid for overtime (6 percent), not being paid on time (4 percent) and being paid below the minimum wage (3 percent).

Overall, 23 percent of our respondents either made a complaint about a workplace issue or attempted to form a union in the last year. Of those workers, 42 percent reported illegal retaliation from their employer or supervisor as a direct result of their most recent complaint or organizing effort. For example, 74 percent had their hours or pay cut or were given worse assignments, 32 percent were fired or suspended, 32 percent were threatened with deportation or firing, and 31 percent were harassed or abused or had an increase in work load.<sup>24</sup>

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. In our sample, 23 percent of workers indicated that they did not make a complaint 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. Forty-one percent of these workers said that they did not make a complaint because they were afraid of losing their job; 40 percent thought it would not make any difference if they complained; and another 5 percent were afraid they would have their hours or wages cut. Fear of retaliation and expectations of employer indifference, then, figure strongly in workers' decisions about whether to make a complaint.

## Workers' compensation

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Virtually all employers in New York 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.

Eleven percent of our respondents experienced a serious on-the-job injury<sup>25</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.

The workers' compensation system is very rarely used by our respondents. Of the workers in our sample who experienced a serious injury during the previous three years, only 11 percent 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 this is due at least in part to the ways in which employers respond to cases of on-the-job injury. Fully 47 percent of seriously injured respondents reported that they were required to work despite their injury; an additional 33 percent said their employer refused to help them with the injury; 10 percent said their employer made them come into work and sit around all day; 8 percent were fired shortly after the injury; 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 9 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 if they filed a workers' compensation claim; threatening to call immigration authorities in response to an on-the-job injury of an unauthorized worker; or instructing an injured worker not to file a workers' compensation claim.<sup>26</sup> In New York City, 16 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-nine percent of respondents who experienced a serious injury at work sought medical attention for that injury, but within this group, only 28 percent indicated their employers paid for all or part of their medical bills. Three-quarters of those who sought medical attention after an on-the-job injury either had to pay their bills out of pocket (35 percent) or used their health insurance to cover the expenses (40 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.

## 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 either are partially or completely exempt from coverage—because of archaic exemptions of specific industries and occupations, or because they are considered to be independent contractors.<sup>27</sup>

In our survey, we captured one group of workers 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 often are 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 non-profit organization or government agency, or both. Yet under current application of employment and labor laws, both cases likely would be treated the same: exempt from coverage.<sup>28</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 in this report. 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 88 percent of in-home child care workers earned less than the New York state minimum wage. This finding underscores the need to ensure 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 New York City are frequently 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 half (54 percent) of the workers in our sample experienced at least one type of pay-related workplace violation in their previous week of work.<sup>29</sup> Twenty-one percent of the workers in our sample were paid less than the minimum wage for their previous workweek. Perhaps the most striking statistic is that among workers who worked more than 40 hours in their previous workweek, 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, 42 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 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. We now 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 are ultimately 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. That means we need to understand more about the employers in this story: What types of businesses tend to violate employment and labor laws? Which types of jobs are hardest hit? Does the size of the business play a role? And are there other workplace practices that enable or facilitate violations?

This section examines workplace violations through the lens of job and employer characteristics—industry (type of business) and occupation (job tasks or

functions), as well as the various pay arrangements that are common in the low-wage labor market. Diverse job and employer characteristics define our sample, from employer size (37 percent of our sample worked at companies with 100 or more employees) to pay arrangement (40 percent did not have a standard hourly pay relationship with their employer). Moreover, workers representing a wide range of industries were sampled (from retail stores to food manufacturing plants to home health care), as well as a wide range of occupations (from child care to sewing machine operator to car washer). As we will see, these and other job and employer characteristics play a central role in determining whether workers are subject to violations of employment laws.

## Minimum wage violations

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Minimum wage violation rates vary significantly by industry, as shown in Figure 4.1.<sup>30</sup> Violations were especially common in the laundry and dry-cleaning industries, in private households, in beauty salons, nail salons and barbershops and in grocery stores. In these industries, about a third or more of workers were paid less than the minimum wage. Based on our previous qualitative work, the fact that these industries had high minimum wage violation rates is not surprising.<sup>31</sup> For example, workers employed directly by private households are structurally at higher risk of poor working conditions. Pay is negotiated between individual families and the employee on a case-by-case basis, workers often are paid a flat weekly or daily amount regardless of hours worked, and both regulation and enforcement historically have been weak.<sup>32</sup>

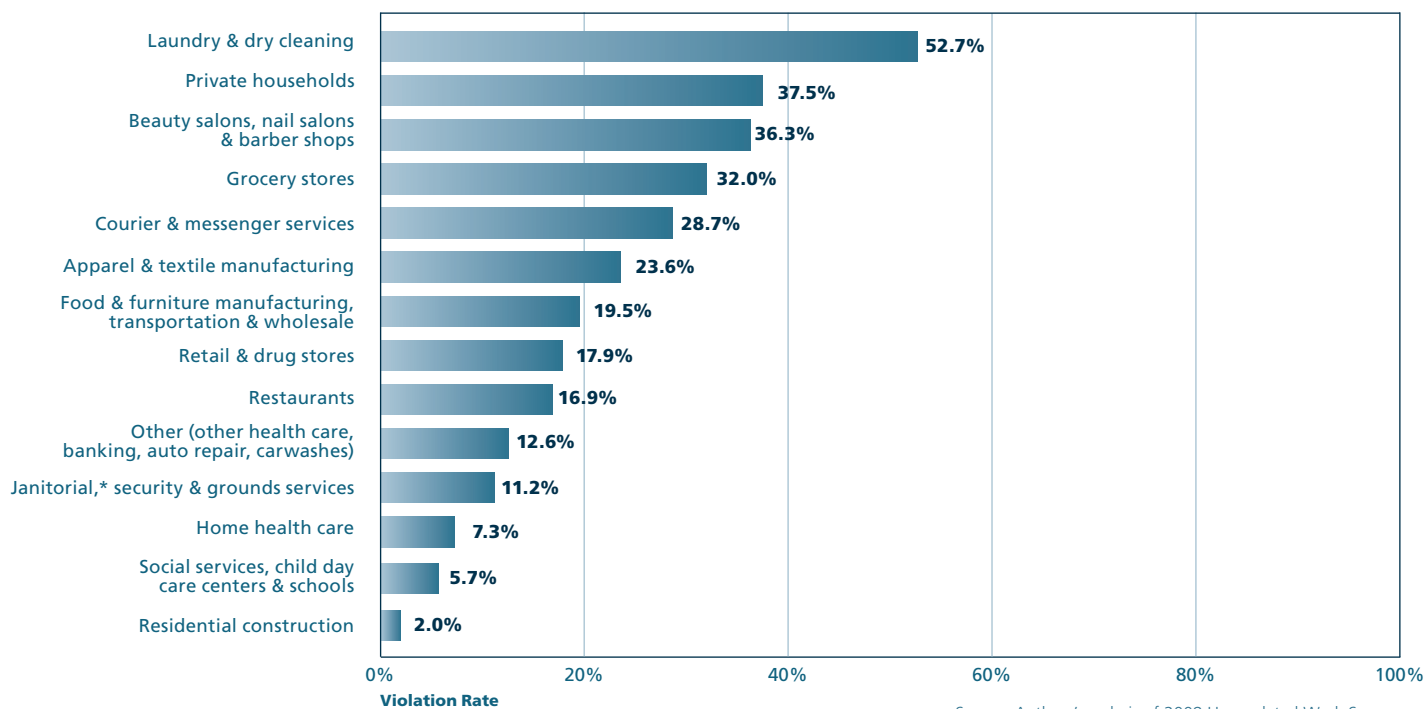
Minimum wage violation rates were substantially lower in home health care (7 percent); social services, child day care centers and schools (6 percent); and residential construction<sup>33</sup> (2 percent). Industries such as garment manufacturing, retail, drug stores and restaurants fell into the middle of the distribution.

As shown in Figure 4.2, minimum wage violation rates also vary by occupation, with much of the variation mirroring that of the industries discussed above. Laundry and dry-cleaning workers have the highest minimum wage violation rate at 57 percent. Child care workers who work in private households had a violation rate of 50 percent, and 45 percent of hairdressers and cosmetologists had a minimum wage violation in the previous workweek. In contrast, workers in the following occupations had relatively low minimum wage violation rates: residential construction workers (2 percent); teacher's assistants and center-based child care workers (6 percent); and home health care workers (8 percent). The low rate for residential construction workers is in line with other research showing that these workers tend to be more vulnerable to other violations, such as non-payment of wages or health and safety violations.<sup>34</sup>

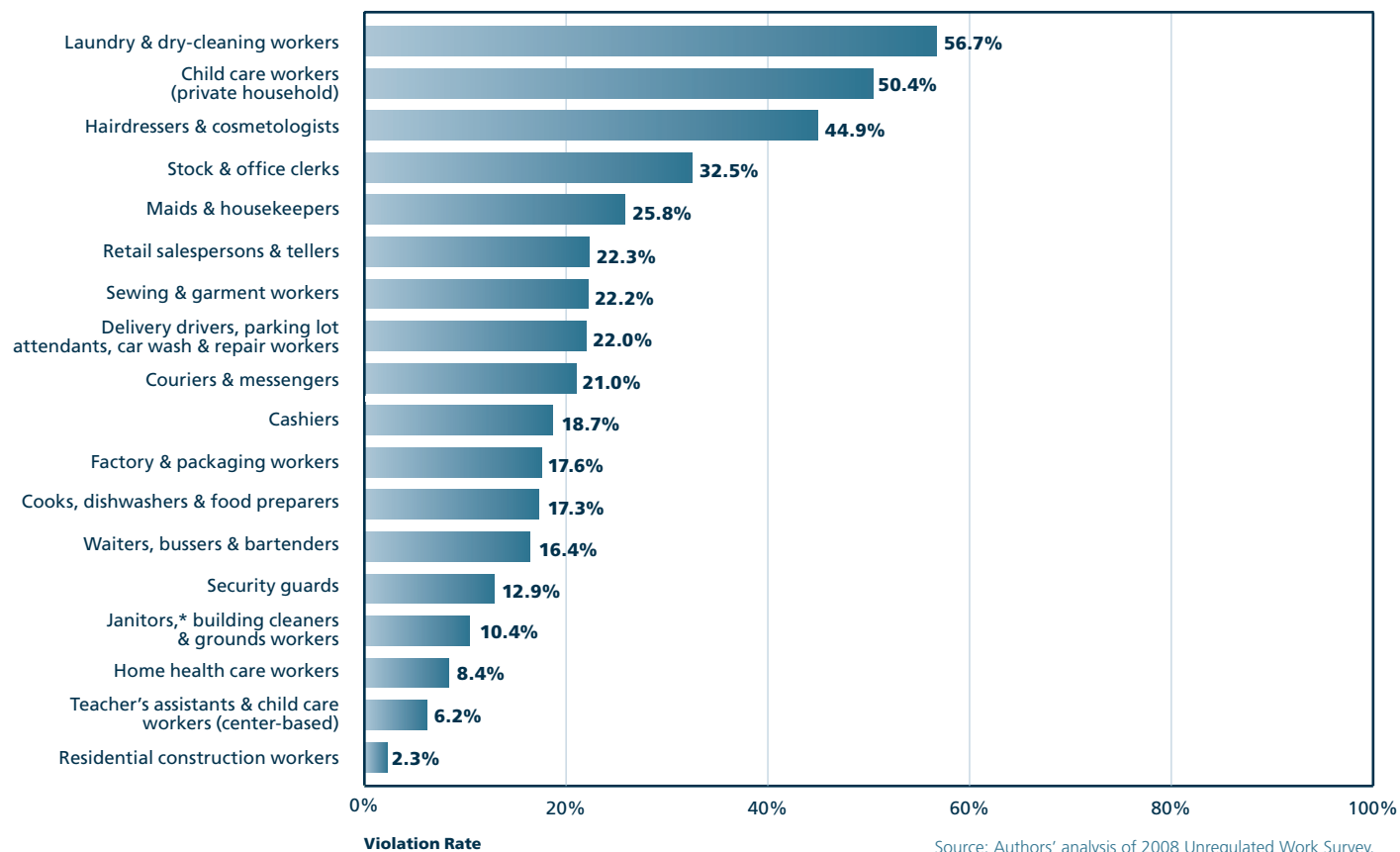
Although many employers in low-wage industries pay their workers a regular hourly wage, others use weekly, daily or other pay types.<sup>35</sup> Many workers are paid on a flat weekly basis, so their pay does not increase with the number of hours they work. For example, a prep cook might be paid \$300 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. For example, a maid might receive \$60 for a day's work, regardless of the number of hours involved. In apparel and textile manufacturing, workers often are paid by the piece—for example, a garment worker might be paid seven cents for each shirt sleeve she sews. Overall, 60 percent of our sample was paid an hourly wage; the remaining 40 percent was paid in some other way, mostly a flat weekly or a flat daily amount.

As Table 4.1 shows, workers in our sample who had non-hourly pay types had substantially higher minimum wage violation rates (32 percent) than those who were paid an hourly wage (14 percent). These differences can be seen within (as well as across) industries and occupations. For example, cooks, dishwashers and food preparers who were paid by the hour had a minimum wage violation rate of 9 percent, while those who were paid on a non-hourly basis had a violation rate of 34 percent. This is not surprising, since when employers use non-hourly pay types, workers' wages are tied only loosely to the number of hours they work, and any increase in hours can result in wages falling below the legal minimum. Non-standard pay arrangements do not cause higher violation rates, but they are a mechanism often used by employers to disguise the fact that workers are not being paid the minimum wage or overtime.

**Figure 4.1: Minimum Wage Violation Rates by Industry, New York City**



**Figure 4.2: Minimum Wage Violation Rates by Occupation, New York City**



**Table 4.1: Workplace Violation Rates by Job and Employer Characteristics, New York City**

		Percent of workers with violations			
		Minimum wage violation rate	Weekly overtime violation rate*	Off-the-clock violation rate*	Meal break violation rate*
<b>All respondents</b>		21.2	77.3	69.3	69.7
<b>Pay type</b>	Hourly	13.6	63.2	61.1	68.5
	Non-hourly	32.4	94.6	82.3	73.1
<b>Pay method</b>	Paid in cash	29.2	91.8	76.2	73.7
	Paid by company check	9.4	58.2	60.2	66.0
<b>Company size</b>	Less than 100 employees	24.7	80.8	77.2	76.6
	100 employees or more	10.3	58.2	55.8	61.6

\* 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 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, state law requires that employees be provided an itemized statement of earnings and deductions for each pay period. As noted in the previous section, 55 percent of workers in our sample did not receive the required statement from their employer—and among workers who were paid in cash, 92 percent did not receive such a statement.

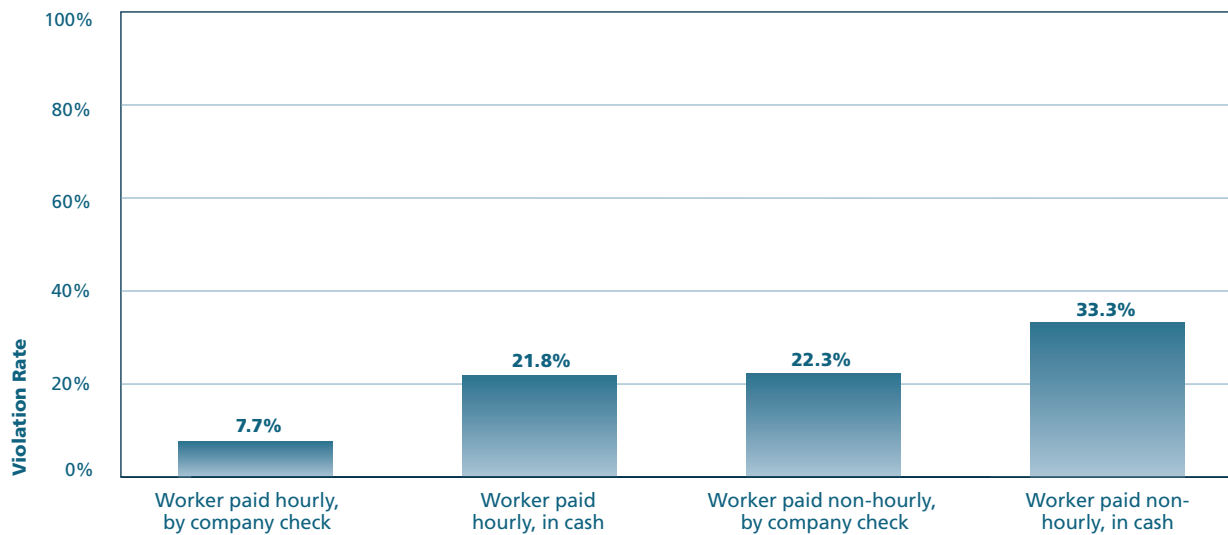
Without the transparency afforded by pay statements, workers often are unable to determine whether they have received the wages they are due. As Table 4.1 shows, workers who were paid in cash had more than three times the minimum wage violation rate of those paid by company check (29 percent and 9 percent, respectively).

Pay type (hourly vs. non-hourly) and pay method (cash vs. company check) are related but not the same. One might expect that workers who were paid a regular hourly wage generally would 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 non-standard, 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 8 percent. In contrast, non-hourly workers who were paid in cash had a violation rate four times this level (33 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 more than double that of workers in larger companies (25 percent and 10 percent, respectively). That said, even workers employed by larger companies were at risk of minimum wage violations.



**Figure 4.3: Minimum Wage Violation Rates by Pay Arrangement, New York City**



Source: Authors' analysis of 2008 Unregulated Work Survey.

## Overtime violations<sup>37</sup>

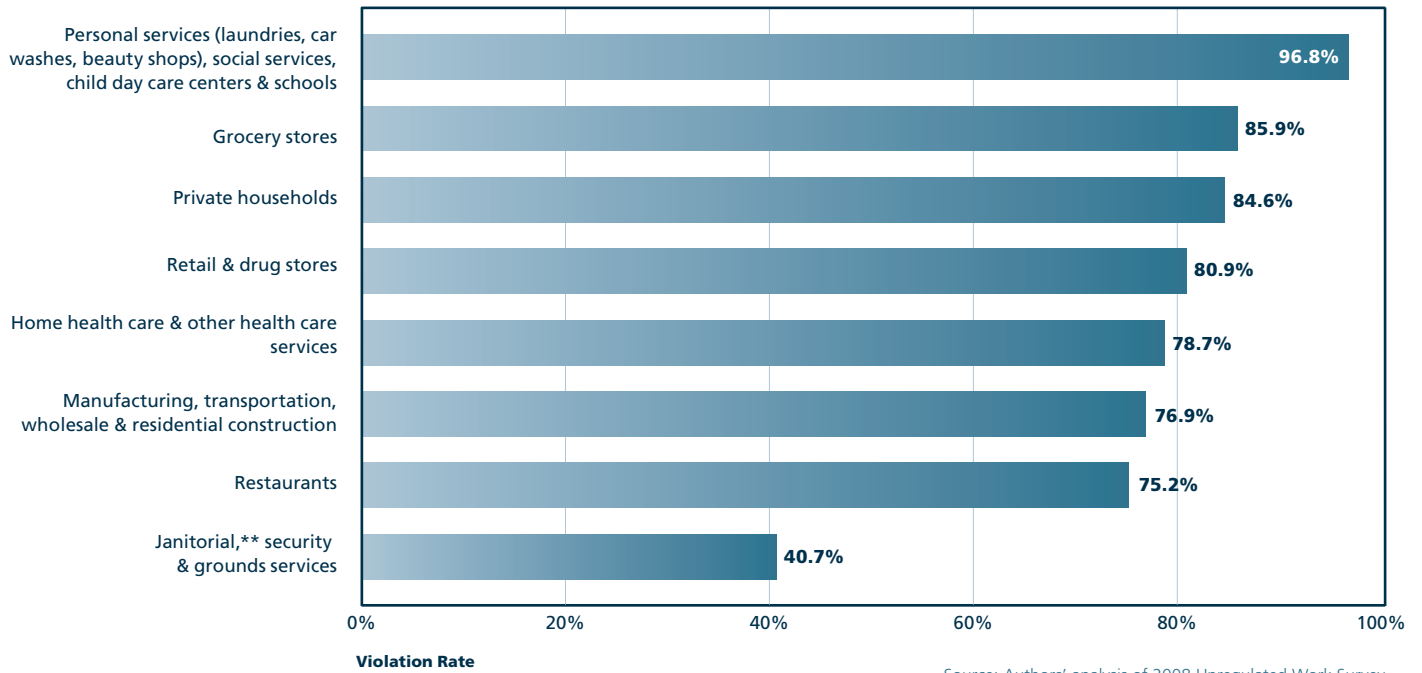
Overtime violations can occur in a number of ways. For example, some employers only pay workers their regular hourly rate—or “straight time”—for overtime hours, rather than the time-and-a-half rate required by law. Other employers fail to pay employees anything at all for their overtime hours. For example, 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.<sup>38</sup>

As we saw in the previous section, 77 percent of respondents in our sample who worked more than 40 hours during the previous workweek for a single employer did not get paid for overtime as required by law. Figure 4.4 shows that overtime violation rates were high across all the industries in our sample.<sup>39</sup> Most ranged from 75 percent (in the restaurant industry) to 97 percent (for workers in personal and repair services, social services, child day care centers and schools). The janitorial, security and grounds services industries had a lower violation rate at 41 percent. (Note: for the janitorial industry, our sample only includes janitors working in small commercial and residential buildings.)

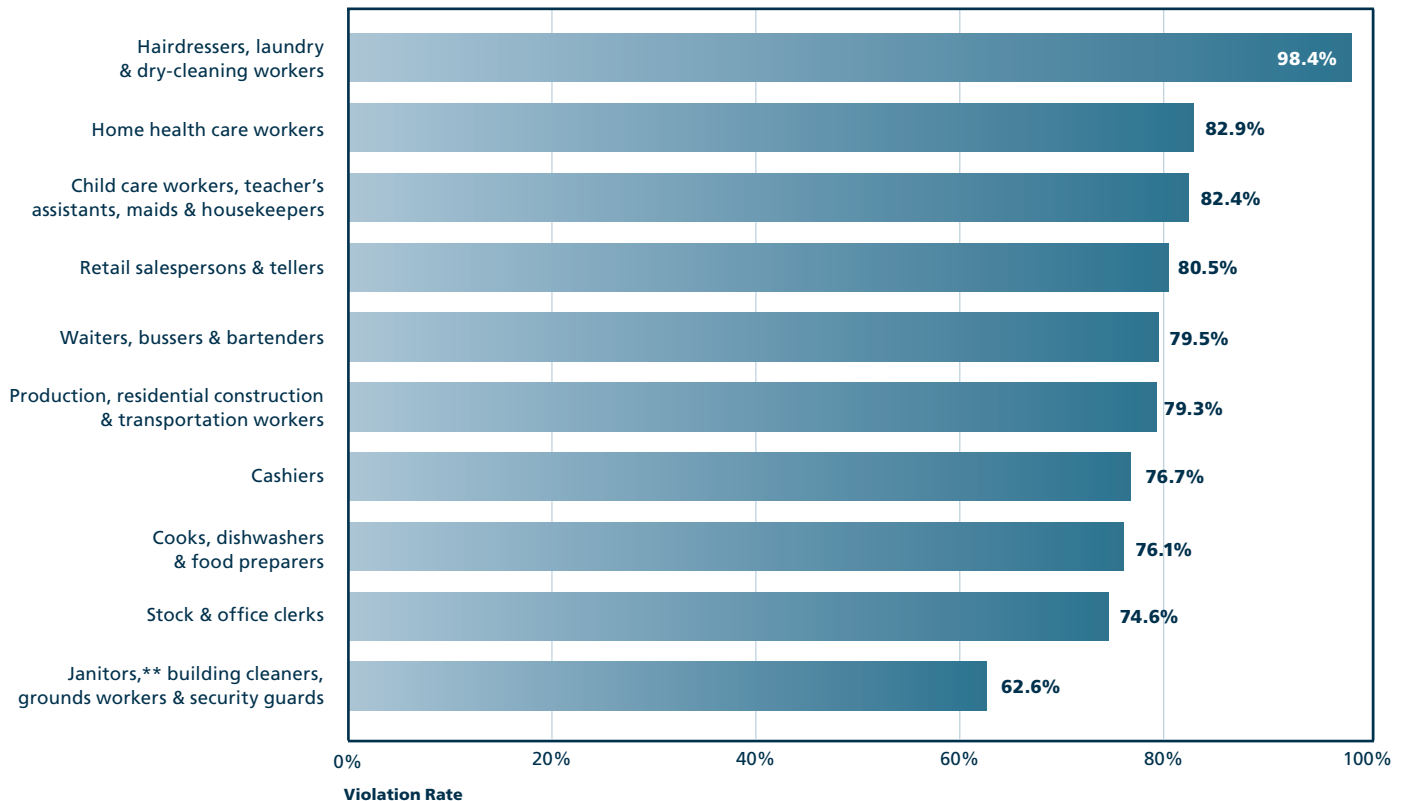
Figure 4.5 shows that overtime violation rates are high across all the occupations in our sample, but there also is substantial variation in violation rates. Rates are particularly high for hairdressers, cosmetologists, laundry and dry-cleaning workers, with a violation rate of 98 percent among those who worked more than 40 hours during the previous workweek.

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 workweek

**Figure 4.4: Overtime Violation Rates by Industry,\* New York City**



**Figure 4.5: Overtime Violation Rates by Occupation,\* New York City**



\* Calculated as a percent of workers who worked more than 40 hours for a single employer during the previous work week.  
 \*\* Janitors in small commercial & residential buildings only.

for a single employer, 95 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; but the lesson is that non-hourly pay arrangements virtually guarantee that workers will experience overtime violations at some point.

But hourly workers also face very high overtime violation rates: 63 percent were not paid or were underpaid for their overtime hours in the previous workweek. Similarly, when employers pay workers in cash, violations of overtime pay laws are markedly high: 92 percent of these workers experienced an overtime pay violation, compared with 58 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 81 percent.<sup>40</sup> In contrast, workers in companies with 100 or more employees had a violation rate of 58 percent.

## Off-the-clock violations

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A large majority (69 percent) of workers in our sample who worked before and/or after their shift in the previous workweek 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.<sup>41</sup> As was the case for overtime violations, workers employed by personal and repair services, social services, child day care centers and schools had very high off-the-clock violation rates (80 percent). The rate was even higher (84 percent) for workers in the home health care industry and other health care services. When analyzed by occupation, hairdressers, cosmetologists, laundry and dry-cleaning workers and home health care workers had high off-the-clock violation rates, greater than 85 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. Company size was also significant; 77 percent of workers in companies with less than 100 employees experienced an off-the-clock violation, compared with 56 percent of workers in larger companies.

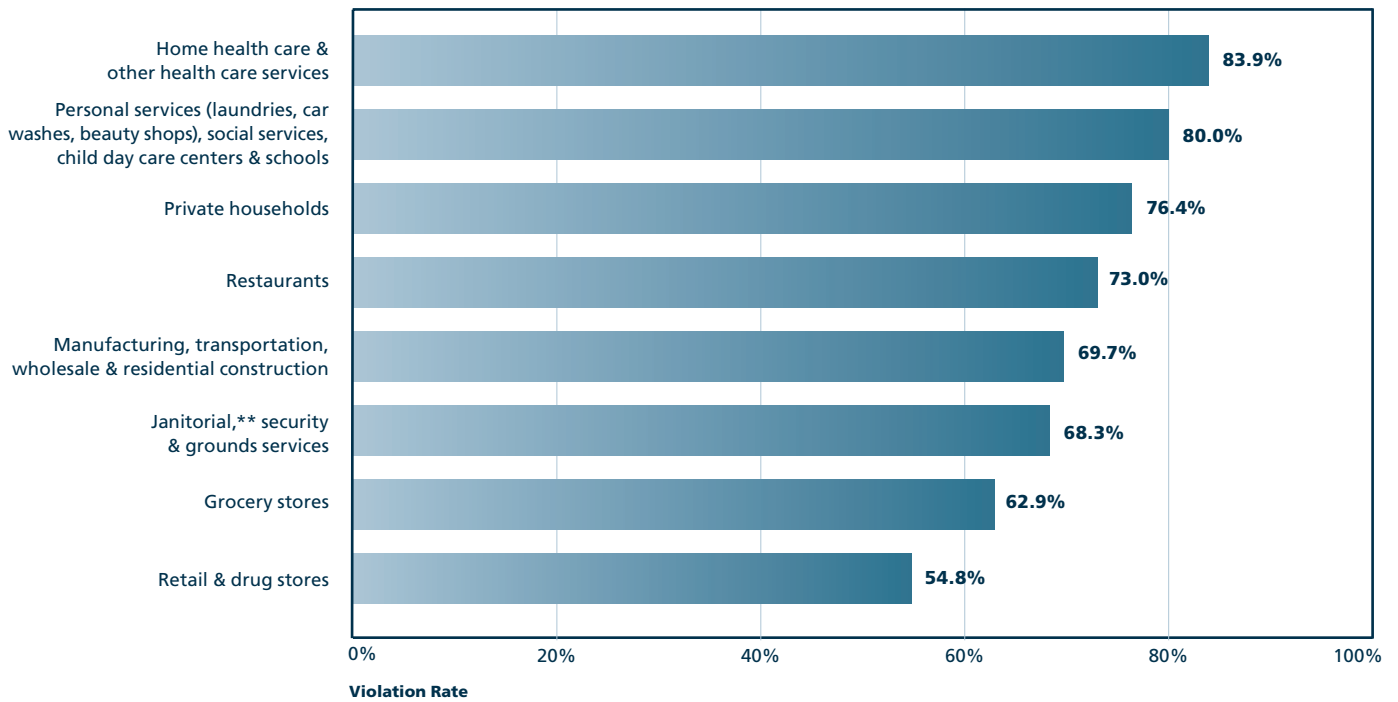
## Meal break violations

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Figures 4.8 and 4.9 show meal break violation rates by industry and occupation. Overall, among respondents who worked enough hours to qualify for a meal break, 70 percent had their breaks denied, shortened or interrupted. Violation rates were especially high for workers in the apparel and textile manufacturing industries (many of whom are paid by the piece), the home health care and private household industries (in which many workers have no one to cover them for a meal break) and beauty salons, nail salons and barbers. Waiters, table bussers and bartenders also experienced relatively high meal break violation rates, which is commonly reported in the restaurant industry.

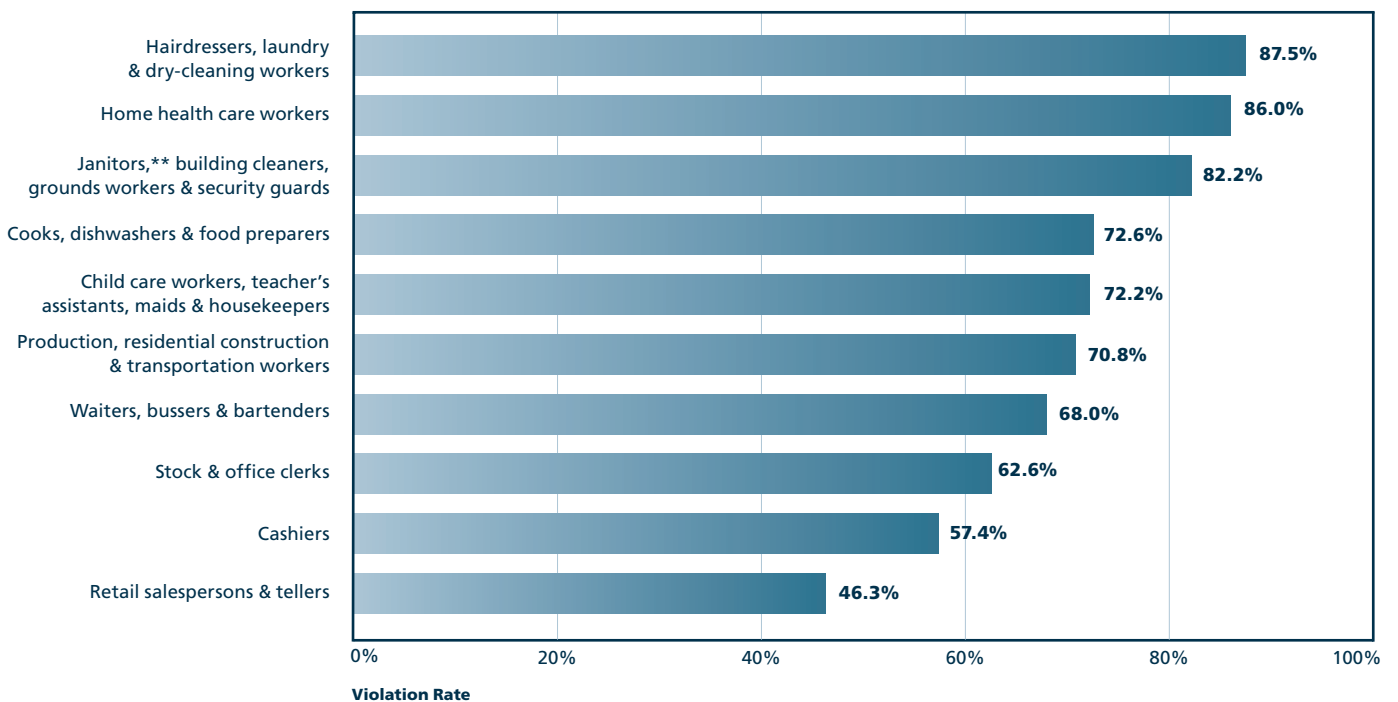
Finally, Table 4.1 shows that meal break violations rates vary by company size. More than three-quarters of those employed by companies with less than 100 workers had a meal break violation, compared with 62 percent of those employed by larger companies. Pay type and pay method did not have significant effects on meal break violation rates.

**Figure 4.6: Off-The-Clock Violation Rates by Industry,\* New York City**



Source: Authors' analysis of 2008 Unregulated Work Survey.

**Figure 4.7: Off-The-Clock Violation Rates by Occupation,\* New York City**

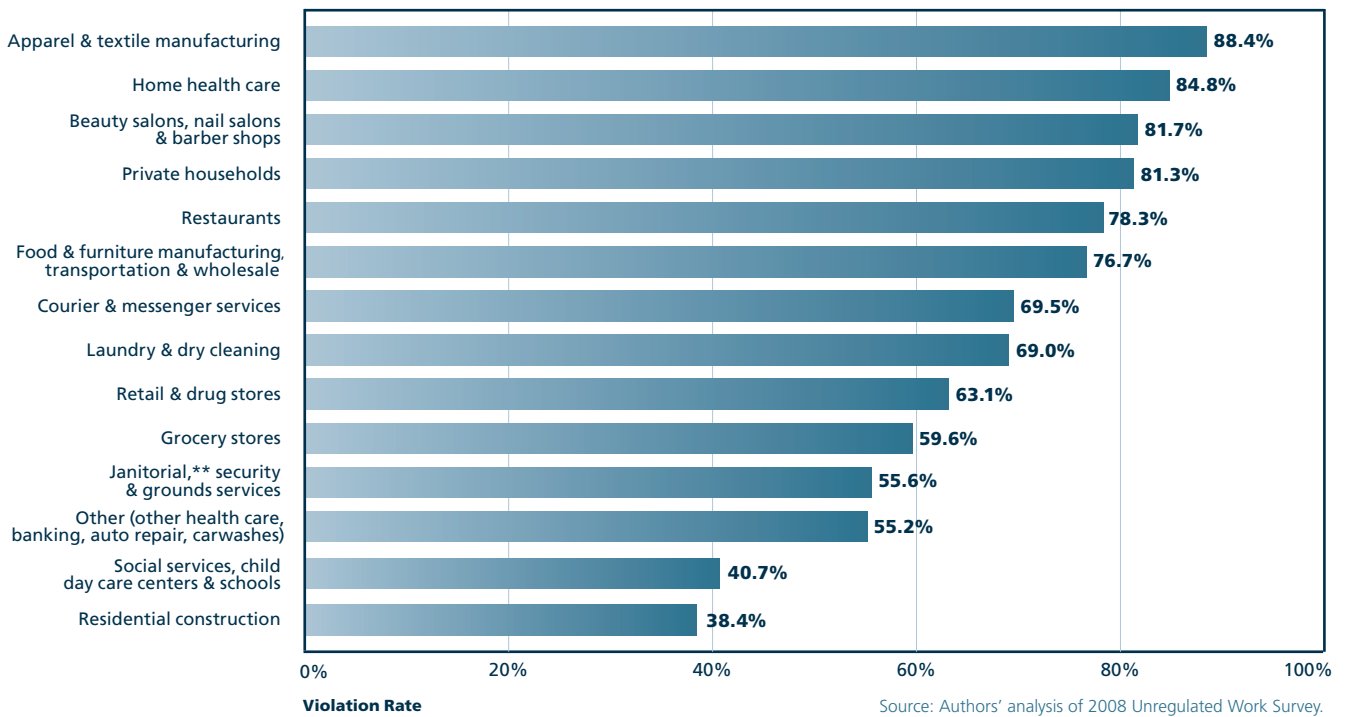


Source: Authors' analysis of 2008 Unregulated Work Survey.

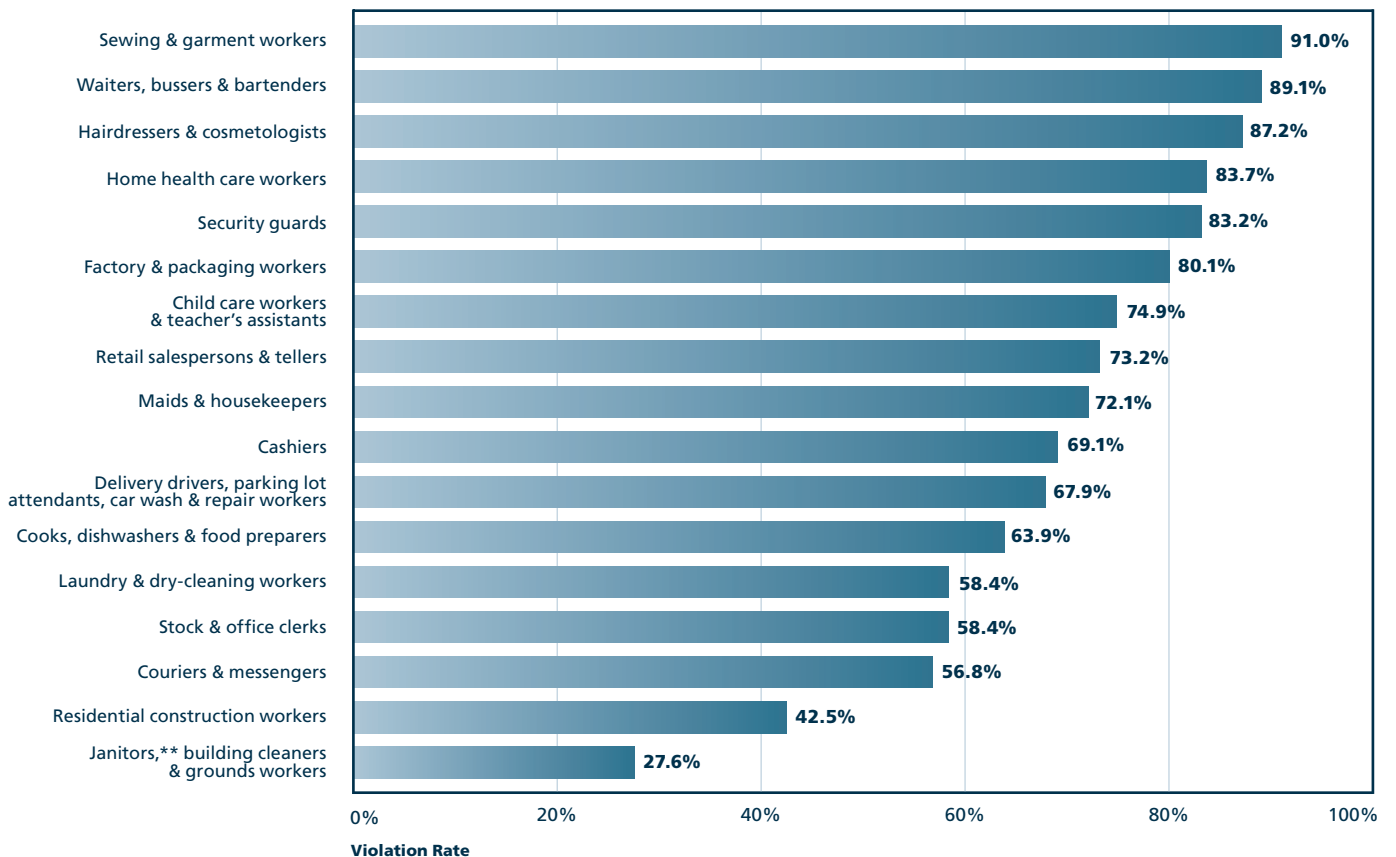
\* Calculated as a percent of workers who worked before or after their official shift during the previous work week.

\*\* Janitors in small commercial & residential buildings only.

**Figure 4.8: Meal Break Violation Rates by Industry,\* New York City**



**Figure 4.9: Meal Break Violation Rates by Occupation,\* New York City**



\* Calculated as a percent of workers who were legally entitled to at least one meal break during the previous work week.  
 \*\* Janitors in small commercial & residential buildings only.

## 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 long have documented that there is significant variation in employers’ business strategies, even within specific industries.<sup>42</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 56 percent indicated their employers offered them health insurance, provided paid vacation days or 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 minimum wage violations.<sup>43</sup> 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 of investing in workers, leading to greater productivity, lower turnover and other benefits for the company.<sup>44</sup> Compliance with minimum wage laws is aligned with these workplace practices. But as our data suggest, the alignment is not perfect, pointing to the need for 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, New York City**

		Percent of workers with violations			
		Minimum wage violation rate	Weekly overtime violation rate*	Off-the-clock violation rate*	Meal break violation rate*
<b>All respondents</b>		21.2	77.3	69.3	69.7
<b>Employer gave worker a raise</b>	No	26.8	80.3	73.4	72.4
	Yes	12.4	74.0	61.8	65.0
<b>Employer offered worker health insurance</b>	No	25.7	80.0	73.2	71.7
	Yes	5.0	67.1	50.5	63.0
<b>Employer gave worker paid sick and paid vacation time</b>	No	23.6	82.1	71.4	72.7
	Yes	6.5	61.3	63.8	61.7

\* 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.

## A note on unionized workers

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 therefore were not included in our sample from the outset (see Appendix A for details on our sampling universe). In addition, the limited 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.

## Summary

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

- Workplace violation rates vary significantly by industry and occupation. For example, minimum wage violation rates ranged from as little as 2 percent in some industries to as much as 53 percent in others, and the range across occupations was 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, laundry and dry-cleaning workers face multiple violations; these workers have the highest minimum wage, overtime and off-the-clock violation rates compared with all other occupations. High violation rates also were typical of the private household industry. In other cases, like residential construction, violation rates tended to be lower (though still significant). Some industries and occupations had very high violation rates for some violations but not for others—for example, home health care workers had a very low minimum wage violation rate but very high rates of overtime, off-the-clock and meal break violations.
- Employers 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. This is particularly true for overtime violations, which are virtually guaranteed when workers are paid a flat weekly or daily rate.
- 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, more than one out of 10 workers at large companies had a minimum wage violation in the previous week, and among those who worked overtime, nearly 60 percent were underpaid or not paid at all for the extra hours.

We also found that there are some workplace practices that result in *fewer* workplace violations. In our sample, employers who offered health insurance, paid sick days and vacation days, and who gave their workers annual raises, were less likely to violate minimum wage law.

Taken together, our findings suggest that employers' compliance with labor laws is intimately associated with the organization of work. Some industries consistently have higher violation rates than others—suggesting there are prevailing industry strategies that shape the decisions individual employers make about whether to follow the law. Similarly, the fact that informal pay systems are predictive of violations suggests employers who want to violate the law are consciously manipulating how they pay workers to disguise those violations. And the “bundling” we described above—that employers who don't follow the law also don't provide health insurance or give raises or otherwise invest in their workers—paints a picture of a consistent business strategy on the part of the employer.





# 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. Worker characteristics play a role in two important ways: some workers are more likely to hold jobs in the low-wage labor market than others (women, immigrants and people of color, see Section 2), and within the low-wage labor market, some groups of workers are more likely to experience violations than others, as we will see in this section.

Specifically, we examine workplace violations in relation to gender, race/ethnicity, nativity, education, age, training and job tenure; and among foreign-born workers, by immigration status, date of arrival in the United States and English-language proficiency.

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

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As Table 5.1 shows, minimum wage violation rates vary significantly with a range of demographic characteristics. For example, 25 percent of foreign-born workers had a minimum wage violation in the previous week, more than twice the rate of their U.S.-born counterparts.<sup>45</sup> Among foreign-born workers, legal status also was significant—36 percent of unauthorized immigrants had a minimum wage violation, compared with 21 percent of authorized immigrants.

Race and ethnicity were salient factors as well: more than a quarter of Latino workers in our sample experienced minimum wage violations, which was significantly higher than the rates for Asian/other, black and white workers. White workers had a particularly low minimum wage violation rate, at 3 percent.

But 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.<sup>46</sup> For example, as Figure 5.1 shows, the high violation rate for foreign-born workers was concentrated among unauthorized immigrants, particularly women—40 percent of female unauthorized immigrants in our sample had a minimum wage violation in the previous week (which is significantly higher than the rate for foreign-born authorized men, and U.S.-born men and women).

In a similar vein, violation rates were not uniform among workers born in the United States, but rather were strongly mediated by race/ethnicity. Specifically, U.S.-born workers of color had minimum wage violation rates ranging from 8 percent to 17 percent—in stark contrast to U.S.-born white workers, who in our sample did not have any minimum wage violations in the previous workweek (see Figure 5.2).

Education was another important factor. Workers who did not graduate from high school or receive their GED had a significantly higher minimum wage violation rate (28 percent) compared with those with some college education (16 percent). That said, higher education does not insulate workers from minimum wage violations.

Surprisingly, other key demographic characteristics did not have statistically significant effects on minimum wage violations. For example, among immigrant workers, violation rates varied little between recent arrivals and those who were more settled in the United States. As Table 5.1 shows, foreign-born respondents who had lived in the United States six or more years at the time of the survey had a minimum wage violation rate similar to that of newcomers. In the same vein, job tenure and age often are strong predictors of labor market outcomes. But in our sample of workers, neither of these factors—nor job training or English-language ability—had a statistically significant effect (see Table 5.1).<sup>47</sup>

**Table 5.1: Violation Rates by Worker Characteristics, New York City**

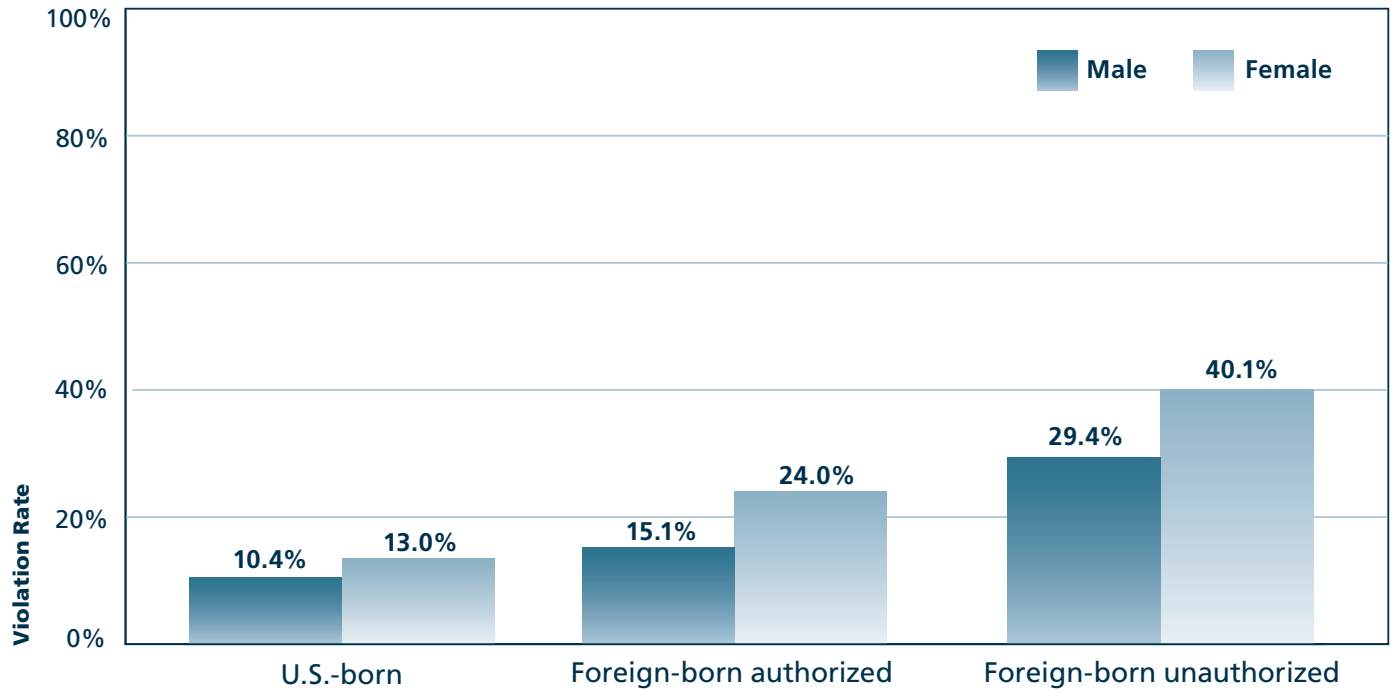
		Percent of workers with violations			
		Minimum wage violation rate	Weekly overtime violation rate*	Off-the-clock violation rate	Meal break violation rate*
<b>All respondents</b>		21.2	77.3	69.3	69.7
<b>Gender</b>	Male	17.4	75.0	73.0	63.0
	Female	23.6	79.3	64.8	76.8
<b>Race/ethnicity</b>	Latino/Latina	27.3	79.8	64.3	66.8
	Black	9.9	74.4	71.5	66.6
	Asian/other	16.9	79.9	75.8	75.3
	White	3.2	84.5	80.5	77.8
<b>Nativity</b>	U.S.-born	11.5	63.0	64.9	62.7
	Foreign-born	25.4	83.4	71.2	72.7
<b>Education</b>	Less than high school, no GED	28.3	78.9	71.0	70.0
	High school graduate or GED	18.7	81.7	59.1	72.3
	Some college or higher	16.0	71.4	73.7	67.0
<b>Age</b>	18-25	17.2	79.8	60.4	71.7
	26-35	27.2	74.8	74.6	71.5
	36-45	22.5	77.2	73.4	70.0
	46+	23.6	78.2	75.9	67.7
<b>Vocational training</b>	None	22.5	78.0	70.3	69.0
	Completed training program	18.6	74.3	65.7	73.2
<b>Job tenure</b>	Less than 3 years	23.1	80.2	72.7	68.8
	3-4 years	20.4	80.0	63.2	67.4
	5+ years	16.3	70.8	63.4	74.7
<b>Foreign-born respondents:</b>					
<b>Legal status</b>	Authorized	21.0	77.5	63.4	68.6
	Unauthorized	35.9	92.0	83.4	78.6
<b>Years since arrival in the U.S.</b>	Less than 6 years	24.9	N/A	72.0	N/A
	6+ years	26.6	N/A	66.7	N/A
<b>English proficiency</b>	Speaks very well or well	21.8	67.9	63.7	64.0
	Speaks not well or not at all	27.5	88.5	76.0	75.8

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

Source: Authors' analysis of 2008 Unregulated Work Survey.

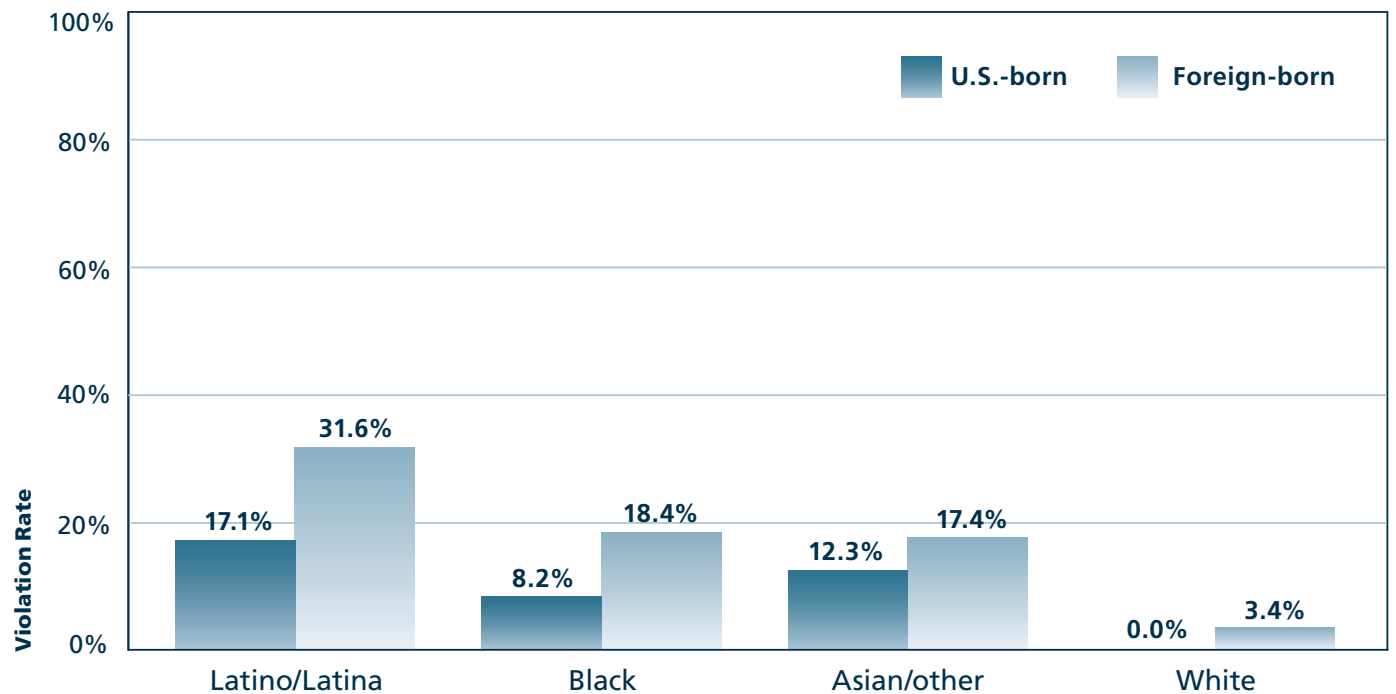
\*Calculated as a percentage of all workers who were at risk for a violation during the previous work week.

Figure 5.1: Minimum Wage Violation Rates by Gender, Nativity and Legal Status, New York City



Source: Authors' analysis of 2008 Unregulated Work Survey.

Figure 5.2: Minimum Wage Violation Rates by Race/Ethnicity and Nativity, New York City



Source: Authors' analysis of 2008 Unregulated Work Survey.

## Overtime violations

Overtime violation rates were only weakly correlated with demographic characteristics. For respondents who worked more than 40 hours for a single employer during the previous workweek, the prevalence of overtime violations was high across virtually all demographic groups, as shown in Table 5.1.

Nativity, legal status and English-language speaking ability were the only demographic factors that had a significant effect. Immigrant workers in our sample had an 83 percent overtime violation rate, compared with 63 percent for the U.S.-born. There also were substantial differences among immigrants by English proficiency levels and legal status.

Workers who reported they spoke English “not well” or “not at all” had an overtime violation rate of 89 percent, compared with 68 percent of workers who reported speaking “very well” or “well.” Authorized immigrants had an overtime violation rate of 78 percent, compared to 92 percent of unauthorized immigrants.

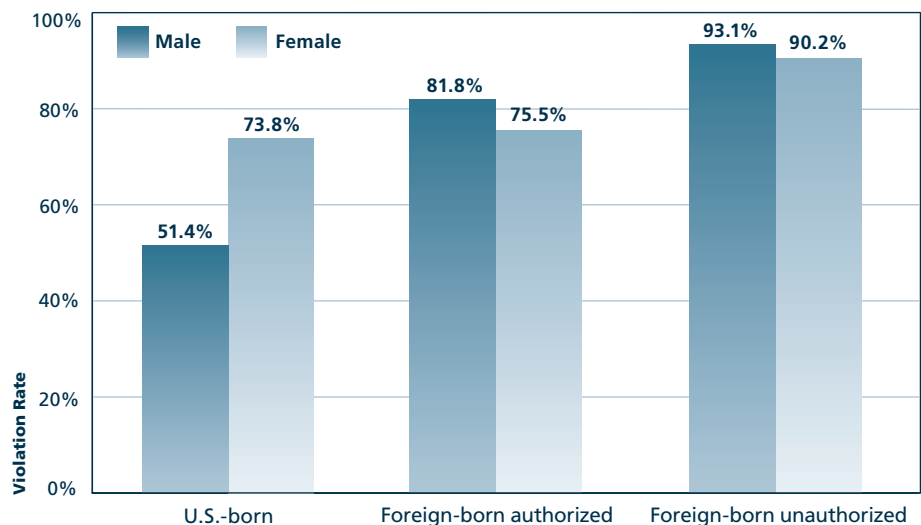
Although gender was not significant by itself, a more nuanced story emerged when gender was analyzed together with nativity and legal status. As shown in Figure 5.3, overtime violation rates were significantly lower for U.S.-born men than for foreign-born authorized men and foreign-born unauthorized men and women. It is important to note, however, the violation rate for U.S.-born men was not small in absolute terms—with more than 50 percent experiencing an overtime violation in the previous workweek.

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

## Off-the-clock violations

As shown in Table 5.1, off-the clock violation rates, like overtime, were consistently high across most demographic characteristics. Immigrants’ legal status was the only characteristic that had a statistically significant effect: unauthorized immigrants had a higher violation rate (83 percent) than authorized immigrants (63 percent). In addition, gender and age become significant when we look at U.S.-born workers only. U.S.-born men had a higher off-the-clock violation rate (76 percent) than native-born women (54 percent). Similarly, older U.S.-born workers had higher off-the-clock violation rates than younger workers.

**Figure 5.3: Overtime Violation Rates by Gender, Nativity and Legal Status,\* New York City**



Source: Authors' analysis of 2008 Unregulated Work Survey.

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

## Meal break violations

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Meal break violations also show very limited variation across demographic categories. As Table 5.1 shows, meal break violation rates were significantly higher for women than for men. Immigrant workers had a higher violation rate than U.S.-born respondents. And among U.S.-born respondents, younger workers were significantly more likely to experience a meal break violation (82 percent) compared with all other age groups (whose violation rates ranged from 52 percent to 59 percent).

## Summary

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Gender, nativity, race and ethnicity each play a role in shaping at least some of the workplace violations discussed here. Moreover, 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.

That said, taken as a whole, worker characteristics were only weakly correlated with three of the four violations examined above. The one partial exception was minimum wage violations:

- Foreign-born workers were more than twice as likely as their U.S.-born counterparts to have a minimum wage violation. The higher rates were concentrated among women—especially women who were unauthorized immigrants, 40 percent of whom had a minimum wage violation in the previous week.
- U.S.-born workers of color had minimum wage violation rates ranging from 8 percent to 17 percent, in stark contrast to U.S.-born white workers, who in our sample did not have any minimum wage violations in the previous workweek.
- Higher levels of education offered some protection from minimum wage violations, but even college-educated workers still were at significant risk.

In fact, education, which is often one of the strongest predictors of labor market outcomes, had no significant impact on overtime, off-the-clock and meal break violations. Similarly, other worker characteristics that often are strong predictors—job tenure, age and length of time in the United States—did not have a significant impact on any of the four workplace violation outcomes examined.

There are several caveats to these findings. First, in some of the above analyses, sample sizes became small, meaning that statistical significance was harder to reach. Second, it is important to remember that all of these analyses were conducted *within* the low-wage sector only, and so one would expect variation in outcomes by demographic characteristics to be muted (we elaborate on this point in the next section).

# 6

## Wage Theft in New York City

In this report, we have documented that violations of core employment and labor laws are pervasive in America's largest city. 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 21st century.

## Assessing the role of worker and job characteristics

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As we have seen, a range of job and worker characteristics are correlated with workplace violations. Further analysis reveals that job and worker characteristics have independent effects on the violations we have documented in this report. Both matter, but they are not always of equal importance. In the low-wage industries studied here, job and employer characteristics are more powerful predictors of minimum wage, overtime and meal break violations than are worker characteristics (ranging between 2.1 and 3.6 times as powerful; see Appendix A for details).

This finding should not negate the broader finding from Section 2, which is that women, immigrants and people of color are disproportionately likely to be employed in these industries, and therefore more at risk of workplace violations. But once a worker is employed in a low-wage industry, job characteristics are more important than worker characteristics in terms of predicting 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 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 \$58, out of average weekly earnings of \$397. That amounts to wage theft of almost 15 percent of what they should have earned, if their employers did not violate employment laws. Assuming a full-year work schedule, we estimate these workers lost an average of \$3,016 annually due to workplace violations, out of total annual earnings of \$20,644.

Furthermore, we estimate that in a given week, approximately 317,263 workers in New York City have at least one pay-based violation. Extrapolating from this figure, front-line workers in low-wage industries in New York City lose more than \$18.4 million *per week* as a result of employment and labor law violations. The largest portion of these lost wages is due to overtime violations (44 percent), followed by minimum wage violations (40 percent) and off-the-clock violations (10 percent).<sup>48</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 and vitality in our city's neighborhoods.





# The Solution: How New York Can Strengthen Worker Protections

We have shown that many low-wage workers in New York City effectively lack the core protections that Americans often 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, and more. The magnitude and breadth of the problem—spanning the city’s industries and communities—requires urgent attention and action.

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 pay subminimum wages or cut costs 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 by the wider community.

Government enforcement is the cornerstone of any viable response to these workplace violations. Public policy must recognize the significant resources and power that reside with the agencies responsible for enforcing wage and hour, health and safety, prevailing wage, anti-discrimination and right-to-organize laws.<sup>49</sup>

Our national report, *Broken Laws, Unprotected Workers*, proposed a national policy agenda to fulfill the promise of worker protections in America. We identified three principles to drive reform: strengthening government enforcement of employment and labor laws; updating legal standards for the 21st century workplace; and establishing equal status for immigrants in the workplace through comprehensive immigration reform.<sup>50</sup>

But this is not just a federal policy agenda; state and local governments have a significant role to play as well. In what follows, we add to the national policy agenda laid out in *Broken Laws, Unprotected Workers* by mapping the key reforms needed in New York to (a) strengthen public enforcement of workplace laws, and (b) update the legal standards that bolster and augment enforcement, at both the state and city level.<sup>51</sup>

## A. Strengthening government enforcement of workplace protections

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New York is well-placed to tackle the problem of workplace violations, given the state's strong labor laws, significant enforcement resources and energized community advocates. In fact, during the past several years, New York state agencies have stepped in to fill a growing gap in enforcement at the federal level. But recent budget cuts have strained resources and slowed progress. In order to build upon its recent success, New York state must recommit resources toward enforcement, continue to pursue innovative strategies and institutionalize them, and enact new legislation to address the reality that workplace violations remain standard practice in many low-wage industries.

Similarly, New York City has a compelling interest—even an obligation—to address the high rate of workplace violations documented in this report. As detailed in Section 6, our conservative estimate is that about 317,000 workers experience wage-related violations every week in the city, losing more than \$18.4 million in wages per week. The impact of this staggering wage theft on families, local communities and city coffers requires action, by leveraging city resources to ensure employers comply with the law.

### 1. Strengthen state-level enforcement

New York's enforcement reforms have begun to show concrete gains in strengthening employers' compliance with core workplace laws. But our findings clearly indicate that significant violations remain, and that the scale of the problem will require a long-term, sustained commitment of resources, stronger enforcement tools and continuation of innovative strategies and community outreach by key state agencies (the Department of Labor, the Attorney General's Labor Bureau and the Workers' Compensation Board).

### The New York State Department of Labor: A National Model of Enforcement Reform

During the last three years, the New York State Department of Labor (DOL) has implemented a range of innovative reforms to better protect the state's workers. For example, the agency now pursues proactive investigations in low-wage industries instead of relying solely on incoming complaints. It also has taken concrete steps to publicize enforcement efforts, which helps workers understand their rights and sends industrywide signals that the likelihood of inspections is real.<sup>52</sup>

Equally important, the state DOL has reached out to immigrant worker centers, unions, service providers, legal advocates and (where possible) responsible employers to enhance enforcement. For example, in 2007, the agency established a Bureau of Immigrant Workers' Rights to build relationships with immigrant communities across the state, and to improve the agency's internal policies and procedures for accessibility to workers with limited English proficiency.<sup>53</sup> Community groups have

been key stakeholders, providing vital "ears on the ground" to identify high-violation industries, leading to a pilot program that trains workers to reach out to their communities about the state's enforcement efforts.<sup>54</sup>

The agency also has begun to prioritize incoming claims, allowing it to concentrate resources on the most pressing cases, including those that involve retaliation and evidence of repeated, systemic violations. And in 2007, the state DOL spearheaded an interagency Misclassification Task Force to tackle the problem of employees who are improperly misclassified as independent contractors—an illegal practice that costs workers and taxpayers alike.<sup>55</sup>

As a result of these efforts, the state assessed \$20.3 million in unpaid wages and damages on behalf of 15,424 workers in 2009—significantly more than the \$12.2 million collected in 2006 (on behalf of 10,674 workers).<sup>56</sup>

To start, the state DOL should build upon and institutionalize its new enforcement strategies:

- **Continue to pursue the range of innovative enforcement strategies described above—and institutionalize them.** For example, the state DOL should continue and expand its innovative program of conducting compliance audits in targeted industries, as well as its outreach to community groups to enhance enforcement. Retraining investigators, revising regulations and internal agency manuals, and conducting regular assessments of the effectiveness of enforcement strategies will help these reforms endure for future administrations. The state DOL also should continue to partner with other state agencies, such as the Attorney General’s Labor Bureau, to pursue strategic enforcement efforts.
- **Restore enforcement staffing at least to 2007 levels.** Lawmakers and the governor should restore the state DOL’s staffing so that the agency can build upon its considerable success. Attrition and hiring freezes have taken their toll on the agency, which has lost 15 labor standards positions since 2007 alone.<sup>57</sup>
- **Improve public job training and placement services for immigrant workers.** The state’s workforce development programs must do a better job of reaching out to immigrant workers to help them access job training and placement services and understand their rights—thereby helping them to avoid unscrupulous employers and predatory private employment agencies.

The state Attorney General’s Labor Bureau also has a long history of effective advocacy on behalf of low-wage workers, pursuing high-profile litigation and building strong relationships with community groups, unions and other advocates in the process.<sup>58</sup> To continue to build upon these longstanding efforts, the AG’s Labor Bureau should:

- **Restore enforcement staffing at least to 2007 levels.** The AG’s Labor Bureau budget should be restored, allowing it to rehire lost staff. Like the state DOL, the bureau has lost significant resources over the past three years—dropping from 18 to 13 attorneys and managers.<sup>59</sup>
- **Continue to draw on the expertise of community organizations to choose high-impact enforcement targets.** Priority should be given to litigation and other enforcement opportunities that will recover unpaid wages and collect damages for workers, and that result in ongoing monitoring agreements.
- **Continue to coordinate enforcement efforts with other agencies, such as the New York DOL and other state attorneys general.** Coordination between New York state agencies already has resulted in effective and highly publicized enforcement efforts.<sup>60</sup> In addition, attorneys general increasingly are working together across state lines to target illegal practices that are nationwide in scope—endeavors where the AG’s Labor Bureau continues to show leadership.

Our survey revealed that strikingly few low-wage workers apply for workers’ compensation when injured on the job. It is therefore vital that the state Workers’ Compensation Board takes steps to improve its accessibility for this workforce:

- **Remove structural obstacles that prevent immigrant workers from accessing workers’ compensation benefits.** For example, certified medical interpreters should be provided for independent medical examinations without cost to the worker. The board should maintain its

policy that a worker's immigration status should not be introduced into evidence at hearings. The board also should expand its efforts to share data with other government agencies to strategically target investigations of employers who fail to insure or are underinsured.

■ **Account for employment law violations when assessing workers' claims for compensation.**

For workers who are paid less than the minimum wage, workers' compensation benefits should be calculated using at least the legal minimum wage (and their employers should be reported to the state DOL). Workers' own testimony should be credited as good evidence of their employment terms and conditions, placing the burden on employers to produce records to refute such evidence.

Finally, new enforcement tools would bolster the efforts of these state agencies and community advocates to enforce worker protections. State lawmakers should enact new laws to aid in these efforts:

■ **Strengthen damages and penalties to deter minimum wage and overtime violations.**

The current law in New York provides workers with unpaid wages plus 25 percent in additional damages, which amounts to a slap on the wrist unlikely to deter employers. New York should follow the lead of eight other states and require unpaid wages plus 200 percent of unpaid wages owed in additional damages. Other best practices include strengthening criminal penalties; strengthening the state's tools for cracking down on employer retaliation; and requiring monitoring of violators to ensure future compliance.

■ **Empower workers to enforce all of their workplace rights under New York law by filing claims in court.** Workers need a mechanism to bring litigation to enforce their rights, many of which currently are enforceable only by the state DOL, including the right to a day of rest and meal breaks.

■ **Create mechanisms to compensate workers who win their unpaid wage claims but are unable to collect from employers who simply refuse to pay.** Workers should have a straightforward mechanism to collect their unpaid wages; for example, by filing a wage lien (available in Wisconsin) or by collecting from an insurance pool for unpaid claims (available in California). Other important strategies include business registration requirements that help workers and the state DOL track down recalcitrant employers.

■ **Update employment laws to create a presumption of employee status for workers performing paid labor—including those hired by subcontractors or misclassified as independent contractors.** The law should presume that on-site workers are employees, and should hold employers accountable for subcontractors' violations when their contracts are financially insufficient to pay the minimum wage.<sup>61</sup>

■ **Prohibit unscrupulous employers from benefiting from public resources like subsidies and licenses.** State and city agencies that enforce prevailing wage laws have long had the authority to debar employers from future public works projects for a period of time after a violation. Other state resources, ranging from economic development subsidies to operating licenses (such as liquor and other licenses), should be protected from repeat violators as well.

■ **Streamline the workers' compensation system to give workers faster access to benefits.** Penalize insurance companies that have high rates of denying, delaying or frivolously appealing claims. Ensure workers receive immediate access to medical care during the claims process.

## 2. Strengthen New York City's role in enforcement

At first glance, New York City's role in enforcing workplace protections might seem limited: for example, the city currently does not have the authority to set its own minimum wage standards. But there is much the city can and should do, both directly and indirectly, to protect its workers from exploitation.

As a first step, New York City should aggressively enforce all of the labor standards that fall under its authority:

- **Vigorously enforce the city's living wage law and applicable prevailing wage laws.** New York City's comptroller has the authority to enforce the city's living wage law, which applies to certain city service contractors, and the state's prevailing wage laws that apply to city-funded projects. The city's Department of Housing Preservation and Development also should scrutinize carefully the participants in the 421-a tax abatement program, which requires recipients to pay prevailing wages to building service workers, and deny or suspend abatements for those who fail to pay.
- **Criminally charge employers who commit egregious workplace violations, working closely with community groups and advocates to target enforcement.** District attorneys in each of the city's boroughs should dedicate staff to prosecute selected minimum wage, overtime and prevailing wage claims, being careful to protect workers and avoid enforcement efforts that unnecessarily shutter businesses.
- **Conduct audits to identify and fine abusive employment agencies.** Across the city, private employment agencies knowingly send vulnerable workers to businesses that pay less than the minimum wage, charging illegal placement fees in the process. The city's Department of Consumer Affairs should continue and intensify its efforts to identify these predatory agencies, fine them and suspend their operating licenses if necessary.<sup>62</sup>
- **Improve safety enforcement on scaffolding and construction sites, which have seen avoidable tragedies in recent years.** The Department of Buildings and its Scaffolding Enforcement Unit not only should fortify their direct enforcement efforts, but also provide resources to community groups to conduct outreach and in-depth education seminars for immigrant workers who are most at risk.<sup>63</sup>

To supplement these direct enforcement efforts, New York City should leverage other city resources to encourage compliance with workplace laws more broadly:

- **Dedicate city resources to support non-government enforcement efforts by community-based organizations, worker centers and legal services providers.**<sup>64</sup> New York City should restore its Immigrant Opportunities Initiative funding to 2008 levels (\$11.25 million) and allow recipients to use these funds to represent workers who suffer workplace violations.<sup>65</sup> The city also should implement the recommendations of its Temporary Commission on Day Laborer Job Centers by funding community job centers for day laborers, as cities in Maryland, Texas, California and other states currently do. Such centers provide a safe place to search for jobs and an opportunity to receive training on workers' rights, vocational skills and English as a second language.<sup>66</sup>

- **Launch public media campaigns to educate workers and employers alike.** New York City has been a national leader in public education, using subway posters, service providers, promotional media and community outreach to publicize the Earned Income Tax Credit. This model should be used to educate low-wage workers about their employment and labor rights in communities across the city. Low-wage employers effectively can be reached through a one-stop website or employment law guides, building upon the successful restaurant industry manual co-produced by the Restaurant Opportunities Center of New York and the city's Department of Health and Office of Immigrant Affairs.<sup>67</sup>
- **Deny or suspend city permits and licenses to applicants with records of violating workplace protections.** Denying applicants with serious records of workplace safety and wage violations would send a strong signal to employers that compliance with these laws is not optional (for example, when applying for restaurant operating licenses).<sup>68</sup>
- **Adopt “responsible contractor” standards for procurement contracts and economic development subsidies.** Los Angeles has adopted such standards, allowing the city to downgrade applications by contractors, subcontractors and vendors with records of violating workplace protections.<sup>69</sup> The city also should demand the return of subsidies if recipients fail to fulfill their hiring commitments or comply with the law.

## **B. Update legal standards for the 21st century workplace**

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Strong enforcement is important, but so are strong legal standards that recognize the changing organization of work in the United States. 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, closing loopholes that exclude workers from key protections, ensuring that public resources are being used to create living wage jobs—all are key improvements that will raise compliance in the workplace and improve the competitive position of employers who play by the rules.

### **1. Raise state-level standards**

New York State has a range of powerful tools available to strengthen standards in its workplaces. Specifically, the state should:

- **Strengthen the state's minimum wage.** New York's minimum wage is just \$7.25—the same as the federal minimum wage—even though the state has one of the highest costs of living in the country. More than a dozen other states have raised their minimum wages above the federal benchmark, and 10 states automatically adjust their wage level every year. New York should follow their lead and reclaim its historic status as a national model for state minimum wage policy.
- **Close loopholes in state law that deny workplace protections to some workers.** Proposals like the Domestic Workers Bill of Rights and Farmworker Fair Labor Practices Act will close antiquated loopholes and establish basic protections on the job for these workers.<sup>70</sup> Regulations that provide a subminimum wage for tipped workers and a lower overtime rate for others, including home care workers, also should be phased out so that all workers are guaranteed the full minimum wage and premium pay for overtime.

- **Ensure public resources are used to create good jobs.** Developers that receive public financing from the state should be required to pay a living wage or the prevailing industry wage, whichever is higher, to ensure these projects create middle-class jobs. These requirements should apply not only to construction jobs, but also to the permanent jobs created by public projects, such as janitorial and retail jobs.
- **Empower localities to adopt higher wage standards.** Cities around the country are using local minimum wage laws as a means of fine-tuning the right minimum wage for the local economy, and for specific sectors like building services and hotels.<sup>71</sup> With its high cost of living, New York City in particular would benefit from a minimum wage higher than the state level. State lawmakers should grant localities in New York the authority to establish their own local minimum wages that reflect local economic conditions.

## 2. Raise city-level standards

While New York City requires state authorization to enact a citywide minimum wage, it nonetheless can pursue other efforts, direct and indirect, to lift workplace standards. For example, the city could make a significant difference by taking these key steps to raise standards:<sup>72</sup>

- **Raise the city’s living wage rate.** New York City’s living wage law sets a wage of \$10 per hour for certain city service contractors and subcontractors—including home health care, day care, food services and building services workers. But the living wage rate has not been increased since 2006, threatening to return thousands of families to poverty. The city should raise living standards for the workers covered by this law, including more than 50,000 home health care attendants that provide vital care to the elderly and disabled.
- **Extend living wage or prevailing wage requirements, whichever is higher, to all projects subsidized or financed by the city or built on city-controlled land.** Even before such requirements are enacted, the city should use its leverage on major projects to ensure developers enter into community benefits agreements that create good jobs.
- **Ensure that growing industries become a source of middle-class jobs for New Yorkers.** For example, the city has adopted a strategy to use zoning changes and other incentives to draw food retailers to underserved neighborhoods. Grocery stores applying for those benefits should be evaluated, in part, based on the wages, benefits and working conditions they offer.<sup>73</sup>



In the end, restoring the promise of worker protections in New York is about more than just government enforcement. It’s about immigrant worker centers and unions having the resources and legal tools needed to organize low-wage workers and monitor workplaces for compliance with the law. It’s about legal services organizations and private attorneys helping workers to claim their rights. And it’s about responsible employers coming to the table and supporting policies to improve working conditions in their industries. Above all, the goal of fair and just workplaces must be integrated into the broader policy agenda to rebuild good jobs and economic opportunity in New York.







# **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 New York City.<sup>74</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 five boroughs of New York City;
- b. front-line” workers, i.e., not managers, professionals or technical workers (many of these groups are exempted from key provisions of the employment and labor laws studied in this report); 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 for all workers ages 18 or older who were not self-employed, which was \$15.38 in New York City (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, or \$13.07 in New York City (in 2006 dollars). This 85 percent threshold is one of several commonly used measures used to identify low-wage industries or jobs.<sup>75</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 New York 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 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 also is an issue when asking for details about a worker’s job, the wages they receive, whether they are paid off the books and their personal background.

In light of these difficulties, we adopted an innovative sampling method that operates through respondents’ own social networks. Low-wage workers have friends, family or co-workers they have 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 that 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>76</sup> This method subsequently was 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 that 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 New York City. These “seeds” then were given a fixed number of uniquely numbered 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>77</sup> This process was repeated over a period of several months; as recruitment progressed, the sample became increasingly diverse, eventually becoming independent of the initial sample of “seeds.”

An important part of the RDS method is communicating clearly 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 fliers 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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Our research team searched for interview sites across New York City that were well recognized and welcoming to low-wage workers. Our five sites included spaces in community colleges, churches and community-based organizations—neutral spaces that offered privacy and anonymity to workers. Recruitment coupons served as an ID, so workers did not have to show identification at building entrances. Fielding of the survey started at the beginning of March 2008 and ended in the first week of August 2008, with a final sample size of 1,432 surveys (See Table A.1).

**Table A.1: Summary of 2008 Unregulated Work Survey, New York City**

	New York City
Fielding period	March—August 2008
Number of interview sites	5
Number of interviewers, translators and researchers on staff	22
Monetary incentive for being surveyed	\$50
Number of valid surveys completed	1,432
Estimated population of front-line workers in low-wage industries in New York City (five boroughs)	586,322
Percentage of all front-line workers in NYC	31.0
Percentage of all workers in NYC	14.2

Source: Authors' analysis of 2008 Unregulated Work Survey.

### Post-stratification adjustments to the data

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 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, as well as between U.S.-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 importantly, 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 New York City's sample to match the racial/ethnic and nativity distribution of the 2007 American Community Survey (ACS), with one modification.<sup>78</sup> Since standard government surveys tend to undersample unauthorized immigrants,<sup>79</sup> we developed an adjustment to the ACS race/ethnicity/nativity distribution drawing on estimates of the number of unauthorized workers in New York City in 2005.<sup>80</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 New York 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.1, we summarize our estimate of the number of workers in New York City that our sample represents—more than a half-million (586,322) workers, which we estimate represent roughly 31 percent of all front-line workers, and 14 percent of all workers, in the city’s five boroughs.

## **Modeling the impact of worker and job characteristics on violation rates**

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In Section 6, we discussed the relative weight of job/employer characteristics compared with 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 the employer was a temp agency and whether the worker belonged to a union. The worker characteristics group consisted of gender, race, nativity, documentation status, education, age, job tenure and whether 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 generally were significant.<sup>81</sup> But the strength of their impact differed substantially. Job characteristics were 2.1 times stronger than worker characteristics in predicting minimum wage violation rates; 3.2 times stronger in predicting overtime violation rates; roughly equal in terms of predicting off-the-clock violation rates; and 3.6 times stronger in predicting meal break violation rates.<sup>82</sup>

# Endnotes

- 1 Bhattarai (2009).
- 2 New York State Department of Labor (2008b) and Nelson (2009).
- 3 Greenhouse (2008b).
- 4 Studies specific to New York City are detailed in the next section. For examples of broader research on the problem of workplace violations, see Bernhardt et al. (2008), Bobo (2008), Fine (2006), Flaming, Haydamack and Joassart (2005), Gordon (2005), Greenhouse (2008c), Hale and Wills (2005), Hondagneu-Sotelo (2001), Levin and Ginsburg (2000), McGrath (2005), Mehta et al. (2002), Milkman (2006), Ness (2005), Southern Poverty Law Center (2009), 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).
- 5 Bernhardt et al. (2009). Both the text and the analysis presented here draws substantially on that report.
- 6 Standard government surveys such as the decennial Census do not gather the detailed data one would need to accurately identify workplace violations. Enforcement agencies usually only document the relatively small number of cases that come before them, leaving a significant part of the labor market unmeasured. Exceptions 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)).
- 7 Recent surveys documenting workplace violations and other working conditions in low-wage industries in New York City include: Asian American Legal Defense and Education Fund and YKASEC (2006), Bernhardt, McGrath and DeFilippis (2007), Cordero-Guzmán, Smith and Grosfoguel (2001), Domestic Workers United and DataCenter (2006), Fiscal Policy Institute (2007a, 2007b), Hum (2003), Make the Road by Walking and Retail, Wholesale and Department Store Union (2005), New York Taxi Workers Alliance (2003), Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition (2005, 2006, 2009), Ross (2004) and Theodore, Valenzuela and Meléndez (2006).
- 8 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 New York. We then used these legal rules to determine whether the workers in our sample experienced a given workplace violation (see Section 3 for more details).
- 9 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.
- 10 The category of authorized immigrants includes both those who are naturalized citizens and those with permanent resident status or other types of legal documentation; the category of unauthorized immigrants consists of immigrants not authorized to work in the United States.
- 11 Using data from the 2007 American Community Survey, we compared demographic characteristics of the full New York City workforce (all workers employed in the five boroughs between the ages of 18-64 who were not self-employed) with demographics characteristics of workers in our sample (workers who fit the above criteria, but only those who worked in front-line occupations in low-wage industries). Women constituted 47 percent of the full New York City workforce, compared to 57 percent of our sample. For foreign-born workers, the corresponding figures were 43 and 70 percent, respectively. For Latino workers, the corresponding figures were 23 percent and 55 percent, respectively. For non-Hispanic black workers, the corresponding figures were 21 percent and 13 percent, respectively. For non-Hispanic Asian/other workers, the corresponding figures were 14 percent and 25 percent, respectively. And for non-Hispanic white workers, the percentages were 42 percent and 8 percent, respectively.
- 12 Not all workers are covered by U.S. employment and labor laws. But with the exception of a small number of in-home child care workers (examined separately at the end of this section), all of the workers in our sample are at least partially covered by one or more of the employment and labor laws considered in our study. Depending on the law in question, workers in certain occupations or industries may be treated differently or exempted from some protections; we have accounted for these types of provisions in calculating all violation rates in this report. For more details, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 13 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)).
- 14 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).
- 15 Courts have differed on whether the state’s daily overtime requirement phases out for workers who make more than the minimum wage. In this study, we have adopted the more generous reading of the law, from the standpoint of low-wage workers. For more details on the ambiguity – and new guidance forthcoming from the Department of Labor – see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 16 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.
- 17 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.
- 18 For more detail regarding New York state laws, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 19 For more details about deductions, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 20 New York’s base wage differs depending on the amount of tips earned and the industry and occupation of the worker. In addition, the law requires that a worker must earn at least the full minimum wage after their tips are included.
- 21 Tipped workers in 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.

- 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 Workers could report more than one type of retaliation.
- 25 A serious injury was defined as one that needed medical attention, whether or not the worker actually received such attention.
- 26 For more information on workers' compensation law, see the Unregulated Work Survey Technical Report (available upon request from the authors).
- 27 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).
- 28 For more information on independent contractors and misclassification, see Carré et al. (2000), National Employment Law Project (2009) and Ruckelshaus and Goldstein (2002).
- 29 This measure includes the following violations: minimum wage, tipped minimum wage, overtime, off the clock, being paid in tips only and illegal deductions.
- 30 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.
- 31 See Bernhardt, McGrath and DeFilippis (2007).
- 32 See Bernhardt, McGrath and DeFilippis (2007), p.61.
- 33 Construction workers who worked at commercial sites did not qualify for our survey. Because of high union density in New York City's commercial construction industry, the median wage for these workers was above the threshold we used for identifying low-wage industries and occupations.
- 34 See Theodore, Valenzuela and Melendez (2006).
- 35 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).
- 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 The analysis here was done for weekly overtime violations only (and does not include daily overtime).
- 38 For example, see the detailed industry profiles in Bernhardt, McGrath and DeFilippis (2007).
- 39 Some industry and occupation categories were aggregated to yield sufficient sample sizes when calculating overtime rates (because not all workers are at risk for an overtime violation).
- 40 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.
- 41 Some industry and occupation categories were aggregated to yield sufficient sample sizes when calculating off-the-clock violation rates (because not all workers are at risk for an off-the-clock violation).
- 42 See Appelbaum and Batt (1994), Appelbaum, Bernhardt and Murnane (2003), Beynon et al. (2002) and Kochan, Katz and McKersie (1994).
- 43 The correlations of these practices with other workplace violations were weaker. Offering paid sick and vacation days was associated with fewer overtime violations. Offering health insurance was associated with fewer off-the-clock violations. For meal break violations, these employer practices offered no significant protection.
- 44 Appelbaum and Batt (1994) and Kochan and Osterman (1994).
- 45 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 very likely are 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.
- 46 Minimum wage violation rates were higher for women than for men, but the difference was not statistically significant.
- 47 The lack of an age effect 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.
- 48 In our survey, 54 percent of workers had at least one pay-based violation in the previous workweek. We applied this percentage to the total number of front-line workers in low-wage industries in New York City, i.e., 586,322 (see Table A.1 in Appendix A).
- 49 For in-depth analyses of public enforcement, see Wial (1999), Weil (2005, 2007) and Weil and Pyles (2005, 2007).
- 50 Bernhardt et al. (2009), pp. 51–54.
- 51 Pieces of this section are adapted from Bernhardt et al. (2009). It also draws on Ruckelshaus (2008); National Employment Law Project (2008); National Employment Law Project, New York Jobs with Justice and Pratt Center for Community Development (2009); and Campaign to End Wage Theft (2006).
- 52 See, for example, Greenhouse (2008a); Ludden (2009). See also New York State Department of Labor (2009b; 2009c; 2008a; 2008b).
- 53 New York State Department of Labor (2007).
- 54 New York State Department of Labor (2009a).
- 55 New York State Department of Labor (2008c).
- 56 New York State Department of Labor (2009d); e-mail from the New York State Department of Labor to the National Employment Law Project, in response to the National Employment Law Project's Freedom of Information Act request, received January 5, 2010 (on file with the National Employment Law Project).

- 57 E-mail from the New York State Department of Labor to the National Employment Law Project, in response to the National Employment Law Project's Freedom of Information Act request, received January 4, 2010 (on file with the National Employment Law Project).
- 58 See Brand (2007).
- 59 Letter from the New York State Office of the Attorney General to the National Employment Law Project, in response to the National Employment Law Project's Freedom of Information Act request, received December 30, 2009 (on file with the National Employment Law Project).
- 60 See Stonington (2009).
- 61 See National Employment Law Project (2009).
- 62 See, for example, Barnard (2008).
- 63 The New York Immigration Coalition (2008) and Chan (2006).
- 64 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).
- 65 New York Nonprofit Press (2009).
- 66 Temporary Commission on Day Laborer Job Centers (2009). See also National Day Laborer Organizing Network (2007).
- 67 Restaurant Opportunities Center of New York and New York City Mayor's Office of Immigrant Affairs (2006).
- 68 See New York City Council (2008).
- 69 Sonn and Gebreselassie (2009).
- 70 The Domestic Workers Bill of Rights was passed in the New York Assembly (N.Y. A. 1470-A), and a more comprehensive version that also includes benefits has been introduced in the New York Senate (S. 2311A). The Farmworker Fair Labor Practices Act also has been passed by the New York Assembly (N.Y. A. 1867), but has not received a vote in the state Senate.
- 71 See Sonn (2006).
- 72 This list includes a few of the most directly relevant examples of what the city can do. For a comprehensive listing, see National Employment Law Project, New York Jobs with Justice and Pratt Center for Community Development (2009).
- 73 See Sonn (2009) and Bernhardt, Lander and Brunk (2009).
- 74 We wrestled with the question of whether to include such independent contractors 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 both for employees with wage income as well as independent contractors, whom we would need to ask detailed questions about business income and costs). However, we hope future surveys will focus on low-wage independent contractors, such as taxi drivers, who are effectively in an employment relationship and whose working conditions are very similar to the population of workers we surveyed here.
- 75 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.
- 76 Heckathorn (1997, 2007).
- 77 The number of coupons given to respondents varied over the course of the survey; on average, respondents recruited two other workers into the sample.
- 78 These adjustments were made within major occupation groups, in order to ensure a high level of accuracy in the weighting.
- 79 For example, see Hoefer, Rytina and Baker (2008), who estimate an unauthorized immigrant undercount rate of 10 percent.
- 80 Data on the number and characteristics of unauthorized immigrants were generously provided by Jeffrey Passel of the Pew Center for Hispanic Research.
- 81 The one exception is that worker characteristics as a group were not significant in predicting overtime violations.
- 82 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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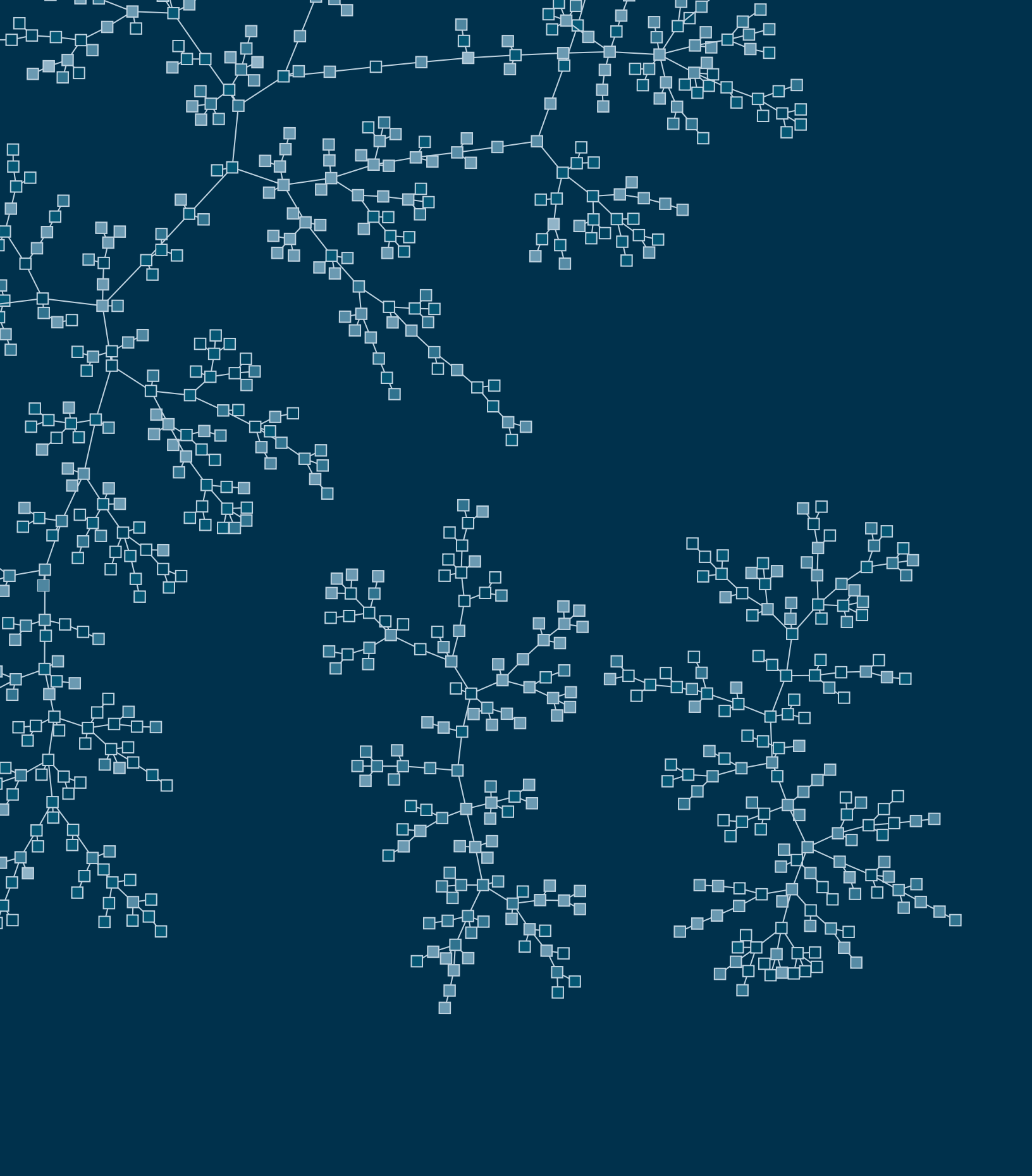
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The graphic on the back cover is taken from one of the survey's RDS recruitment chains. Each square represents a worker and the different colors represent the workers' industry.

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