

Fired on a Whim

The Precarious Existence
of NYC Fast-food Workers



February 2019

ACKNOWLEDGEMENTS

This report was prepared by the Center for Popular Democracy, Fast Food Justice, the National Employment Law Project, and 32BJ.



About the Center for Popular Democracy

The Center for Popular Democracy (CPD) works to create equity, opportunity, and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions. CPD strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda.

www.populardemocracy.org



About Fast Food Justice

Fast Food Justice is an organization of fast-food workers across New York City coming together to educate each other and advocate for improvements in our workplaces and in our communities. We educate each other about our rights, ensure that employers are held accountable for what we have already won, support higher standards in the industry and fight for changes that will benefit our communities.

www.fastfoodjustice.org



About the National Employment Law Project

The National Employment Law Project (NELP) seeks to ensure that America upholds for all workers the promise of opportunity and economic security through work. At the federal, state and local levels, NELP fights to create good jobs, expand access to work, and strengthen protections for low-wage workers and the unemployed.

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About 32BJ SEIU

32BJ SEIU's mission is to build and grow a diverse, effective, politically independent and democratic organization of workers to change our lives for the better, improve our communities, and build a more just society for present and future generations. We recognize our successes and learn from our setbacks. We strive to be strategic, organized, inclusive, honest, respectful, optimistic and confident.

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Executive Summary

One fast-food worker was fired for not smiling enough. Another was summarily dismissed for having long nails. A third was fired for arriving late once, which was due to her struggle to address domestic abuse at home. And many more were fired with no explanation at all.

Throughout New York City, fast-food workers' lives are thrown into disarray when their employers fire them arbitrarily, often after workers have prioritized physically demanding fast-food jobs over time with their families, educational goals, and their own health. Many people are surprised to learn that their employer can terminate them whenever they choose, for almost any reason or even no reason at all, and that employees have no right to receive a warning nor the opportunity to correct simple mistakes before being fired. Employers can also dramatically reduce work hours, leaving workers earning so little that they are effectively forced to quit. A vindictive or biased employer can slash benefits and wages, change schedules, and demote or transfer employees with few restrictions, forcing thousands of New York City families to live in a state of constant uncertainty. A late arrival due to train delays, a perceived "bad attitude," or a single customer complaint may be enough to end even long-term workers' employment.

This model is called "at-will" employment, and it sows chaos throughout already-unstable workplaces. That chaos trickles down to the families and communities that these workers support, causing stress, fear, and instability which wreaks havoc on families who are already living paycheck to paycheck. For families with little to no savings, struggling to survive in an increasingly expensive city, the sudden loss of income can precipitate homelessness or require workers to rely on government assistance to put food on the table.

The lack of legal protections against unfair termination exacerbates mistreatment in an industry overwhelmingly powered by women, immigrants, and people of color.¹ Some of the arbitrary treatment reported by fast-food workers—firing one worker for the same conduct that is tolerated in others—is likely animated by racial and gender bias. Other workers who have been fired or had their hours slashed suspect they are being punished for speaking up about abuse, wage theft, or hazardous working conditions.

Yet many terminations motivated by bias or retaliation against activism are not covered by existing legal protections, or even if they are illegal, are impossible to prove. By sowing fear that keeps workers from speaking up, the at-will model leaves workers vulnerable to wage theft, high rates of injury, and pervasive sexual harassment.

New findings from a survey of 539 New York City fast-food workers confirm that job loss and reductions in hours are rampant and cause severe financial hardship. Survey responses show that:

- **Fast-food employers terminate workers with alarming frequency.** Fifty percent of workers surveyed had been fired, laid off, or compelled to quit a fast-food job due to intolerable working conditions. Of respondents who reported job loss, over a quarter experienced multiple job losses within the fast-food industry.
- **Drastic cuts in hours are common.** In a sample of 237 fast-food workers, 58 percent reported having experienced a significant and ongoing reduction in hours in one or more jobs.* On average, these workers lost 14 hours of work per week. For a full-time worker, that represents a one-third reduction in income.
- **Many workers are denied even a basic explanation when terminated.** When asked whether they were given a reason for being fired or let go from a fast-food job, 65 percent of workers reported that in at least one instance they had not been given a reason for termination.†
- **Termination throws workers into poverty.** Sixty-two percent of respondents who lost a fast-food job or suffered a cut in hours experienced financial hardship as a result, including food insecurity, housing instability, and loss of resources to pay for childcare. Others were evicted, forced to move, or had to drop out of school.

New York City does not have to tolerate this abuse of its most vulnerable workforce. By enacting "Just Cause" legislation, the city could require fast-food chains to demonstrate a legitimate reason for terminating a worker or reducing their hours. This policy would hold fast-food giants accountable, address a severe power imbalance, and bring stability and security to more than 67,000 fast-food workers, and to the families and the communities in which they play an integral role.

* A survey addendum with a question on hours reduction was issued separately to a random sample of 237 fast-food workers by Fast Food Justice. See "Survey Sample and Methods" for more information.

† This reflects a subset of respondents who answered a survey question on whether they were given a reason for being fired or let go from a fast-food job.

Introduction



“They said I was not smiling enough.” This was the sole explanation Melody was given when her manager finally fired her after a year of employment. But Melody’s job at a Chipotle in Midtown had begun to go downhill months earlier. First, a new manager arrived, who started bringing

in employees from his old store while cutting the hours of existing employees. Melody went from almost full-time work down to eight hours a week, making it impossible for her to support her two children. She was forced to apply for public assistance.

Still, Melody stuck with the job, hoping that her hours would increase when she had proven herself to the new manager. Then Melody was abruptly fired, allegedly for not smiling, although she had never had a single customer complaint. She knew that there was no real reason for her termination—that her manager simply no longer wanted her there, and that there was nothing she could do about it. Melody was upset but not surprised: she had seen coworkers fired for equally arbitrary reasons and felt that it was only a matter of time before it happened to her.

Melody’s experience is far too common in the fast-food industry, which is marked by instability and uncertainty. Each day, fast-food workers’ lives are thrown into disarray when their employers fire them arbitrarily, often after workers have prioritized physically demanding fast-food jobs over time with their families, educational goals, and their own health. Many people are surprised to learn that their employer can terminate them whenever they choose, for any reason or no reason at all, and that employees have no right to receive a warning or the opportunity to correct simple mistakes before being fired. Employers can also dramatically reduce work hours; many workers who aren’t formally fired are forced to quit when their hours are cut and their

income is drastically reduced. Moreover, some of the arbitrary treatment reported by fast-food workers—firing one worker for the same conduct that is tolerated in others—is likely animated by racial and gender bias. A vindictive or capricious employer can slash benefits and wages, change schedules, demote, or transfer employees with few restrictions, forcing thousands of New York City families to live in a state of constant uncertainty.

This “at-will” employment model sows chaos in already-unstable workplaces. Arbitrary terminations and forced quits spurred by drastic reductions in hours may help explain the sky-high turnover rates in fast food. Staff turnover in fast food was 150 percent in 2018,² double the rate of the broader restaurant-and-accommodation sector.³ The refusal to invest in workforce training or coaching employees through harmless mistakes drives turnover as employers prefer to fire or cut the hours of employees who fall out of favor.

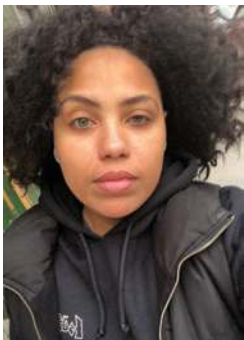
Findings from an original survey of more than 530 New York City fast-food workers show that job loss is a routine experience for fast-food workers, and that the financial hardships of job loss are severe. Fifty percent of survey respondents had either been fired or laid off, or felt forced to quit a fast-food job because their employer made it impossible to stay. Such instability can wreak havoc on families already living paycheck to paycheck. For families with few savings, struggling to survive in an increasingly expensive city, the sudden loss of income can precipitate a loss of housing or require workers to rely on government assistance to put food on the table.

New York City now has the opportunity to protect fast-food workers from arbitrary firings that disrupt and destabilize their lives. “Just Cause” legislation can hold fast-food giants accountable and address a severe power imbalance by requiring global fast-food chains to demonstrate legitimate, performance-related reasons for firing a worker or reducing their hours. By passing Just Cause legislation, the city can lead the way in transforming the fast-food industry so that thousands of fast-food workers are able to stay in their jobs and thrive.

The Fast-Food Industry: High Turnover and Frequent Violations of Workplace Rights

New York City's 3,000 fast-food locations⁴ employ more than 67,000 people.⁵ Two-thirds of these fast-food workers are women, two-thirds are immigrants, and 88 percent are people of color.⁶ These demographic populations are among the most vulnerable to wage theft.⁷

Fast-food employers frequently violate their employees' workplace rights. According to the US Bureau of Labor Statistics, food service personnel "have one of the highest rates of injuries and illnesses of all occupations."⁸ A survey of fast-food workers in the ten most populous US metropolitan areas found that nearly 90 percent were victims of wage theft, with most experiencing multiple kinds of wage theft.⁹ Another survey found that 78 percent of fast-food workers had been injured on the job, with 73 percent suffering multiple burns within a single year.¹⁰ And in a recent survey of women working in fast food, 40 percent of respondents reported unwanted sexual behavior at work, including more than a quarter who experienced multiple forms of sexual harassment.¹¹

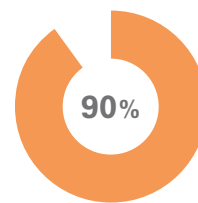


Francis was working 45 to 60 hours a week at Taco Bell, sometimes working 21 hours straight. When she realized that she was not being paid correctly for the overtime hours, she demanded proper compensation. Immediately after speaking up, her hours were cut down to as few as 16 hours a week. Francis was told

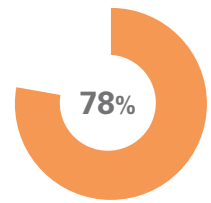
that her hours would pick up again, but the opposite happened. Eventually, Francis was falsely accused of cursing at a customer and promptly fired.

Managers can easily invoke unverifiable, anonymous customer complaints to weed out workers who stand up for their rights. Workers have to make a daily choice: endure exploitation, harassment, and physical danger or risk reductions in hours or termination based on allegations of

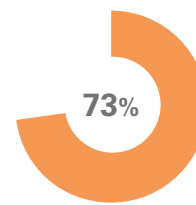
Violations of Workplace Rights



WAGE THEFT



INJURED ON THE JOB



MULTIPLE BURNS



SEXUAL HARRASSMENT

misconduct that they will have no opportunity to disprove. By sowing fear of retaliation, at-will employment enables fast-food companies to evade accountability for wage theft, discrimination, and unsafe working conditions.

Poor working conditions and frequent labor violations also contribute to an extraordinarily high turnover rate within the fast-food industry. Staff turnover in fast food reached 150 percent in 2018,¹² double the rate of the broader restaurant and accommodation sector.¹³ A fast-food restaurant with 150 percent turnover would lose all of its existing workforce within a year, as well as half of the new workers brought in to replace the original staff.

Staff turnover includes both voluntary and involuntary termination, as well as circumstances in which an employee is

forced out of a job due to a change in their working conditions such as a significant reduction in hours or a switch to the graveyard shift (this is sometimes known as “constructive discharge”). While some turnover is voluntary, a high turnover model invites arbitrary and unfair treatment of workers. Fast-food companies continuously recruit new staff while discarding even long-time employees over minor issues, or to exert power and intimidate others from speaking up. With a stack of job applications on their desk, a manager is more likely to fire an employee the first time they arrive late or has a “bad attitude.” Yet when employees are not regarded as easily replaceable, managers have a greater incentive to coach employees through minor infractions, giving workers at least one chance to improve rather than summarily fire them.



Daniella was fired after working for two years at Arby's. She had experienced a domestic violence dispute and was kicked out of her home. With no place to go, Daniella did

not sleep for two days. She called her manager to explain her predicament and said that she would not be able to make it to work the next day. Daniella later decided that she couldn't risk her job and decided to report to work despite her challenging circumstances. When Daniella arrived 30 minutes late to her shift, she was terminated without any consideration of her extenuating personal circumstances. Daniella's story illustrates fast-food employers' willingness to fire a dedicated employee over a single minor infraction rather than having compassion for their challenges or giving the employee an opportunity to correct the problem.



Survey Findings

Findings from an original survey of 539 New York City fast-food workers show that job loss* and hours reduction are common experiences for fast-food workers, and that both carry severe financial consequences for workers and their families.

Job Loss is Shockingly Common for Fast-food Workers

The survey found that job loss is a common experience for fast-food workers. In a sample of 539 fast-food workers, half of all respondents had been terminated from a fast-food job, or experienced constructive termination (an employer forced them to quit by making their job impossible). Of respondents who reported job loss, 26 percent had lost two or more fast-food jobs.

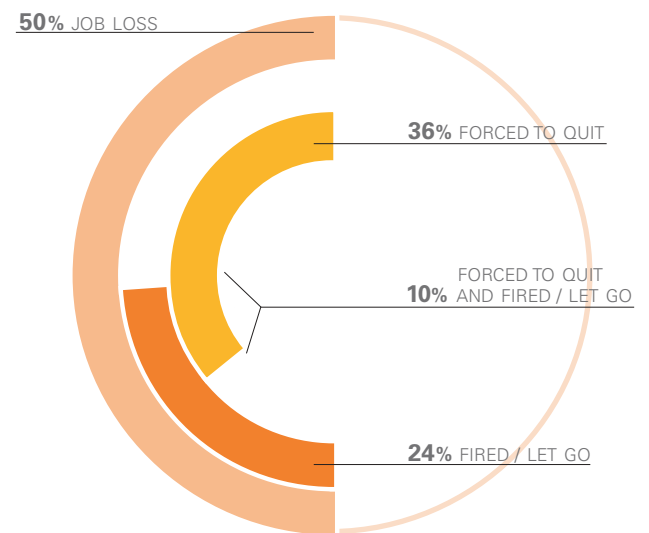


Suhaylah was fired from her job as shift manager at American Bagel at Fulton Center in Manhattan with no explanation, the culmination of her manager's everyday capriciousness. If her manager was in a good mood, she would be scheduled for 35 hours; if not, she might only be scheduled for 20. One day, Suhaylah was running late and called her manager

several times to alert him. He didn't respond. When she got to work, he simply said "I don't need you, you can go." Suhaylah was fired without any explanation.

Like Suhaylah, many survey respondents were never provided a reason for termination by their employer. Workers who had been fired or let go from a fast-food job were asked whether they were given a reason; 65 percent of workers who responded to this survey question reported that in at least one instance they were not told the reason.[†] When reasons for termination are provided, managers often cite minor infractions for which termination is

Job Loss Among Fast-Food Workers



a disproportionately harsh response. Fast-food workers reported reasons cited for their terminations such as:

- Nails were "too long."
- "Did not smile."
- Clocked out for a coworker.
- Gave a glass to a customer that had made a previous purchase.
- Stepped away from a workstation briefly to drink water.

* Job loss is defined in this report as being fired, let go, or forced to quit.

† This question was completed by only a subset of those who indicated that they had been fired or let go.

Workers also frequently reported losing their jobs over misunderstandings or violations of company rules that had never been explained to them.



Princess had worked at McDonald's in Prospect Heights, Brooklyn for more than three years and had significant responsibility for training new employees. Princess had always sought to accommodate management's needs, even at the cost of her own health and educational advancement. She

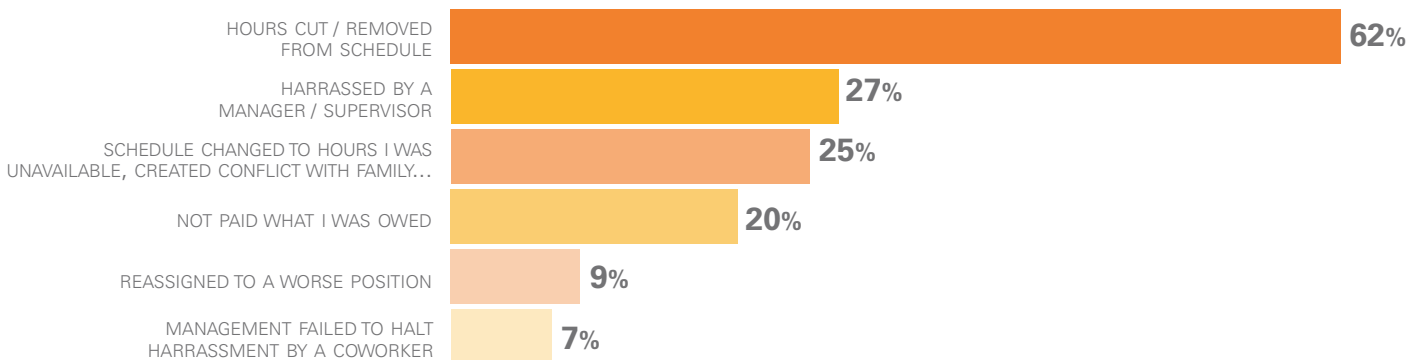
told her manager that her school's work-study requirements made it hard to work night shifts, but when the manager continued to schedule Princess in the evenings, she felt she had no choice but to work those shifts. Some days, Princess went straight to school after an overnight shift, then to work-study, and then right back to work—one day rolling into the next with no rest. Princess relayed to her manager the school nurse's warning that lack of sleep was endangering her health, but the manager was unmoved. "We need you," he told her.

One day, Princess had to miss work for an urgent personal reason. She gave her manager six hours' notice, which her manager acknowledged, telling her to notify him if the situation changed. Princess assumed that her manager would find a replacement for her shift unless he heard back from her again, but in fact her manager expected her to call him again to confirm her absence. Princess was fired over this one simple miscommunication. Her constant flexibility and dedication to her job over the past three years had not been enough to earn a second chance.

More than a third of survey respondents (36 percent) experienced at least one instance of feeling forced to quit a fast-food job because their employer made it impossible for them to stay. Of the 192 respondents who reported being forced out of a job:

- 62 percent quit because their hours were cut or they were removed entirely from the schedule;
- 27 percent quit because they were harassed by a manager or supervisor;
- 25 percent quit because their schedule was changed to hours that they were unavailable to work; and
- 20 percent experienced wage theft.

Forced to Quit: Reasons for Job Loss*



*Percentages do not total 100 since many respondents experienced more than one reason.

Job Loss Has Dire Consequences for Workers and Their Families

Recent data shows that fast-food workers in New York City earn on average \$21,700 annually,¹⁴ roughly two-thirds of the New York City poverty threshold for a family of four.¹⁵ Forty percent of New York City's fast-food worker-led-families relied on food stamps to supplement their wages.¹⁶ These families—especially the more than half of New York City's fast-food workers that support children¹⁷—live on the economic margin. Even while working, they earn barely enough to survive and saving money is often impossible.

With so few resources, it is unsurprising that job loss represents a crisis with cascading negative impacts on fast-food workers and their families. Respondents reported that their job losses resulted in food insecurity, housing instability, and inability to afford childcare. For many, job loss led them to drop out of school, jeopardizing their chances of advancing to a more stable career.

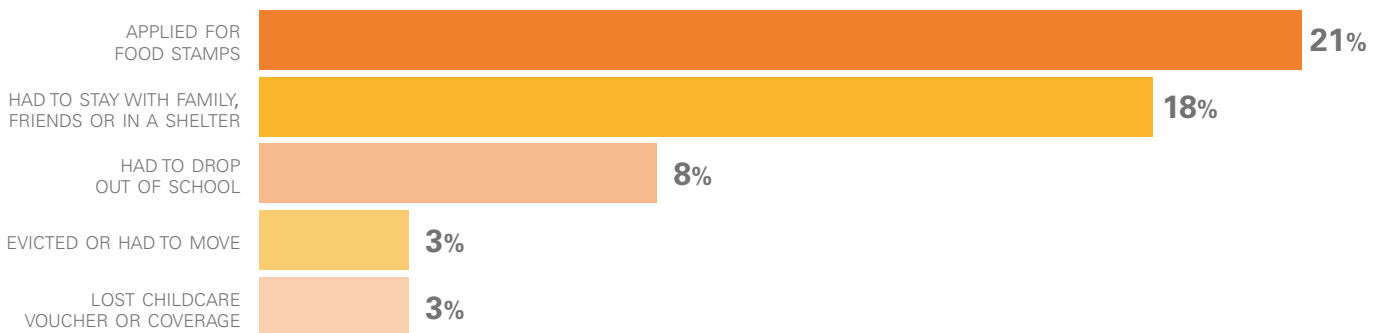
After Daniella lost her job at Arby's, she experienced extreme financial hardship. She was out of work for three months, and often struggled to afford food and rent. She could no longer help pay for her nieces' diapers or take care of her disabled aunt. Daniella's sister, a mother of two,

had to pick up extra shifts to cover basic expenses, since Daniella had been helping to support her nieces before she lost her job. Daniella applied for unemployment benefits, but was denied. The financial uncertainty and impact on her family caused Daniella to suffer from depression.

Like Daniella, the majority of survey respondents reported that termination led to severe economic dislocation. Sixty-two percent of respondents who suffered job loss or constructive discharge experienced at least one financial hardship: 22 percent of respondents applied for food stamps as a result of job loss, while 18 percent had to stay with family or friends or in a shelter. Many reported multiple such hardships.

62% of respondents who lost a fast-food job experienced some form of financial hardship.

Impacts of Job Loss*



*Many respondents experienced more than one of the above impacts.



Many fast-food workers found that they could not access the safety net established to shield working families from economic crisis following job loss. About one fifth (21 percent) of respondents applied for unemployment insurance after losing a fast-food job—a low percentage that suggests lack of awareness of the benefit, difficulty navigating the system, or some other barrier. Of those who did apply, 63 percent did not receive unemployment insurance in one or more instances. This means that the majority of respondents experienced a loss of income without the support of unemployment insurance.

Daniella’s story illustrates how fast-food industry’s high-turnover, termination-without-explanation at-will model imposes harms on New York City’s low-wage communities beyond financial impacts alone. Daniella’s job loss also impacted her sister, nieces, and aunt—women and girls who had relied on Daniella to mitigate the uncertainty of their own economic circumstances. Whereas a middle-class person who loses a job might be able to access their own or a family member’s savings temporarily, a fast-food worker is unlikely to find alternatives when the state’s safety net fails them. It is hardly surprising, then, that job loss can undermine the well-being of entire families, force workers out of their homes, and compromise their mental and physical well-being.

* A survey addendum with a question on hours reduction was issued separately to a random sample of 237 fast-food workers by Fast Food Justice. See “Survey Sample and Methods” for more information.

Impacts of Reduced Hours

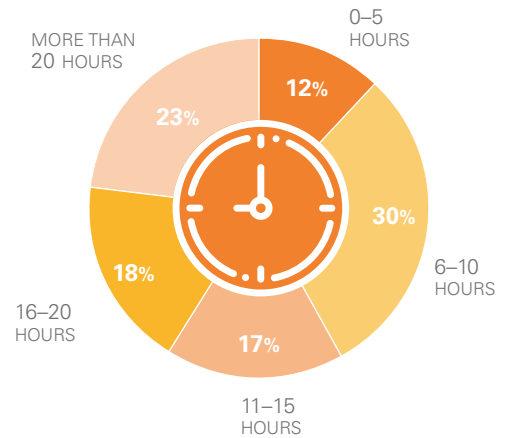
The majority of workers sampled experienced a reduction of hours in one or more fast-food jobs. In a sample of 237 fast-food workers, 58 percent reported a significant and ongoing reduction in hours in one or more jobs.* On average, these workers lost **14 hours of work per week**. On a \$15 minimum wage, this reduction translates to \$210 lost per week, or nearly \$11,000 per year. For someone working full-time, this represents a loss of one-third of their hours and income.



Ivelisse, was working nearly 40 hours per week when she started at Dunkin Donuts in Manhattan. But later her hours were cut in half, and she had to find a second job just to keep up with expenses. Ivelisse and her wife have two children under the age of five, and the dramatic cut in hours has impacted her ability to take care of them. Twice she was

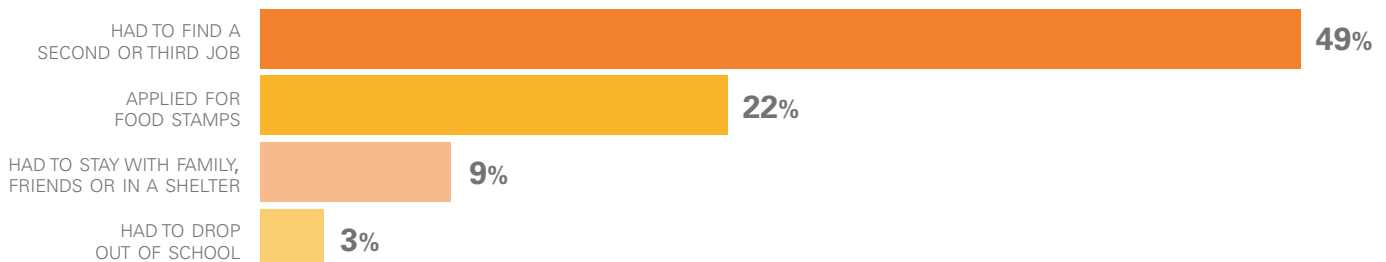
unable to pay rent and her landlord evicted her family. With two jobs, it is difficult for Ivelisse to maintain her health—balancing the demands of two managers leaves her no time to see a doctor. She also struggles to spend consistent time with her kids. “Since Dunkin Donuts cut my hours, I feel unstable in my everyday life,” Ivelisse says. “Every day is an opportunity to see my kids and I am not getting that.”

Number of Hours Lost Per Week



The loss of hours resulted in significant financial hardship for many respondents. In fact, many workers who experienced a reduction in hours faced equivalent financial hardships to those who lost their jobs altogether. The majority of respondents (67 percent) reported at least one financial hardship as a result of losing hours at work. Twenty-two percent applied for food stamps and nine percent had to stay with family, friends, or in a shelter. In addition, nearly 50 percent of those who experienced a reduction in hours had to pick up a second or third job to make ends meet.

Impacts of Reduced Hours



Arbitrariness Allows Bias to Flourish

Overwhelmingly, respondents felt that fast-food employers do not treat workers fairly or hold them to the same performance standards. **Seventy-five percent of all survey respondents felt that their employers did not have consistent expectations for performance, attendance, and customer service.** Respondents frequently cited favoritism and racial discrimination as sources of unfair treatment from managers. These responses reveal a work environment in which decisions to terminate an employee for a frivolous reason—such as what they considered to be excessively long nails—may not only be inconsistent with treatment of other workers, but motivated by racial and gender bias.

These survey results are consistent with other research showing that workers of color frequently experience less favorable treatment in hiring and assigning work roles or schedules, harsher enforcement of workplace rules, and dismissiveness when they seek redress for harassment or discrimination.¹⁸ Workplaces where managers wield broad discretion in responding to perceived performance issues can invite discrimination through the **implicit biases** that subconsciously shape our judgment of others.¹⁹ These biases permeate the exercise of discretion, resulting in harsher treatment for women, people of color, LGBTQ workers and immigrants. This inequality is further compounded by high rates of occupational segregation. Women and workers of color in the restaurant industry are concentrated in the lowest paying positions while disproportionately working in the lowest paid sub-sector: fast food.²⁰



How Can This Be Legal?

Most people are unaware that in New York their employer can terminate them for virtually any reason, or for no reason at all, and that employers are not required to give them a warning first or the opportunity to address problems before they are let go.²¹ In one poll, nearly 90 percent of workers believed the law protected them from being fired for arbitrary reasons such as that their supervisor simply did not like them.²² In reality the opposite is true. Since the 19th century, American law has afforded employees virtually no protection against arbitrary firings; reductions in hours, benefits and wages; schedule changes; demotions; or transfers.²³

Statutory exceptions to at-will employment are supposed to shield workers from certain forms of discrimination and retaliation.²⁴ Under the National Labor Relations Act, workers who organize to improve working conditions are also afforded protections against retaliatory dismissals.²⁵ Workers who blow the whistle on various forms of employer illegal conduct, such as safety violations and financial crimes, may also be protected from retaliatory termination.²⁶

These laws should ensure that workers are never fired due to a manager's racial or gender bias, because a worker rejected a supervisor's sexual advances, or to silence workers who speak up to demand better conditions or pay. In practice, however, the legal system fails to punish employers for terminations that are illegal under existing law.²⁷ Low-wage workers face enormous barriers to even bringing claims before a judge, and courts have issued narrow rulings to prevent workers from winning cases.²⁸

Add to these obstacles the fact that legal representation is often very costly, and that low-wage workers are increasingly blocked by forced arbitration contracts from joining forces in bringing lawsuits,²⁹ and it becomes exceedingly difficult for individual low-wage workers to find justice through the courts.

Most importantly, existing anti-discrimination and anti-retaliation laws do not address the everyday arbitrary firings faced by millions of low-wage workers in New York and across the country. The absence of basic protections for workers against arbitrary dismissal provides employers with few incentives to treat workers fairly. As a result, the city's 3,000 fast-food locations can wield disproportionate power over workers' lives.



Edwin had worked at Domino's Pizza for 11 years and had been working enough hours to support his wife and two kids. He was also active in the Fight for \$15. Edwin's manager told him that the state-mandated minimum-wage increase required Domino's to cut hours. Now, on a good

week, he works only 28 hours and had to add a second job in order to take care of his family. Edwin suspects that his manager is cutting his hours to force him and other activists to leave.

Conclusion and Policy Recommendations

By passing Just Cause legislation, New York City can ensure that fast-food workers have the stability and security that they deserve. Better working conditions and less turnover would lead to happier, better-trained, more experienced, and higher-performing staff equipped to provide exceptional customer service. Taxpayers would not have to pick up the tab for the industry's callous instability in the form of unemployment benefits, food stamps, and shelter costs. More than 67,000 hard-working New Yorkers would be protected from arbitrary terminations that wreak havoc on their families' finances, housing stability, and physical and mental health. Most importantly, Just Cause legislation would correct a skewed power dynamic in which fast-food giants have the power to destabilize workers' lives on a whim, wielding this power to perpetuate wage theft, sexual harassment, and other workplace abuses with impunity.

New York City now has the opportunity to enact groundbreaking policy to ensure that fast-food jobs are secure, stable, and family-sustaining. The policy should:

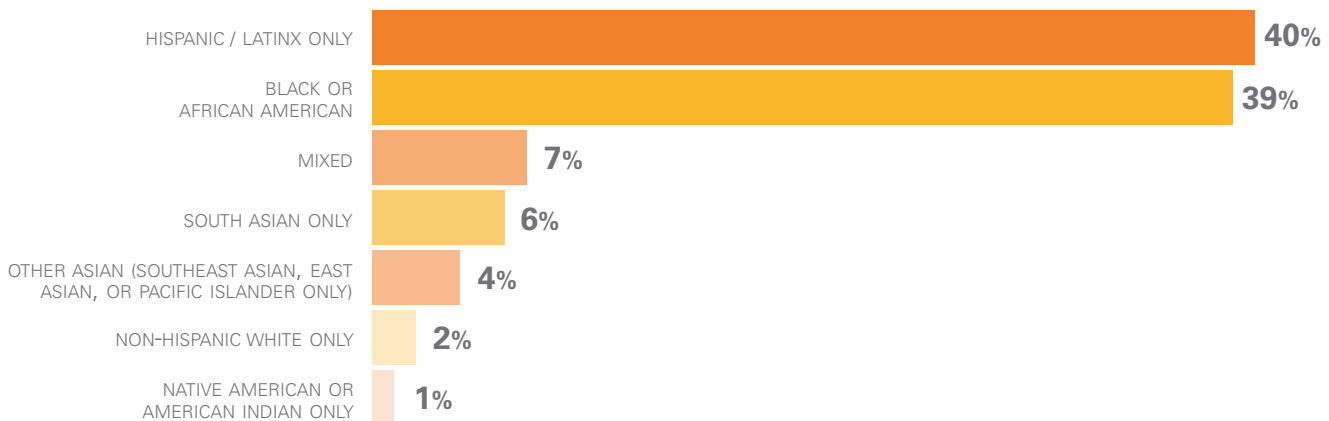
- Require employers to demonstrate an appropriate reason, such as misconduct or performance problems, for terminating an employee who has completed a probationary period;
- Use progressive discipline (such as warnings or suspensions) for minor offenses so that workers have a chance to improve before being punished with termination;
- Prohibit termination when the employee was legitimately unaware of the rule or denied training, or when the rule has been applied inconsistently;
- Require employers to provide a written reason for every termination;
- Consider a reduction in hours of 15 percent or more equivalent to a termination, ensuring that employers cannot skirt the new standard by forcing people to quit;
- Ensure that layoffs occur for bona fide economic reasons to prevent employers from characterizing arbitrary terminations as layoffs; and
- Provide a cost-effective, fair, and voluntary arbitration system to resolve disputed terminations.

Survey Sample and Methods

This survey sample was comprised of 539 fast-food workers who were reached by Fast Food Justice organizers. Respondents were primarily current Fast Food Justice members. A small number were either former members or nonmembers reached through canvassing efforts.

Because Fast Food Justice members are primarily people of color, the survey sample reflects a higher percentage of people of color than frontline fast-food workers in New York City overall.³⁰ The sample also reflects a slightly higher percentage of male workers than the citywide percentage.³¹

Survey Respondents, Race



Survey Respondents, Gender



Respondents have spent varied amounts of time in the fast-food industry:

- 3 or more years: 47%
- 1-2 years: 22%
- 6-12 months: 17%
- 0-6 months: 14%

Respondents reside in diverse zip codes across New York City and represent all five boroughs. They also reflect a diversity of fast-food chains, the most common of which include McDonald's, Chipotle, Dunkin Donuts, and Burger King. Other chains (listed only if represented by more than 10 respondents) include: Five Guys, Shake Shack, Popeyes, Pret a Manger, Dominos, Starbucks, Subway, Potbelly, Juice Press, KFC, and Wendy's.

Survey Addendum: Reduction in Hours

To better understand the impact of hours reduction on fast-food workers, Fast Food Justice organizers fielded a short, separate survey to a subset of 237 survey respondents. Respondents included workers who have experienced job loss as well as workers who have not. The racial and gender composition of the addendum sample was similar to that of the full-length survey, as well as similarly diverse in terms of places of residence and employment.

Survey Limitations

Survey imitations include recruitment bias and self-selection bias (individuals chose whether or not to respond). Data is self-reported by fast-food workers and was not independently verified.



Endnotes

- 1 Internal Analysis by James Parrott, "Demographic Characteristics, Including Parental, Student And Poverty Status Of Frontline NYC Fast-Food Workers," Fiscal Policy Institute, 2016.
- 2 Leslie Patton, "McDonald's High-Tech Makeover is Stressing Workers Out," *Bloomberg News*, March 13, 2018, <https://www.bloomberg.com/news/articles/2018-03-13/work-er-exodus-builds-at-mcdonald-s-as-mobile-app-shows-confusion>.
- 3 Data is from 2016. "Hospitality employee turnover rate edged higher in 2016," National Restaurant Association, March 16, 2017, <https://wahospitality.org/blog/hospitality-employee-turnover-rate-edged-higher-in-2016/>.
- 4 "Restaurant Inspection Information," New York City Department of Health and Mental Hygiene, Accessed 2018, <http://a816-restaurantinspection.nyc.gov/RestaurantInspection/SearchBrowse.do>.
- 5 "Occupational Wages," New York City Region, NY Department of Labor, Accessed 2018, <https://www.labor.ny.gov/stats/lswage2.asp>.
- 6 Internal Analysis by James Parrott.
- 7 Wage theft is any instance of an employer failing to pay their employees the wages owed for work performed. See: David Cooper and Teresa Kroeger, "Employers steal billions from workers' paychecks each year," Economic Policy Institute, May 10, 2017, <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/#epi-toc-13>.
- 8 "Food and Beverage Serving and Related Workers," Occupational Outlook Handbook, Bureau of Labor Statistics, Last Updated October 10, 2018, <https://www.bls.gov/ooh/Food-Preparation-and-Serving/Food-and-beverage-serving-and-related-workers.htm#tab-3>.
- 9 "Key Findings for Survey of Fast Food workers," Hart Research Associates, April 1, 2014, <https://big.assets.huffingtonpost.com/National-WageTheftPollMemo.pdf>, 1.
- 10 "Key Findings From A Survey On Fast Food Worker Safety," Hart Research Associates, March 16, 2015, http://www.coshnetwork.org/sites/default/files/FastFood_Workplace_Safety_Poll_Memo.pdf.
- 11 "Key Findings From A Survey Of Women Fast Food Workers," Hart Research Associates, October 5, 2016, <https://hartresearch.com/wp-content/uploads/2016/10/Fast-Food-Worker-Survey-Memo-10-5-16.pdf>, 1.
- 12 Leslie Patton, "McDonald's High-Tech Makeover is Stressing Workers Out."
- 13 Data is from 2016. "Hospitality employee turnover rate edged higher in 2016."
- 14 "Quarterly Census of Employment Wages," Bureau of Labor Statistics, Accessed 2018, <https://www.bls.gov/cew/#databases>.
- 15 The New York City Government Poverty Measure differs from the official poverty measure. "New York City Government Poverty Measure 2005–2016," The Mayor's Office for Economic Opportunity, The City of New York, April 2018, https://www1.nyc.gov/assets/opportunity/pdf/18_poverty_measure_report.pdf, 4.
- 16 Internal Analysis by James Parrott.
- 17 Ibid.
- 18 "Confronting Racial Bias at Work: Challenges and Solutions for 21st Century Employment Discrimination," Race Forward, November 2016, <https://www.raceforward.org/system/files/pdf/reports/RacialBiasAtWork.pdf>, 13.
- 19 Horace McCormick, "The Real Effects of Unconscious Bias in the Workplace," University of North Carolina Kenan-Flagler Business School, 2015, https://www.kenan-flagler.unc.edu/~media/Files/documents/executive-development/unc-white-paper-the-real-effects-of-unconscious-bias-in-the-workplace-Final?_ga=2.141437042.1120966372.1541102025-32274256.1541102024&_ga=2.141437042.1120966372.1541102025-32274256.1541102024, 6; Cheryl Staats, Kelly Capatosto, Robin A. Wright, and Danya Contractor, "State of the Science: Implicit Bias Review," Kirwan Institute for the Study of Race and Ethnicity, 2015, <http://kirwaninstitute.osu.edu/wp-content/uploads/2015/05/2015-kirwan-implicit-bias.pdf>, 29.
- 20 Chris Benner, "Ending Jim Crow in America's Restaurants: Racial and Gender Occupational Segregation in the Restaurant Industry," Food Labor Research Center, Berkeley University, 2015, http://rocnited.org/wp2015b/wp-content/uploads/2015/10/RaceGender_Report_LR.pdf, 2.
- 21 New York's Court of Appeals, the state's highest court, wrote in one 1983 case that "the employer [has] an unfettered right to terminate the employment at any time." *Murphy v. Am. Home Prod. Corp.*, 58 N.Y.2d 293, 304, 448 N.E.2d 86, 91 (1983).
- 22 Pauline T. Kim, "Bargaining with Imperfect Information: A Study of Worker Perceptions of Legal Protection in an At-Will World," 83 *Cornell L. Rev.* 105, 1997, <https://scholarship.law.cornell.edu/clr/vol83/iss1/2>, 134; Estlund, Cynthia L., "How Wrong Are Employees About Their Rights and Why Does It Matter?," *NYU Law Review*, 2002, <https://www.nyulawreview.org/issues/volume-77-number-1/how-wrong-are-employees-about-their-rights-and-why-does-it-matter/>.
- 23 Deborah A. Ballam, "Exploding the Original Myth Regarding Employment-at-Will: The True Origins of the Doctrine," 17 *Berkeley J. of Emp. & Lab. L.* 91, 1996, https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=2a-hUKewj-nZKi74TgAhW0Vt8KHfz7Bx4QFjAAe-gQlChAC&url=http%3A%2F%2Fscholarship.law.berkeley.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1240%26context%3Dbjell&usg=AOvVaw1HBwQFbOX_vmEGwo9AtPil, 92.
- 24 Federal and state laws bar employment discrimination based on race, gender, national origin, age, disability, pregnancy, and genetic information. See Title VII of the Civil Rights Act, 42 U.S. Code § 2000e et seq.; Americans with Disabilities Act, 42 U.S.C. § 12101, et seq. New York City law broadens these prohibitions to include gender expression, marital status, and conviction record. New York City Human Rights Law, N.Y. Admin Code 8-101, et seq.
- 25 National Labor Relations Act, 29 U.S. Code § 158. Illegal discharges to deter organizing are estimated to occur in 34 percent of all union elections. See Kate Bronfenbrenner, "No Holds Barred: The Intensification of Employer Opposition to Organizing," Economic Policy Institute, 2009, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1037&context=reports>.
- 26 See, for example, False Claims Act, 31 U.S.C. § 3729; Whistleblower Protections Act of 1989, 5 U.S.C. § 1201. See also Cynthia L. Estlund, *Wrongful Discharge Protections in an At-Will World*, 74 *Tex. L. Rev.* 1655, 1996.
- 27 Michael Selmil, "Why Are Employment Discrimination Cases So Hard to Win?," 61 *La. L. Rev.*, 2001, <https://digitalcommons.law.lsu.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=5889&context=lalrev/Why>.
- 28 In a recent study, researchers estimated that fewer than one percent of individuals who perceive discrimination at work end up filing a claim with the Equal Employment Opportunity Commission and, of those who do, only six percent go to trial with only a third of those winning. "Three ABF Scholars Put Rights on Trial in New Book About Employment Civil Rights Litigation," Researching Law, American Bar Foundation, 2017, http://www.americanbarfoundation.org/uploads/cms/documents/abf_newsfall17_final_web.pdf, 4. Even if a worker provides evidence of discrimination or retaliation, an employer can invoke a "legitimate, nondiscriminatory reason" for firing the employee, which shifts the burden back to the worker to prove that the employer's reason was just a "pretext" for discrimination or retaliation. *Zann Kwan v. Andalex Group LLC*, 737 F.3d 834, 846 (2nd Cir. 2013).
- 29 Alexander J.S. Colvin, "The growing use of mandatory arbitration," Economic Policy Institute, April 6, 2018, <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barred-for-more-than-60-million-american-workers/>.
- 30 Internal Analysis by James Parrott.
- 31 Ibid.

