

THE NATIONAL EMPLOYMENT LAW PROJECT IN 2009

**Meeting a Year of Extraordinary
Challenges With Real Solutions
for Working Families**

By almost any economic measure, 2009 was daunting for America's working families. Unemployment rose to its highest level in decades and long-term joblessness broke new records almost every month. Job loss, though thankfully slowing recently, has been sustained and substantial. Wages and incomes are down. And the battering of the broader economy has reverberated within workplaces, as more and more employers cut corners on workers' wages and other workplace standards.

The **National Employment Law Project (NELP)** responded to the crisis with a stepped-up program that, in partnership with our allies, has won important policy reforms and raised the profile of crucial economic and workplace problems and solutions. Throughout 2009, NELP kept a spotlight on policies and programs to create good jobs, strengthen upward mobility, enforce hard-won worker protections, and help unemployed workers maintain or regain their footing. Tens of millions of jobless workers and their families have already benefited from these efforts, and the policy framework we are promoting will help ensure a post-recovery economy built on good jobs that support families and sustain communities across America.

The overview that follows shares highlights of NELP's activities and achievements throughout 2009.

Strengthening Economic Security

NELP works to build a robust safety net that enables workers to surmount job loss and navigate perilous economic times. Over the past year, NELP's sustained and aggressive research, education and advocacy have been pivotal in securing substantial federal investments in unemployment benefits and in winning coverage expansions in more than half the states—the most significant expansion of the federal-state unemployment insurance (UI) program in more than 70 years.

Building a Stronger UI Safety Net

NELP **played a central role** in ensuring the American Recovery and Reinvestment Act (ARRA), the \$787 billion economic recovery measure enacted in February, included **key benefits for unemployed workers**. The law continued the federal emergency Unemployment Compensation program through the end of 2009, making 20 to 33 weeks of federal UI benefits available to workers still unable to find jobs after exhausting their state benefits. It provided full federal funding for states' permanent Extended Benefits programs, fostering program changes that have resulted in more weeks of benefits for more jobless workers in more states. And it gave all jobless workers a \$25 per week boost in benefits, reduced 2009 federal income taxes for the unemployed, and helped an estimated seven million workers retain health coverage with a federally-funded COBRA subsidy.

The ARRA also incorporated a key NELP priority, UI modernization. The measure set aside \$7 billion for awards to states that **update their programs** to expand coverage through eligibility reforms that take into account today's workforce and work patterns. Implementation of the reforms described in the ARRA will prevent hundreds of thousands of workers—mostly low wage, women and people of color—from falling outside the UI safety net when they lose their jobs.

Since the ARRA passed, a whopping 28 states have implemented modernization **reform proposals**. NELP worked with partner organizations in these and other states, providing research and data analysis, technical assistance in crafting legislation, and state-specific fact sheets and reports.

As job loss persisted and durations of joblessness grew, NELP remained **at the forefront** of efforts for unemployed workers, leading this fall's fight for additional weeks of benefits for workers still unable to find jobs. In **testimony before the Senate Finance Committee**, NELP made the case for passage of the **Worker, Homeownership, and Business Assistance Act** of 2009, which provided at least 14 (and up to 20) weeks of added emergency federal benefits for workers still unemployed after exhausting their first round of federal aid. Most recently, NELP joined allies to successfully press Congress to **reauthorize the ARRA** before members left town for the holidays, ensuring that a **million workers around the country** will not lose their unemployment benefits in the first month of the new year.

Engaging Workers and the Broader Coalition for Change

Throughout the year, NELP's UI policy advocacy was informed and strengthened by hands-on involvement in local campaigns—helping to lead a New York State reform coalition, for



NELP joined national and state partners in an early December press conference calling for reauthorization of recovery act provisions that extended unemployment benefits and health care subsidies to the nation's jobless workers.

example—and direct assistance to unemployed workers. An early 2009 NELP-commissioned **national survey of unemployed workers**—with accompanying special reports on unemployment among **Hispanic workers**, **African-American workers**, **older workers**, and **jobless workers with children**—offered up a compelling portrait of the struggles unemployed workers face, and **extensive news coverage** over the year, often reflecting NELP's outreach and input, has kept the jobs and joblessness crises front and center.

NELP re-launched its special website, **unemployedworkers.org**, to provide an avenue to bring more worker voices into debates at the

federal and state levels. To date, more than 20,000 individuals have signed onto this platform for engaging and sharing information with unemployed workers across America.

Rounding out this year's efforts, in early December NELP convened a major national conference on **Unemployment Insurance: Progress, Prospects, Priorities**. The gathering brought together more than 130 stakeholders from 40 states—including researchers, worker advocates, union leaders, and federal and state policymakers and officials—to assess the status of the nation's UI safety net and brainstorm strategies for expanding and strengthening the program in the years ahead.

Building A Good Jobs Economy

NELP is working to build a good jobs economy that will restore the promise of economic opportunity to working families across the country. To that end, NELP advances policies to strengthen the wage floor and improve enforcement of core labor standards; develops innovative strategies to give workers, communities and policymakers the tools needed to build a good jobs economy; and promotes policies that build equality, fairness, and inclusion for all those who work in America.

Strengthening the Wage Floor

A robust minimum wage is a key building block of economic security and opportunity for millions of workers and their families. As the July implementation date for the final step of the 2007 federal minimum wage hike approached this year, NELP undertook outreach and education that helped generate an [exceptionally strong *New York Times* editorial](#), and authored an [essay in the *American Prospect*](#) on women and the minimum wage. Around the same time, NELP released a major report, [Restoring the Minimum Wage for America's Tipped Workers](#), detailing the human cost of the egregiously low federal minimum wage for tipped employees, which has been stuck at \$2.13 since 1991. In partnership with the Restaurant Opportunities Centers United (ROC-U), NELP generated media attention for this issue in outlets like [CNN](#), the [New York Times](#), [Reuters](#), and [McClatchy](#), and followed up in the fall with a congressional briefing co-sponsored with ROC-U and [Representative Donna Edwards](#) on the [WAGES Act](#), a proposal to restore a strong minimum wage for America's tipped workers.

NELP also worked with partners in the states to support local efforts to raise minimum wages, close loopholes, and [resist efforts to roll back existing protections](#). For example, NELP [testified](#) before the New York State Hotel and Restaurant Wage Board about the need to raise the minimum wage for tipped workers in the hospitality industries and filed an [amicus brief](#) in the 7th Circuit supporting the legal viability of local labor standards.

Documenting Workplace Violations

For Labor Day 2009, NELP joined with colleagues from the Center for Urban Economic Development at UIC and the UCLA Institute for Research on Labor and Employment to publish the landmark study, [Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities](#), which reported findings from our unprecedented survey of 4,400 low-wage workers in New York, Los Angeles and Chicago. The first-of-its-kind study documented stunningly pervasive wage violations across our nation's economy, spurring [substantial media attention](#), including editorials in the [New York Times](#) and [Washington Post](#). *Broken Laws* has become the definitive brief for policymakers on the need to overhaul our badly frayed workplace enforcement system. Companion city-specific reports are upcoming in 2010.

NELP also joined with partners to release [Confronting the Gloves-Off Economy](#), a new report summarizing the "gloves-off" labor practices prevalent in low-wage industries and strategies for workers to employ to address them. The report was drawn from a [companion academic volume](#), which features contributions from over 20 leading experts including economists, sociologists, labor attorneys, union strategists and others.

Enforcing Federal Wage Protections

NELP convenes and leads the *Just Pay Working Group*, a virtual table of worker centers and their networks, lawyers, unions, researchers, think tanks and others that coalesced earlier this year to develop a coordinated agenda of regulatory and legislative reforms to strengthen core wage protections and their enforcement by the U.S. Department of Labor. In working groups that met over several months, the group has forged a comprehensive list of proposals built from historical best practices and concrete models from state enforcement agencies around the country. Slated for release in early 2010, the *Just Pay Working Group* blueprint will serve as a key resource for agency officials as they seek to improve the enforcement of core labor protections for our nation's workers.

This fall, NELP hosted *Reclaiming Our Wages*, a major national wage enforcement conference in Washington, DC, that brought together hundreds of stakeholders from around the nation who are committed to ensuring workers are paid the wages they are due. Over two days, national and grass roots leaders, experts and activists shared highlights of model initiatives for combating unlawful wage practices and explored strategies for replicating these efforts at the federal level and around the nation.

Supporting Strategic Enforcement Efforts Nationwide

NELP partners with lawyers, worker centers, enforcement officials, policymakers, unions and other advocates around the country in policy campaigns, research projects and strategic litigation that



Rachel Micah-Jones (Centro de Derechos Migrantes), Hollis Pfitsch (Legal Aid in NY), Lupe Gamboa (Oxfam America) and other colleagues joined hundreds of national and local leaders and activists to share models for wage justice campaigns at NELP's Reclaiming Our Wages conference.

aims to ensure workers get the wages they have earned. Included among numerous efforts over the past 12 months, we assisted advocates in New Mexico in *enacting a model law* to strengthen the state's penalties for minimum wage violations and joined allies to write and publish educational materials like the *Rights Begin at Home* series of domestic workers' rights guides for *California* and *Illinois*.

NELP has continued to provide expert technical assistance to policymakers seeking to clamp down on employers who misclassify employees as independent contractors at the expense of workers and taxpayers alike. This summer saw the release of our *annual roundup* of state legislative reforms and targeted enforcement

actions to address improper misclassification. We are also providing technical assistance to state attorneys general who have been pursuing a *high-profile investigation* of widespread misclassification of package delivery drivers.

NELP *celebrated the first anniversary* of its *National Wage and Hour Clearinghouse* this year. This web-based information platform provides members (organizers, lawyers, scholars and other worker advocates) with model pleadings, a listserv for discussing novel wage-and-hour questions, and news summaries on major developments in wage enforcement. We provide ongoing litigation support for Clearinghouse members as they litigate cutting-edge cases and issues around the country, this year assisting in lawsuits involving construction and retail workers in Louisiana, home care workers in Pennsylvania, farmworkers in the southeast, and day laborers in the state of Washington, among others.

Leveraging Government Action to Create More Good Jobs Across Our Economy

As described in *the American Prospect*, NELP and our allies are drawing upon state and local innovations like living wage laws and community benefits agreements to develop strategies for leveraging federal resources to create good jobs. Early in the year, we joined partners to craft a *"green construction careers" provision* within the House-passed American Clean Energy and Security Act.

If passed by the Senate, the provision will ensure that a percentage of the new construction jobs it creates goes to workers from targeted groups including low-income communities.

This fall, NELP released *The Road to Responsible Contracting*, which profiles successful state and local policies rewarding employers who create good jobs providing living wages, affordable health benefits and safe workplaces, and we [testified before the Office of Management and Budget](#) in support of a proposed “responsible contracting” executive order ensuring that jobs created through taxpayer dollars are good jobs that raise living standards for working families.

In New York, NELP and our partners released *One City/One Future: A Blueprint for Growth that Works for All New Yorkers*, a landmark policy agenda for transforming economic development in New York City to deliver family-supporting jobs, quality training, affordable housing, and healthy, sustainable communities. Later, we [testified before the City Council](#) in support of key legislation for [the Good Food/Good Jobs campaign](#) that aims to bring supermarkets that provide healthy food and living wage jobs to the city’s underserved neighborhoods.

Advocating for Immigrant Workers

NELP’s work frequently lies at the intersection of immigrant rights and workers’ rights, in areas ranging from pushing back against local anti-immigrant measures to efforts to strengthen federal enforcement of labor protections for immigrant workers. In the spring, [NELP testified](#) before a House committee on improving the U.S. Department of Labor’s enforcement of protections for H-2B guestworkers. This fall, NELP and allies at the AFL-CIO and American Rights at Work published a major report, *ICED OUT: How Immigration Enforcement Has Interfered With Labor Rights*, which shines a spotlight on the Immigration and Customs Enforcement Agency’s (ICE) misguided practice of conducting immigration raids in workplaces rife with labor abuses—a practice that negatively affects both native-born and immigrant workers.

NELP believes that migration must be approached on a worldwide basis, since policies adopted within the United States are often the models for policies worldwide. To that end, NELP has joined with other migrant worker advocates to promote basic human rights for migrant workers within the United States and around the world. This year, NELP [authored a chapter](#) on migrant labor, forced labor, and human rights in a Labor and Employment Relations Association volume and participated in the [Global Forum on Migration and Development’s Civil Society Days](#) in Athens, Greece, to promote migration policies that protect migrant workers’ human rights. Closer to home, NELP [argued before the Washington State Supreme Court](#) that immigration status should not be allowed into evidence in a personal injury lawsuit—both to protect access to the courts and promote safe workplaces.

Renewing Economic Opportunity

NELP promotes access to good jobs for all workers. Our Economic Adjustment Initiative, which focuses on workers facing job loss due to auto industry restructuring, promotes implementation of rapid response and other best practice models to help displaced workers access needed benefits and obtain quality reemployment. NELP’s Second Chance Labor Project combines representation of workers in strategically targeted proceedings with training for advocates and public policy development, with the goal of lifting barriers to employment for persons with criminal records.

Reforming and Expanding Federal Laws to Help Dislocated Workers

Early this year, key reforms NELP and its partners championed were adopted by Congress when it [reauthorized the Trade Adjustment Assistance \(TAA\) program](#) as part of the recovery act, bringing about long overdue improvements in benefits and training assistance for dislocated workers and expanding the universe of covered workers. With a near-tripling of training funds and eligibility expanded to service workers, among other changes, the TAA overhaul represented a crucial step in making the program more responsive to the needs of America's workers buffeted by the global economy. More recently, NELP worked with policymakers and congressional staff to help craft updated [legislation to improve the federal Worker Adjustment and Retraining Notification \(WARN\) Act](#), to better help workers prepare for layoffs.

Promoting Model Practices to Improve Workers' Access to Benefits and Services

With the recession and financial industry meltdown exacerbating an already grave economic crisis in the Great Lakes region, NELP combined direct support for discrete groups of workers—helping thousands obtain TAA certification, for example—with aggressive promotion of best practice models to foster a more robust, worker-centered response to plant closings and job loss. NELP promoted this agenda at conferences of [professional organizations of state workforce development agency officials](#) and before [major economic policy institutions](#). Informed by [recommendations NELP issued earlier](#), Ohio retooled its rapid response programs this year, and we presented on these changes to networks of community organizations, including the Ohio Association of Community Action Agencies.

NELP convened numerous training sessions and presentations for unions, community service providers, state workforce agency representatives, community groups, and other stakeholders in Midwestern states, to update them on benefits and services for dislocated workers and how the programs themselves should best be implemented. We also developed a comprehensive toolkit, which we utilized for four [full-day training sessions](#) hosted by NELP and the Center for Civil Justice to engage community-based organizations across Michigan in how to anticipate and respond to the human services needs of dislocated workers—from programs specific to dislocated workers to basic safety-net programs that serve entire communities.

Challenging Barriers to Employment for People with Criminal Records

In an effort to revive enforcement of longstanding EEOC guidance governing employers' reliance on applicants' criminal records to screen them for jobs, NELP filed multiple EEOC charges in 2009 on behalf of people of color denied employment solely because of their criminal records. With several labor, civil rights and advocacy group partners, we also [called upon the Equal Employment Opportunity Commission](#) to investigate and file a commissioner's charge against a major bank, private staffing agency, and state agency that together were applying a blanket prohibition against job applicants from workers with criminal records for open positions at the bank.

NELP took up the cause of port workers subject to new background screening requirements (including criminal records) as a condition of retaining their jobs. Drawing on our experiences in representing affected workers, NELP concluded that the long delays occasioned by the flawed [administration of the screening program](#) resulted in temporary or permanent job and income loss for thousands of qualified workers. We [successfully represented](#) over 350 longshore and

transportation workers initially denied security clearances, enabling them to keep their jobs, and then [produced a report](#) on the key protections for these transportation workers, egregious processing delays, and the disproportionate negative impact of the process on workers of color. Complementing our assessment of the program's operations, we developed "[know your rights](#)" [materials](#) to increase workers' awareness of such protections.

Promoting Relevance, Accuracy and Fairness in Background Screening

More and more employers are using criminal background checks to screen for employment, regardless of the relevance to the job, and all too often, they are relying on highly inaccurate databases to assess individuals' records. NELP is working with partners at the federal, state and local level to help ensure screening for criminal records is relevant, fair and accurate. We have provided technical assistance to cities seeking to reduce barriers to employment for people with criminal records, and we created a [comprehensive resource guide](#) documenting the growing number of cities that have "Banned the Box" and disallow blanket prohibitions on applicants with criminal records.

NELP is also leading a coalition of civil liberties and civil rights groups working with policymakers on solutions, including legislation, to overhaul the FBI criminal records database, which is used extensively for employment screening despite its high incidence of incomplete and inaccurate records. NELP has engaged a significant public education effort in support of this and other policy initiatives, with frequent presentations and training sessions as well as testimony before state and federal policymakers and elected officials.



With awards presented by Sarita Gupta (Jobs with Justice), NELP honored Jon Hiatt (AFL-CIO) and Pablo Alvarado (NDLON) for their leadership in forging labor-community partnerships.

In addition to our substantive work, NELP celebrated our 40th Anniversary this fall with a dinner and awards program in Washington, DC. Hundreds of friends joined us in this celebration as we paid tribute to the late Senator Edward M. Kennedy, who had earlier agreed to be recognized at the event. Senator Sherrod Brown of Ohio was the dinner's featured speaker, and we also presented awards recognizing the work of Wade Henderson from the Leadership Conference on Civil Rights; the National Employment Lawyers Association and its Executive Director, Terisa Chaw; Pablo Alvarado of the National Day Laborer Organizing Network; and AFL-CIO Chief of Staff Jon Hiatt.

We thank all those who have supported NELP throughout the year, and look forward to continuing to work together to rebuild a good jobs economy that works for all working families in America.

NELP thanks our major supporters for their generous support of our work in 2009

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