

From the National Employment Law Project

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REPORT: FIGHTING WAGE THEFT IN AMERICA

As Industries Flout Workplace Laws, Workers Lose Minimum Wages and Overtime Pay, and Federal Enforcement Struggles to Keep Up, Working Group Offers Obama Admin a “Just Pay” Roadmap to Restore Wage & Hour Standards

Washington, DC – A new report released today by the National Employment Law Project and its partners in the Just Pay Working Group outlines how the Obama administration can combat the epidemic of illegal pay practices that is exploiting gaps in workplace enforcement and hurting millions of workers, their families and their communities.

The paper, [“Just Pay: Improving Wage and Hour Enforcement at the United States Department of Labor,”](#) represents the year-long effort of dozens of worker advocates, academics, private lawyers, labor unions and state officials to devise concrete reform proposals to help the U.S. Department of Labor’s Wage and Hour Division enforce and strengthen the laws that govern the American workplace.

“Today’s Labor Department has a once-in-a-generation opportunity to modernize the way it enforces employment laws – laws that have been increasingly broken and eroded in recent years. Industries and employers have made a science out of flouting workplace laws and cheating millions of workers out of pay,” said **NELP Executive Director Christine Owens**.

“We hope this report can help the government maximize the impact of investigations, strengthen the dialogue with workers, and promote communication with stakeholders and businesses already doing the right thing. Secretary of Labor Solis has made key initial steps to curb these trends, but there is a long-overdue need to end illegal practices that are hurting workers, businesses and our economy,” said **NELP Legal Co-Director and report author Catherine Ruckelshaus**.

The paper follows several reports about the severity of workplace violations and the inadequacies of enforcement. Last fall, a groundbreaking study of low-wage industries in the three largest U.S. cities, *Broken Laws, Unprotected Workers*, revealed that 26 percent of surveyed workers were paid less than the minimum wage and 76 percent were not properly paid for overtime. The average worker lost over \$2,600 in annual income as a result of the violations.

Compounding the problem of employer non-compliance, studies by the [Government Accountability Office](#) at the end of the prior administration blasted the Wage and Hour Division (WHD) for failing to enforce basic minimum wage and overtime laws. In 1998, for example, the WHD pursued claims filed by more than 35,000 workers and initiated an additional 16,262. By 2007, the agency pursued only 22,374 workers’ complaints – more than one-third fewer than 1998 – and initiated only 7,210 claims on its own – fewer than half of 1998’s claims. Over that same period, the agency lost 22 percent of its investigators, dropping from 942 in 1998 to 732 in 2007. When the GAO sent undercover wage claimants to the WHD, they were met with unreturned calls, consistent case closings, and confusing or nonexistent communications.

The negative effects of shortchanging workers’ wages ripple across communities and the economy: families suffer when earnings are too low to meet basic needs; local businesses and economies are denied vital stimulus that would flow from the additional spending of workers who are paid all that they earned; and

governments at all levels take a hit, because they are denied tax revenues generated by higher earnings and because many working families must resort to public programs to meet basic needs when wages fall short.

U.S. Secretary of Labor Solis has taken important steps to address the crisis, hiring 250 new investigators and recently launching a “We Can Help” outreach campaign to encourage workers to report violations. Implementing the additional steps outlined in the “Just Pay” report will enable the WHD to maximize its impact as the central player in restoring the wage floor. Highlights of the proposals include:

- **Target high-violation industries to maximize impact.** The WHD should expand efforts to launch proactive investigations in top priority areas, using tools like unannounced investigations to reach workers who otherwise would not file claims and to change employer behavior at an industry-wide level. In settlements, WHD should seek all the financial damages available, beyond just lost wages – otherwise employers may rationally gamble that it’s worth breaking the law if the risk and financial penalties aren’t severe. Data on complaints and investigations should be maintained to constantly refine the effectiveness of enforcement.
- **Crack down on worker independent contractor misclassification.** Root out misclassification of employees as “independent contractors” by targeting employers with subcontractors in a wider range of industries, including construction, janitorial, retail/warehousing, security, industrial laundry, agriculture, temporary help/employee leasing firms, food services and hospitality, ensuring compliance where there are “fly-by-night” contractors unable to pay and unable or unwilling to comply with baseline wage and hour standards.
- **Revamp intake of worker complaints.** DOL should implement a triage system for individual worker complaints so it does not get bogged down in individual claims with little impact beyond the individual worker.
- **Encourage immigrant workers to come forward.** Regardless of their immigration status, many workers in low-wage industries avoid entanglement with government authorities to avoid drawing excessive attention to themselves – and yet they are among the most susceptible to workplace violations. DOL should clarify with immigration authorities (ICE) that sharing a worker’s immigration status after a worker has filed a complaint is prohibited. DOL has just recently authorized the SOL and the WHD to issue “U” visas, which are designed to protect victims of crimes like trafficking, following one of the key recommendations of the report.
- **Enhance outreach to all workers.** DOL should improve communications with workers in the claims process by simplifying complaint procedures and explaining them clearly and publicly on the agency’s website, providing a downloadable claim form. The agency’s We Can Help campaign, recently launched, should help to publicize the rampant problem of underpayments to enhance the deterrent effect of enforcement activities.
- **Strengthen the laws protecting workers.** Stronger worker protections are sorely needed in certain areas: DOL should end the unfair exclusion of home health care workers from basic minimum wage and overtime protections; update recordkeeping requirements to help ensure workers are compensated appropriately; and close loopholes that improperly define and disadvantage white-collar workers. Congress can also legislate changes like immigration reform and strengthening minimum wage laws.

- **Enlist outside stakeholders.** DOL cannot do it alone. It should work with the agency's regional leaders, worker center networks, labor unions, state enforcement agencies, national policy experts and "high-road" employer groups who support leveling the playing field for responsible employers.

"The culture of lawlessness discourages law-abiding firms and encourages wage-chiseling that in turn undercuts higher-paying jobs. It affects all of us. Sub-par jobs have become the norm – we're talking about millions of people working minimum wage jobs that are not paying the minimum wage.

"If we are going to tackle the deeply entrenched violations that have now been widely documented, it will take aggressive commitment, resources and collaboration from DOL. Without revitalizing the Wage and Hour Division, workers and their families will continue to lose millions of dollars, communities will continue to lose money, and governments will continue to miss out on billions in payroll and tax revenues. We hope the 'Just Pay' proposals bring us closer to the goal of fair-paying jobs for all," said Ruckelshaus.

View the report here: <http://www.nelp.org/page/-/Justice/2010/JustPayReport2010.pdf?nocdn=1>

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