



National Employment Law Project

## Testimony of Jen Kern

DC Workers Rights Board Hearing, February 18, 2010

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As has been made painfully clear by the testimony of workers and others here tonight, wage violations are rampant across the United States. For many years, both government enforcement data and private studies have found minimum wage and overtime violation rates in many industries that top 50%.

### I. The Worker Survey: Broken Laws, Unprotected Workers

This past Labor Day, NELP, along with the UCLA Labor Center and the Center for Urban Economic Development at the University of Illinois-Chicago, released a three-city survey of workers themselves. The survey consisted of detailed, 90 minute interviews with over 4,000 workers in low wage industries in New York, Chicago and Los Angeles. Researchers and lawyers reviewed the workers' answers to determine whether there were minimum wage, overtime and other violations – and to what extent. The results were sobering:

- Over a quarter of the workers had **minimum wage violations** in the prior week of work. Far from trivial violations, 60% of these workers were underpaid by more than a dollar an hour.
- 30% reported **tipped minimum wage violations** – a type of wage theft that has extra sting for tipped workers already laboring under a sub-minimum wage (in Illinois and New York).
- A stunning three quarters – 76% - of the workers surveyed who are covered by overtime experienced **overtime violations** within the prior week. And we're not talking a few minutes here and there. The average worker who worked overtime and reported a violation had put in 11 hours of overtime that were either underpaid or not paid at all.

- **Off-the-clock violations:** Of those in the survey who had worked off the clock, 70% were not paid at all for the hours they worked outside their regular shift.
- 70% of workers reported **meal break violations** – where their time and wages were stolen through illegally shortened or denied meal periods.
- Overall, researchers found especially high rates of violations in service industries, retail, service in private households and residential construction.

This was a survey that was actually able to reach vulnerable workers who are often missed in standard surveys. The findings make clear that major labor and employment laws are regularly and systematically violated, impacting a significant part of the low-wage labor force in the nation's largest cities.

In short, the framework of worker protections put in place over the last 75 years is not working.

It certainly doesn't work for workers – but it also doesn't work for the economy as a whole. 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.

Consider these numbers:

- 68% of workers surveyed had at least one pay violation in the previous week. Of those, the average worker lost over \$2,600 a year - out of total earnings of \$17,000 - as a result of workplace violations. That translates into wage theft of 15% of earnings.
- We estimate that loss to the local economies in the survey due to wage theft to be \$56.4 million *per week* in the three cities.

Put simply, stealing workers' wages is bad for workers, bad for families and bad for the economy.

## II. Why Is This Happening?

It's clear that wage theft is rampant and the tools to stop it are weak to non-existent. Why is this happening? Contrary to conventional (conservative) wisdom, these injustices are not due to some irrevocable "natural market forces". They are a result of deliberate decisions on the part of corporations and government that have left workers to fend for themselves in a labor market that is increasingly unfriendly to their survival.

The current harsh reality low wage workers face is a result of a perfect storm made up of the changing nature of work, the rise of corporate power, the decimation of unions, and the failure of our government's laws and policies to stem the tide of abuses that have resulted.

The shape and structure of the labor market has changed dramatically in recent decades – with companies shifting to more casual work arrangements that they often use to blur the lines of moral and legal responsibility to their workers. Employers have become adept at using these new labor relationships – such as temp workers, subcontracted workers or “independent contractors” - to either evade or outright violate labor laws – and in some cases erode wages for an entire industry. For example, the residential construction industry now relies largely on day labor – a system of cash payment and unregulated labor brokers – making it unlikely that workers get full pay, much less the training and safety equipments they are entitled to.

While employers look for new ways to cut costs on the backs of workers, the government and regulators have largely looked the other way.

For example, from 1980-2007 the number of workers in the American workforce increased by 52%; the number of workplaces skyrocketed by 112%. But you wouldn't know that by looking at enforcement profile of the US Department of Labor. Over that same time period, the number of enforcement investigators *decreased* by 31% and the number of actual compliance actions plummeted by an embarrassing 61%.

At the same time, workers' ability to protect themselves on the job by joining together with their fellow workers to form unions has also been eroded by corporate union-busting, labor laws that are stacked against worker organizing, and a moribund (or sometimes even hostile) National Labor Relations Board.

Add to this sad picture the fact that our labor and employment laws don't even cover all workers in the first place. Workers can be classified as non-employees in a number of ways – such as being classified (or, as is often the case, *misclassified*) as independent contractors, or by working outside the traditional labor market (prison labor, students, trainees, welfare to work).

### **III. Policy Recommendations**

So, given all this, here are three policy recommendations that would make a difference:

**1. Update legal standards for the 21<sup>st</sup> century workplace.** The laws on the books are failing workers, so we need new laws:

- We need to make sure that all workers are covered by all our labor laws – including home care workers, domestic workers, and day laborers.

- We need to raise the minimum wage to its historic value and index it to inflation so low wage workers don't keep losing ground.
- We need to ensure workers' rights to organize through labor law reform such as the Employee Free Choice Act.

## **2. Strengthen government enforcement of employment and labor laws.**

- We need more proactive government enforcement. Our current complaint-driven system for identifying violations is particularly ineffectual in low-wage industries where workers are least likely to know their rights and most vulnerable to employer retaliation. Effective enforcement will require adequate funding for investigators and other staff and better anti-retaliation protection for workers.
- We need stronger penalties for workplace violations. The current penalties are so insignificant they may be dismissed by unscrupulous employers as simply part of the "cost of doing business". Penalties need to provide a real deterrence.

**3. Establish equal status for immigrants in the workplace.** The best way to prevent worker abuses is to ensure that workers know their rights and can enforce them without fear of retaliation. This is hardly possible for undocumented immigrant workers today. We must prioritize comprehensive immigration reform and ensure enforcement of laws regardless of immigration status.

## **IV. Taking Action**

The good news is that the shame of wage theft in America is being dragged into the light by workers and advocates who are organizing, educating the public and pushing policy proposals to fight wage theft at the city, state and even federal level. Just today, Miami-Dade County passed a wage theft ordinance, 10-0.

Last year, NELP worked on policy proposals designed to protect workers from wage theft in some fifteen states. For example, the New Mexico state legislature passed a bill granting increased damage rewards to victims of wage violations. In New York, the legislature passed a disclosure law aimed at prevention of wage theft. And in Maryland, the Governor established a task force on Workplace Fraud. Thus far this year, we are consulting on bills in eight additional states (CA, FL, IL, MI, OH, LA, TX and WA).

We have a long way to go, but forums like this one are a good sign that the wage criminals better be prepared for a fight to the finish.