



**Testimony by Siobhán McGrath**  
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**Subcommittee on Emerging Workforces**  
**Hearing on Day and Temporary Labor Services**  
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Good morning. My name is Siobhán McGrath. I am a Policy Researcher with the Poverty Program at NYU School of Law's Brennan Center for Justice. I have been invited to provide testimony, and I would like to thank you for the opportunity to do so. I would also like to commend the Committee's decision to address the problems surrounding day labor. I want to review some of what is known about day labor in the New York City area and to suggest an approach to addressing these problems.

The Brennan Center has been conducting an intensive, multi-year, multi-method study of workplace violations in New York City's economy. We have interviewed over 300 people on this topic, including employers, workers, regulatory officials, community organizers, job placement providers, and union officials. We have found that in fourteen industries, laws which mandate minimum wage and overtime rates, health and safety protections, and guarantees of fair treatment are routinely violated. Day laborers are particularly vulnerable to these abuses, in large part because of the nature of the industries in which they work. I will return to this point in a moment.

But first I want to review some of the key findings from the New York Day Labor Study, conducted by Abel Valenzuela and Edwin Melendez in the greater New York metropolitan area in 2003.<sup>1</sup> They estimate that as many as 8,300 day laborers seek work at about five dozen corners throughout the area. Of the 290 day laborers surveyed for this study:

- A full 50% experienced non-payment of wages;
- 60% were paid less than agreed;

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<sup>1</sup> See Valenzuela, Abel Jr., and Edwin Melendez. 2003. "Day Labor in New York: Findings from the New York Day Labor Survey." New York City: Community Development Research Center and Center for the Study of Urban Poverty; and Valenzuela, Abel Jr., and Edwin Melendez. 2004. "Additional Findings from the NY Day Labor Survey." New York, NY.

- 39% were abandoned at the work site;
- 14% were paid with a bad check; and
- 53% had no breaks.

Day laborers also face significant health and safety risks on a daily basis. For example, workers have sometimes been asked to remove the safety equipment that they brought with them to the jobsite; the worst cases involve fatal injuries. Of the workers surveyed:

- 61% had no access to water or food;
- 36% were asked to do hazardous work over the prior 12 months;
- 63% were not provided with any protective clothing or equipment by their contractor;
- 12% were injured on the job at least once in previous year;
- 46% did not seek medical treatment for the most serious injury;
- Of those that did seek treatment, 28% that the employer paid for the treatment, 28% reported that the worker paid, and 44% reported some other form of payment; and
- 90% of the workers did not make a Workers Comp insurance claim.

Why are employers of day laborers able to violate labor and employment laws to this extent? There are at least three reasons: (1) inadequate enforcement of these laws; second, (2) workers' lack of knowledge about their rights and/or fears of retaliation; and (3) industry structures and business practices.

First, the federal government's capacity to enforce wage and hour laws has been severely reduced over time. While the estimated number of workers covered by the Fair Labor Standards Act has increased by 55% over the last three decades, and the estimated number of covered workplaces has increased by 112%, the number of federal investigators available to enforce this law has declined by 14% over the same period.<sup>2</sup> At the state level, in July 2005, there were just over 100 investigators on staff with the New York State Department of Labor charged with enforcing minimum wage and overtime law for about 6 million covered workers and over 500,000 employers.<sup>3</sup>

Second, workers' lack of knowledge about their rights also contributes to the prevalence of workplace violations in this industry. And even when day laborers are aware of their legal rights, they are effectively prevented from exercising them. Of the workers surveyed by Valenzuela and Melendez:

- 61% of the workers said they did not know what rights they had;
- 80% did not know where or to whom they could report workplace abuses; and
- 29% feared retaliation if they reported an abuse.
- Of those who feared retaliation,
  - 47% feared violence;

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<sup>2</sup> See the Brennan Center's publication: Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004, available at: <http://www.brennancenter.org/resources/books.html#ej>.

<sup>3</sup> Source: Letter from the New York State Department of Labor, to the Brennan Center for Justice, in response to the Brennan Center's Freedom of Information Law request, received August 16, 2005 (on file with the Brennan Center for Justice).

- 42% feared being fired;
- 55% feared non-payment of wages; and
- 67% feared being reported to the INS

And third, working conditions for day laborers are driven by the structures and business practices of the industries in which they work. Day laborers work in a variety of industries, including landscaping, domestic work, and manufacturing. But the most common industry in which day laborers find work is the construction industry. The project-based nature of this industry means that many day laborers are hired by contractors and subcontractors for short-term jobs.

In contrast to most workers who, when they encounter problems on the job, can discuss the issues with their co-workers and bring concerns to their employers, day laborers do not have these means of addressing workplace issues available to them. This is because they do not have the same employers day-to-day, nor do they have the same co-workers day-to-day, nor do they even work at the same job sites day-to-day. In fact, day laborers often do not know how to contact the employers that they have worked for.

It is for this reason that day labor job centers have been identified as a best practice in responding to these issues, which arise from the contingent nature of project-based employment and subcontracted work. A recent study entitled On the Corner: Day Labor in the United States<sup>4</sup> supports this point. The authors state, “Workers centers have emerged as the most comprehensive response to the challenges associated with the growth of day labor.”

In particular, the incidence of workplace violations can be significantly reduced through the institution of day labor job centers. First and foremost, this is because employers are required to register at the job center, providing contact information through which they can be located in the event of workplace injuries, non-payment or underpayment of wages, or other problems on the job. And at job centers, day laborers are educated about their rights, develop relationships with fellow day laborers who they can turn to for support, and are provided with opportunities for leadership development. In order to best respond to the prevalence of workplace violations, job centers need to be staffed by those with expertise in addressing workplace issues, and they need to be designed and run with the active participation of day laborers themselves.<sup>5</sup>

On a final note, it is important to recognize that day laborers in New York City are almost always hired by employers and subcontractors, and not by the types of service providers that the proposed legislation would regulate. The problems faced by these workers, therefore, go well beyond the scope of the bill being considered. I would urge you to

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<sup>4</sup> Valenzuela, Abel Jr., Nik Theodore, Edwin Melendez, and Ana Luz Gonzalez. 2006. "On the Corner: Day Labor in the United States." Los Angeles and Chicago: Center for the Study of Urban Poverty and Center for Urban Economic Development.

<sup>5</sup> For more on the elements of a model job center, see the National Day Laborer Organizing Network's Building Community: The Components of a Day Labor Worker Center Model, available at: <http://www.ndlon.org/docs/buildingcommunity.pdf>.

consider, in addition to any legislative solutions, the creation of day labor job centers throughout New York State.

Thank you again for considering this issue, and for the opportunity to testify.