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National Employment Law Project

Unregulated Work:

Research and Public Policy for an Emerging Trend in the U.S. Labor Market

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Institute for Work and Employment Research

MIT Sloan School of Management

“Workers are paid off the books, don’t get paid on time, get paid too little, and don’t get paid for overtime”

Restaurant worker

The problem

“Sometimes my hands are all burned red from the chemicals. There are no gloves, no boots, no uniforms, just street clothes.”

Car wash worker

“They work for 10 hours, they get 35 dollars, no lunch breaks, no overtime. The question of it never arises. The moment they talk about it they get fired.”

Immigrant organizer in the retail industry

In a nutshell

The trend: employment and labor laws are being systematically violated

- Minimum wage, overtime, health and safety, workers' comp, discrimination, right to organize
- Low-wage industries across our economy
- A growing way of doing business
- Affects low-wage and immigrant workers

Public policy: part of the problem, part of the solution

Defining “unregulated work”

1. Jobs that *are* legally covered by employment and labor laws, but where employers routinely violate one or more of those laws.
2. Jobs that *are not* legally covered by employment and labor laws, even though there is effectively an employment relationship, and where conditions of work fail to meet one or more standards of workplace regulation.

Related concepts:

- *Non-standard work*: structure of the employment relationship deviates from some standard
- *Informal work*: work is being performed in illegal conditions
- *Informal economy*: distinct market for trading goods and services that are produced in illegal conditions, by illegal enterprises

“These folks have an excruciatingly long workday, so if you figure out what they’re paid per hour, they would never meet the minimum wage standards.”

Analyst of subsidized child care

The evidence

“Since they send workers to various places, the contractor says that the worker doesn’t accumulate enough hours at a certain place to claim overtime.”

Building maintenance organizer

How prevalent are violations?

1. Representative employer surveys (few)
2. Representative worker surveys (only one)
3. Convenience samples of workers (few)
4. Administrative data (promising but under-used)
5. Qualitative research on unregulated work (most developed)
6. Indirect indicators (deunionization, industry restructuring, declining enforcement)

Some key workplace violations

- Failure to pay minimum wage/prevaling wage
- Failure to pay overtime, and forced off-the-clock work
- Not allowing required breaks
- Failure to pay at all
- Failure to pay UI and social security taxes on cash wages
- Taking illegal deductions
- Violation of health & safety standards
- Failure to provide training on equipment and safe work practices
- Failure to carry workers' comp, and to pay it when claimed
- Retaliation against workers filing claims
- Retaliation against organizing
- Discrimination in hiring, promotion, firing
- Failure to comply with FMLA provisions

Industries with unregulated work in NYC

- Grocery stores & supermarkets
- Restaurants & food service
- Retail & drug stores
- Domestic work
- Subsidized child care
- Home health care
- Taxis and livery cabs
- Auto repair, car washes, garages and gas stations
- Nail & beauty salons
- Building cleaning & security
- Laundry & dry cleaning
- Residential construction & landscaping
- Warehouses
- Apparel and food manufacturing



Methods of regulatory avoidance

In-house externalization



Subcontracting/temping out for work conducted on-site



Subcontracting for work off-site



Misclassification of workers as independent contractors



Trafficking/forced labor

A quick peek: 2008 Unregulated Work Survey

- Survey of 4,387 workers conducted in New York City, Chicago and Los Angeles
- Asks detailed questions about hours, wages and working conditions
- Uses “Respondent-Driven Sampling” for hard-to reach populations (35% of sample is undocumented)
- First wave of results due out on labor day; will yield representative estimates of prevalence of workplace violations in low-wage industries

“It became about who can provide
bodies at the least cost per hour.”

*Building maintenance
and security analyst*

Explanations

"There's an industry-wide problem about failure to pay the
minimum wage... When we ask owners why they're paying so
little, they say, 'That's what everybody else pays'"

Regulatory agency staffer

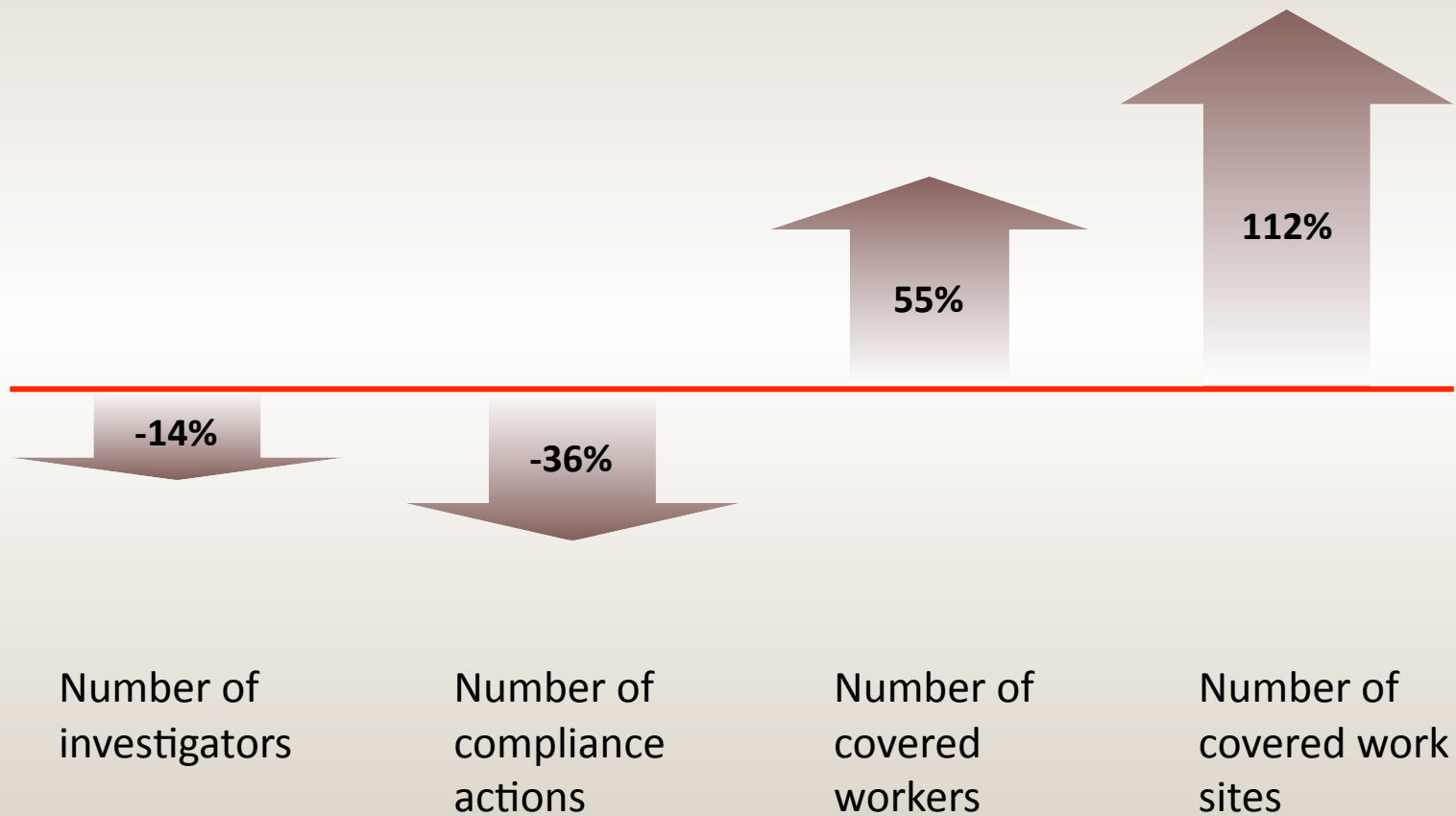
Economic drivers

1. *Trade-sensitive industries:* Global competition puts extreme pressure on US wage floor
2. *Domestic industries:* Economic restructuring is putting increasing pressure on labor costs in low-wage industries
3. *Semi-public industries:* Failure of state to adequately fund public goods creates “gray” markets of unregulated caregivers
4. *Local demand for unregulated goods and services:* Growing labor force with very low wages needs super cheap goods and services, which in turn creates more unregulated jobs

Policy enablers

- **Declining enforcement of workplace regulations** – both in terms of resources and in terms of the will to enforce
- **Inadequate workplace standards** – for example, the fall of the minimum wage has created strong incentives for subcontracting, and key groups of workers are still excluded from coverage
- **Dysfunctional immigration policy** – has effectively disenfranchised millions of immigrants in the workplace

Declining Enforcement by the U.S. Department of Labor, 1975 to 2004



“It makes me feel like I am a slave just because I am undocumented. It makes me feel like a machine, and I am not a machine.”

Domestic worker

Solutions

“We cannot get anything but the little fish. Often times the big fish, the ones really improving their profit margins by hiring these workers, are untouchable because they are not hiring directly.”

Legal aid lawyer

Three principles for public policy

Better enforcement of employment and labor laws

- Proactive government enforcement
- Stronger penalties
- Better anti-retaliation protection

Stronger standards for the 21st century workplace

- Robust standards in employment and labor laws
- Broader reach of workplace regulation

Equal status for all workers in the workplace

- Comprehensive immigration reform
- Firewall between enforcement of immigration and labor laws

All hands on deck

- Responsibility can't just rest with government
- Need worker centers & unions to organize low-wage workers and achieve real density
- Need the private bar to help bring strategic litigation
- Need to figure out how to bring responsible employers on board, to wean low-wage industries off exploitation
- Need to integrate unregulated work into the broader progressive agenda

Resources

- *The Gloves-Off Economy: Workplace Standards at the Bottom of America's Labor Market* (Cornell University Press, 2008)
- *Unregulated Work in the Global City: Employment and Labor Law Violations in New York City* (NELP, 2007)
- “Research on Informal Work in the U.S.: Emerging Concepts and Measurement,” WIEGO conference memo (NELP, 2008).
- *Rebuilding a Good Jobs Economy: A Blueprint for Recovery and Reform* (NELP, 2008)