

National Employment Law Project

Statement of Amy Sugimori, National Employment Law Project Hearing on day laborers before the Council of the City of New York Committee on Immigration

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Good Afternoon, and thank you for providing me the opportunity to testify today. My name is Amy Sugimori. I am an attorney with the National Employment Law Project and also a member of the New York Day Labor Coalition.

About NELP

The National Employment Law Project (NELP) is a non-profit law and policy organization based in New York City. NELP has advocated on behalf of low-wage, unemployed and immigrant workers since 1969. NELP's Immigrant & Nonstandard Worker Project provides technical support and legal resources to service providers, community based organizations, organized labor and policy makers interested in protecting and expanding the rights of immigrant workers. In this capacity, NELP works with numerous worker organizing and advocacy groups throughout New York and around the country. I am presenting testimony today as a legal advocate supportive of worker education and empowerment and the development of productive community-government collaborations.

Summary

New York City has historically relied on day laborers to perform manual labor such as construction work, landscaping and to provide domestic services. Today, formal and informal day labor sites are thriving in Williamsburg, Jackson Heights, Bay Parkway and Astoria to name just a few areas.

Many of the City's day laborers are immigrants with limited job opportunities. Needing to work to support themselves and their families, day laborers must often perform hazardous tasks for the lowest of wages. Fearful of retaliation or unaware of their rights, many day laborers are reluctant to report occupational hazards and injuries or unpaid wage claims. Because of this and because of the structure of the day labor industry, the United States General Accounting Office observed, in a September 2002 report, that government agencies charged with enforcing labor and employment laws are unable to do their job with respect to day laborers because they do not find out about violations.¹ However, the GAO concluded that an effective way for those agencies to improve their enforcement efforts is to develop relationships with agencies that serve day laborers – such as day labor centers. In fact, GAO worked with groups that run day labor centers, including the Latin American Workers Center, to gather the information for its report.

NELP supports the creation and funding of day labor centers to address the many workplace needs of day laborers in New York City. There are a number of law and policy changes that can be made to reduce the exploitation of day laborers.

¹ UNITED STATES GENERAL ACCOUNTING OFFICE, WORKER PROTECTION: LABOR'S EFFORTS TO ENFORCE PROTECTIONS FOR DAY LABORERS COULD BENEFIT FROM BETTER DATA AND GUIDANCE (2002), *hereinafter*, GAO REPORT.

However, an extremely effective first step is to support and sustain workers centers that emphasize worker leadership and community investment. Experience from around the country shows that day labor centers that are worker-led and that have ongoing community involvement and support can offer invaluable resources in protecting the workplace rights of day laborers and providing numerous benefits to the surrounding community.

Day Laborers Face Exploitation

According to a recent study of day laborers in New York, 85% of all day laborers “report at least one type of abuse including paying less than the agreed upon amount, abandoned at the work site, bad checks ... in the form of payment, no breaks or water at the work site, robbery, and threats.”²

Wage and Hour Violations are Rampant in the Day Labor Industry

Despite the legal wage and hour protections afforded to day laborers under federal and New York State law, studies and anecdotal evidence also show pervasive wage and hour violations committed by day labor employers and temporary labor agencies. For example, the results from the New York survey indicate that nearly 50% of day laborers experienced non-payment and/or underpayment of wages.³ The short nature of the employment relationship, multiple barriers to enforcement resources and the lack of strong protective wage and hour laws render day laborers particularly vulnerable to non-payment of wages.

Wage and hour problems confronting day laborers take many forms and include: complete non-payment of wages; payment of less than the agreed upon rate; payment by checks with insufficient funds and late payment of wages. Furthermore, as the GAO report notes there are certain lawful practices such as permissible wage deductions under the FLSA for items such as meals and transportation that can adversely impact day laborers, bringing their take-home pay well below the minimum wage.⁴ Day labor employers often delay payments of promised wages until the completion of a job. Upon completion, day laborers are commonly left with less than promised or a void check.

Day laborers – particularly those who are not organized – are unlikely to complain to the Federal or State Departments of Labor, due to fear of retaliation, lack of awareness of rights or how to enforce them, and real or perceived lack of access to government agencies. Since both Departments of Labor are largely complaint-driven in their enforcement activities, labor and employment laws go unenforced throughout the industry. Together with the Brennan Center, NELP recently convened a nation-wide conference of organizers and advocates working to address the serious problem that many workers are not being paid the wages they have earned. One thing that became very clear over the course of the conference is that many strategies are needed in order to ensure that employers are not permitted to violate the wage and hour laws with impunity. New partnerships need to be developed between community and government. Day labor centers can play a crucial role in ensuring that wage and hour abuses are not the norm in the industry: by educating workers about their rights and giving them the tools to negotiate for appropriate wages; by working with the

² Abel Valenzuela Jr. and Edwin Melendez, *DAY LABOR IN NEW YORK: FINDINGS FROM THE NYDL SURVEY* (2003), at ii.

³ *Id.*, table 15.

⁴ GAO REPORT, at 23.

Departments of Labor to ensure that wage and hour laws are enforced; and by raising awareness among the community and employers.

Day Laborers Are at High Risk for Occupational Fatalities and Injuries

Day laborers often toil under hazardous conditions without the benefit of health and safety training or equipment. Due to the lack of notice requirements, most day laborers have no advance warning about possible exposure to hazardous materials or dangerous tasks. Day laborers who discover they are assigned to hazardous duties only after they are on the job are faced with the unfair choice of refusing work and losing a day of wages and risking retaliation or performing dangerous work without health and safety protections. Needing work and fearing retaliation, day laborers often risk life and limb without ever reporting work hazards. A stark example of this was described in testimony before the NY City Council in 2003 by my colleague, Luna Yasui, who spoke of day laborers performing street cleaning in the World Trade Center area following September 11th without being informed of the risk of exposure to hazardous materials such as asbestos an fiberglass or being provided with safety equipment. Day laborers are often assigned to the dangerous tasks shunned by workers with more options. As a result, day laborers face a higher incidence of workplace injuries and fatalities. For example, in New York City, the disturbing trend of immigrant day laborers performing construction work and being killed on the job has raised awareness of the need for stiffer penalties and better enforcement.⁵

Once again, legal coverage alone is not enough. Many day laborers fall within the jurisdiction of the Federal Occupational Safety and Health Administration (OSHA). Limited investigative resources, the fleeting nature of day labor employment and the complaint driven nature of OSHA enforcement result in a virtual absence of health and safety enforcement for day laborers. In theory the complaints process that drives enforcement of the OSH Act makes it possible for any employee to report a health and safety violation. In practice, fear of retaliation, the short term nature of day labor have and limited enforcement resources have severely restricted OSHA monitoring of day labor worksites. OSHA's focus on larger projects and employers results in a lack of oversight of smaller employers more likely to employ day laborers. Moreover, day laborers face workplace hazards outside of the traditionally understood workplace, such as injury while being transported to the worksite by their employer.

Day labor centers can play a crucial role in reversing the terrible trend of high incidences of workplace injury and illness among day laborers. They can do this through educating day laborers about their rights, potential hazards, and necessary safety equipment; through providing day laborers with the tools to advocate for safe work conditions for themselves; through working with OSHA to ensure that safety and health laws are enforced; and through educating employers, the public and the government about the need for better health and safety standards that provide meaningful protections to day laborers.

Recommendations

1. City council members should support the creation of and pledge funding for day labor centers that strive to provide a respectful space for day laborers to search for work and to learn about how to protect their workplace rights.

- Day labor centers run by and for day laborers – along the model articulated by the

⁵ Bryan Virasami and Graham Rayman, *Advocates Decry Workers' Deaths*, Newsday, August 13, 2004.

National Day Labor Organizing Network - have been instrumental around the country in protecting the workplace rights of day laborers. Centers enable day laborers and advocates to obtain crucial information about day labor employers. Such information can assist advocates in recovering unpaid wages. Most importantly, centers provide workers with a safe environment to share strategies about protecting their workplace rights.

- A center offers day laborers a space to search for work with dignity and respect. A physical space can protect day laborers from traffic, inclement weather and harassment from passers by.
- A center can facilitate worker outreach and education by providing day laborers and advocates with a place to conduct workshops on employment and labor rights, occupational safety and health, English classes and other job related skills.
- Day labor centers offer day laborers, advocates and community members with a space to come together and discuss issues of mutual concern.

2. City council members should take firm public stances supporting the right of day laborers to search for work with dignity. Desperate for work, day laborers endure egregious working conditions for fear of unemployment or other retaliation by employers. City council members can alleviate some of this fear by creating a climate of respect for day laborers and all workers by speaking out against workplace exploitation, highlighting the contributions of day laborers, educating the public about the rights of day laborers and encouraging day laborers to report dangerous work conditions and unpaid wage claims.

4. City council members should explore the possibility of local legislation to provide more particular protections for day laborers from some of the workplace abuses they experience.