

## NEWSSTAND

Study Reports Widespread Wage-And-Hour Law Violations

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A new report purports to document widespread violations of wage-and-hour laws in three major U.S. cities, and may lead to increased scrutiny of employers by government regulators.

The 72-page report, titled *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, was released on September 1, 2009. It was published by the Center for Urban Economic Development at the University of Illinois at Chicago, the National Employment Law Project and the UCLA Institute for Research on Labor and Employment. The report contains the results of a survey of more than 4,000 workers in many low-wage industries, and concludes that there are wide-ranging violations of the Fair Labor Standards Act among these workers.

The study comes less than a year after Wal-Mart settled 63 wage-and-hour class action lawsuits with payouts estimated between \$350-640 million, and after an appellate court upheld a \$35 million jury verdict in a collective Fair Labor Standards Act action against Family Dollar Stores, Inc. Release of the report led U.S. Labor Secretary Hilda L. Solis to issue a statement commenting that, “there is no excuse for the disregard of federal labor standards – especially those designed to protect the neediest among us,” and reaffirming that “stronger enforcement remains at the top of [her] agenda.” In support of this pledge, Secretary Solis stated that she was in the process of hiring 250 new wage and hour investigators in order to monitor wage and hour violations. She noted that during the first six months of 2009, the Department of Labor had succeeded in collecting \$82 million in back wages for nearly 107,000 minimum wage workers.

### **Who Was Surveyed?**

The survey focused on the three largest cities in America – Chicago, Los Angeles and New York City – which together represent a diverse labor force of more than 11 million workers. To qualify for the survey, workers had to be age 18 or older; employed as a “front-line” worker (i.e. not a manager, professional or technical worker); and work in a low-wage industry as their primary job. Eligible workers’ occupations included cooks, dishwashers and food preparers, sewing and garment workers, building services and grounds workers, factory and packaging workers, child care workers, general construction workers, home health care workers, retail salespersons and tellers, maids and housekeepers, cashiers, waiters, cafeteria workers and bartenders, office clerks and couriers, car wash workers, parking lot attendants and drivers, beauty, dry cleaning and general repair workers, security guards and teacher’s assistants.

## **How Was the Survey Conducted?**

Researchers used an “innovative sampling strategy” that was developed to overcome the barriers of surveying “hidden” and “hard-to-reach” populations. Known as Respondent-Driven Sampling (RDS), the sampling technique was originally developed by co-author Douglas Heckathorn Ph.D., Professor of Sociology at Cornell University. The RDS technique involves recruiting a small number of workers who fit the study criteria, interviewing them, and sending them into their existing social networks to recruit other workers to complete the survey. Once surveyed, these newly recruited workers then recruit others to complete the survey, and so on.

The interviews, which generally lasted 60-90 minutes, were based on a survey designed to detect violations of laws guaranteeing the minimum wage and overtime pay, full and timely payment of wages owed, provision of legally required meal and rest breaks, protection against retaliation by employers for complaints about working conditions or attempting to organize, and access to workers’ compensation in the case of an on-the-job injury. Questionnaires did not rely on the workers having any knowledge about their rights under employment and labor law; instead, raw data was obtained from workers about their hours, earnings and working conditions, as well as relevant employer actions. The authors then used the reported data to determine whether a law had been violated.

In addition to the raw data discussed above, the questionnaires collected some information regarding workers’ awareness of wage-and-hour laws and eligibility. This data has not yet been analyzed. However, according to co-author Annette Bernhardt, Ph.D., Policy Co-Director of the National Employment Law Project, many of the workers surveyed had very little knowledge of the laws, and those who did frequently did not think they were covered due to false information or myths about eligibility.

## **What Were the Findings?**

According to the study authors, widespread violations of low-wage laws exist across many low wage industries in each of the cities studied. The study made the following findings:

- 76 percent of the surveyed workers were not paid the legally required overtime rate by their employers.
- 26 percent of the workers surveyed were being paid less than the minimum wage. Violations were most common for apparel and textile manufacturing, personal and repair services and private household workers. In these industries, more than 40 percent of workers were paid less than minimum wage.
- About 22 percent of the workers surveyed said that they had worked before and/or after their regular shifts in the previous work week. Of these workers, 70 percent did not receive any pay for the work they performed outside of their regular shift. Off-the-clock violation rates were highest for home health care workers (90 percent).
- 57 percent of workers surveyed reported that they did not receive documentation of their earnings and deductions.
- 69 percent of workers who were entitled to a meal break received no break at all, had their break shortened, were interrupted by their employer or worked during the break.
- One in five workers reported that they had made a complaint to their employer or attempted to form a union in the last year. Of those workers, 43 percent experienced some form of

retaliation. The reported retaliation included being fired, threatened with a pay cut, or having their immigration status questioned.

- Only 8 percent of the workers surveyed who had suffered serious injuries on the job filed for compensation to pay for medical care and missed days at work stemming from those injuries.

### **What Should Employers Do?**

In light of the findings of the study, and the Department of Labor's prompt response regarding increased enforcement efforts, employers – particularly those in low wage industries – should ensure that they are in compliance with applicable wage-and-hour laws by conducting an internal audit and reviewing HR policies that deal with overtime pay, meal breaks and other relevant wage-and-hour topics.

Study author Bernhardt also suggests that larger employers pay attention to the wage-and-hour policies of all staffing agencies, temporary employment agencies, outsourcing firms and subcontractors with whom they contract, because employers may be liable for any violations committed by these entities under the joint employer doctrine. Bernhardt also suggests that employers pay close attention to the signals they send to their local and regional managers regarding the importance of keeping costs down during difficult economic times, and recommends that any such messages be given with a reminder that cutting costs by cutting overtime or asking workers to perform off-the-clock work is prohibited.