

ABA Commission on Hispanic Legal Rights and Responsibilities

WEST COAST (II) REGIONAL HEARING

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University of California School of Law

385 Charles E. Young Drive East 1242 Law Building ♦ Los Angeles, CA

**Wage Theft and Workplace Violations in L.A.:
The Failure of Employment and Labor Law for Low-Wage Workers**

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Labor Conditions for California Domestic Workers and Farm Workers

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I. Introduction to Wage Theft Report

The Wage Theft report focused on the prevalence of labor violations in the city of LA and documented these labor violations by surveying 1,815 low-wage workers who held non-supervisory job positions in Los Angeles County. This report was part of a larger research project in which workers from Chicago and New York City were also surveyed in 2008. A significant aim of the research was to capture the labor violations experienced by unauthorized immigrants and other vulnerable workers who are often missed or excluded in standard surveys.

Some of the labor violations that the report documented included minimum wage violations, overtime violations, non-payment of wages, and the denial of meal and rest breaks. The survey also documented employer retaliation as well as violations of worker's compensation.

DEMOGRAPHICS

The sample reflected the following demographics in the LA sample:

- 16% of those who were surveyed were U.S. born, 27% were authorized immigrants, and 57% were unauthorized.
- The data collected from the respondents indicated that 73% were Latino, 18% were Asian, 6% were Black and 2% were White/other.
- 52% were female and 48% were male.
- 59% of the workers surveyed reported having less than a high school diploma and 26% reported having a high school diploma or GED.
- 29% of workers who were surveyed were within the ages of 18-25; 25% were within the ages of 26-35; 23% were within the ages of 36-45; and 24% were 46 years old and up.

By studying the demographics of the data collected from those surveyed, it was found that in L.A. minimum wage violations were greater for women than for men. This violation was even higher for unauthorized immigrant women. A minimum wage violation was 36 percent for women while for men it was 21 percent. The research also showed that foreign-born workers were more than twice as likely as U.S. born workers to have a minimum wage violation and foreign-born Latinos experienced higher minimum wage violation rates than the other racial/ethnic groups surveyed.

INDUSTRIES REPRESENTED BY THE REPORT

- Car wash workers and gas station attendants
- Child care workers, either in centers, or those who take children into their own homes
- Dry cleaning and laundry workers
- Furniture factory workers
- Gardeners and landscapers
- Garment workers, both in factories and those who work out of their home for a company
- Grocery store, drug store, and supermarket workers
- Hair stylists and nail salon workers
- Hotel housekeepers
- Janitors or cleaners in buildings, hotels, or stores
- Meatpacking, food processing and bakery workers
- Nannies, domestic workers, or housekeepers/ nursing aides/ home health care workers
- Parking garage and parking lot workers and valet parkers
- Residential construction workers, including painters, laborers, drywall installers, and roofers
- Restaurant, cafeteria, and fast food workers
- Retail workers in department stores, clothing stores, office supply stores, furniture stores, or auto supply
- Security guards
- Teacher's aides
- Warehouse workers

WEEKLY WAGE THEFT IN LOS ANGELES

Thirty percent of LA respondents indicated that at the time they were surveyed they had been paid less than the minimum wage in their previous work week. From this group of respondents 63.3 percent were underpaid by more than \$1.00 per hour and for those who worked overtime hours, 79.2 percent were not paid the proper overtime rate. More than two-thirds of workers reported experiencing at least one pay-related violation in the previous work week. It was calculated that the average worker lost about \$40 out of average weekly earnings of \$318 (\$2,070 annually out of total earnings of \$16,536 or 12.5 percent of earnings). In a given week, an estimated 654,914 workers in LA County suffer at least one pay-based violation. Furthermore, employment and labor violations have led front-line workers, who are not managers, professionals or technical workers, who are working in low-wage industries to lose more than \$26.2 million per week. Such loss of income undermines the communities these workers are a part of since the wage theft they experience hinders them from investing and contributing into their local economies.

WORKERS' COMPENSATION

Results from the survey suggest that the workers' compensation system is infrequently used by low-wage workers. Of the LA respondents who experienced a serious on-the-job injury during the previous three years only 4.3 percent had filed a workers' compensation claim for their most recent injury. Of those respondents who experienced an injury, 42.3 percent reported that they were required to work regardless of their injury; an additional 30.3 percent said their employer were unwilling to help them with the injury, and 12.6 percent were fired shortly after their injury.

II. DOMESTIC WORKERS IN CALIFORNIA

Occupation	Total Number	Percentage of All Domestic Workers
Maid/Housekeeping Cleaners	91,969	41%
Child Care Workers	24,918	11%
Personal and Home Care Aides	75,948	34%
Home Health Aides	20,095	9%
All Other Private Household Workers	10,568	5%
Total Household Workers	223,498	100%

The survey results of the workplace violation rates amongst domestic workers in Los Angeles found that 32.9 percent of respondents were at risk of being paid below the minimum wage during a previous work week. Additionally, 82.7 percent of respondents were at risk of experiencing at least one meal break violation during a previous work week and 70.3 percent of respondents were at risk of non-payment for off-the-clock work during a previous work week. At the time the survey was conducted, the women surveyed in Los Angeles who worked as maids or housekeepers reported being underpaid an average amount last week of \$34.46, for child care workers the average amount underpaid last week was \$128.58, and for home health care aides the average amount underpaid last week was \$92.42.

III. FARM WORKERS IN CALIFORNIA

California's Agricultural Employment report released in 2008 by the Employment Development Department reported that over 61.8 percent of farm workers in California earned \$10.00 an hour or less in 2008, while 37.6 percent earned the minimum wage of \$8.00. Farm workers are often

paid by the quantity of crops they pick; so the faster they work; the more money they earn. Their income is very unstable since work is seasonal their income fluctuates depending on the harvest season. Migrant farm workers often work in one particular farm for a few weeks before they have to relocate to the next planting and harvesting location. Furthermore, a majority of farm workers do not work directly for the big farm growers whose farm they work on. Instead, these seasonal workers are hired by farm labor contractors. As a result, many of these growers fail to comply with regulations including providing adequate water and shade and most evade these regulations without any penalties.

WORKING CONDITIONS FOR FARM WORKERS IN CALIFORNIA

The nation's first heat-illness standard was implemented in California in 2005, which required farmers and contractors to provide water and shade to all farm workers they hire. This measure was enacted after the fatal deaths of a number of farm workers were attributed to heatstroke and other heat-related illnesses.

Although this Heat Illness Prevention regulation was enacted, a lawsuit filed in 2009 against California's occupational- health and safety agency argued that the enforcement agency, the State's Division of Occupational Health and Safety (Cal-OSHA) was not holding employers accountable to establish the proper measures to prevent heat related illnesses among farm workers. Consequently, they argued these preventative measures were not being enforced by Cal-OSHA due to them being severely understaffed (only 198 inspectors for 17 million state workers including the 650,000 farm workers). Even when farm owners are cited for violations by Cal-OSHA, they often avoid any penalties or punishment since farm contractors are the direct employers of the farm workers.

The agriculture industry in California employs about 650,000 people a year and about 70 percent of these farm workers are uninsured. According to federal estimates about a third of farm labor in California is made up of illegal immigrants who are prohibited from buying insurance on state-run exchanges. Even if these farm workers were allowed to buy health insurance they would not be able to afford it. According to the report California's Agricultural Employment released in 2008 by the Employment Development Department farm workers reported an annual income of less than \$35,000.00 while one out of every eight farm worker reported an annual income of less than \$15,000.00. Furthermore, farm workers will continue to be uninsured. Many farm groups opposed the health care bill since it would have required them to offer health insurance to the farm workers they employ or pay a penalty if any of their workers received a government subsidized health plan on the new insurance exchange. However, farm lobbyists fought hard and won an exemption so that farm workers in the U.S. who are here illegally or on temporary visas are considered seasonal employees. Businesses that hire these employees for less than four months would not be required to offer health insurance or pay any penalties. Thus, about half of all California farm workers fall under this exemption and are uninsured.

IV. POLICY EFFORTS AND IMPLICATIONS

IMPROVING ENFORCEMENT

Low-wage workers experience labor violations regardless of their occupation or industry work. Therefore, the research project conducted by the wage theft report identified policy efforts that would improve the conditions of low-wage workers. Above all, the survey signified a major workplace enforcement crisis in the United States with extensive violations of long-established labor laws, especially the city of Los Angeles, which has a significantly higher rate of workplace violations in comparison to the nation's other major cities.

The report also recognized that policy efforts should strengthen government enforcement of existing labor laws and update the legal standards for the 21st Century workplace by raising the minimum wage and expanding overtime coverage, etc. The report found that from 1975 to 2004, the number of U.S. Department of Labor workplace investigations fell by 14 percent, which included workplace audits and regular inspections to identify and cite violators. Also important to note was that the number of compliance actions that were completed fell by 36 percent. The report proposes that to deal with the enforcement crisis the number of inspectors and the budget of the U.S. Department of Labor should be increased so that the department is better equipped to enforce labor laws. Another proposed implementation is to strengthen the penalties for violations. Secondly, the government enforcement agencies should partner with worker centers, unions, legal advocates to identify and target violators especially amongst the most vulnerable employees. Ultimately a comprehensive immigration reform would eliminate the vulnerability of unauthorized workers to super-exploitation and would prioritize equal protection for unauthorized immigrants under workplace laws.

WAGE THEFT CAMPAIGNS

Most recently networks in Los Angeles such as the National Day Laborers Organizing Network, the Interfaith Worker Justice, the National Employment Law Project, and other groups have partnered to create a campaign against wage theft. This campaign was organized to combat the theft of wages by employers who fail to pay their employees their wages. The campaign is currently working to adopt an ordinance in Los Angeles that would increase criminal penalties for employers who willfully fail to pay wages to employees who resign or are discharged.

DOMESTIC WORKERS BILL OF RIGHTS

Domestic workers are some of the most vulnerable workers to experience labor violations, and they are also the least protected, which is why the Domestic Workers Bill of Rights was written. The bill would provide domestic workers the same rights that all other California workers have to a 30 minute meal break after five hours of work and ten minute rest breaks after four hours of

work. Under this bill, domestic workers would also be entitled to overtime pay. In the end, the bill seeks to grant domestic workers the rights provided to workers in California.

The United States should work towards ensuring worker protections and groups such as community organizations, worker centers, and unions are helping to make this a reality.

V. Recommendations for ABA Commission on Hispanic Legal Rights and Responsibilities

- Create subcommittee that would work with worker centers and community organizations that focus on improving working conditions for low-wage workers.
- Create policy subcommittee to work on and support legislative efforts like anti-wage theft legislation and the Domestic Workers Bill of Rights that will improve working conditions for low-wage workers.