

**NELP**

## Immigrant & Nonstandard Worker Project Policy Update

*Advocating for the Working Poor and the Unemployed*

October 2006

### Holding the Wage Floor:

#### Enforcement of Wage and Hour Standards for Low-Wage Workers in an Era of Government Inaction and Employer Unaccountability<sup>1</sup>

As the economy loses higher paying manufacturing jobs following firms' claims of stiff global competition and technological forces, major questions have emerged about the jobs left behind. In the bottom half of our economy, almost every growing sector-- health care, child care, retail, building services, construction and hospitality --is plagued by low-road employers who drag down working conditions for everyone. In addition to providing paltry benefits, if any, these employers routinely violate bedrock employment rights like the right to be paid fully for work, and the right to a safe workplace. Common schemes emerge in jobs with sweatshop conditions: employers hide behind subcontractors, call their workers "independent contractors" not covered by workplace laws, and hire immigrant workers who are vulnerable to exploitation. Federal law and many states exempt large classes of low-wage workers from basic wage and hour protections, including home health care companions, and domestic and agricultural workers. Consequently, our "growth-sector" jobs are not bringing people out of poverty and workers across the socio-economic spectrum are impacted.

Workers in many of these jobs make the minimum wage *or less*. The federal minimum wage is currently \$5.15/ hour; for a full-time worker that translates into an annual income of only \$10,712. The federal poverty level is \$16,090, meaning that minimum wage earners are not making ends meet and are otherwise eligible for public benefits. While some states have minimum wages that are above the federal level, six states do not have a state minimum wage at all.<sup>2</sup>

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<sup>1</sup> Note: all links are underlined in this document and can be accessed directly by opening the web version of this document, at:

<http://www.nelp.org/docUploads/Holding%20the%20Wage%20Floor%2Epdf>

<sup>2</sup> See [US Department of Labor](#) Map.

This Policy Update collects some of the existing data on the extent of wage and hour violations in many low-wage sectors, the lack of public agency enforcement of basic minimum wage and overtime laws, and lists barriers to enforcement (including immigration status and lack of union representation). We end with recommendations for improving the wage floor, with specific examples of successful legislative and organizing campaigns. This is a work in progress and we welcome additional examples and data.<sup>3</sup>

❖ **“Growth” Jobs in Our Economy are Plagued by Low Wages**

*Although service sector jobs are growing, workers are not seeing an increase in their wages. In fact, workplace abuses are persistently common in many of the fastest growing jobs.*

- In 2004, 7.8 million Americans were classified as “working poor,” working more than part-time and still earning below the federal poverty level. U.S. Bureau of Labor Statistics, [A Profile of the Working Poor, 2004](#) (May 2006).
- In 2002, the United States Department of Labor’s (“US DOL”) Bureau of Labor Statistics (“BLS”) found that 2.2 million hourly workers received wages at or below the minimum. U.S. Department of Labor, Bureau of Labor Statistics, [Characteristics of Minimum Wage Workers: 2002](#), Aug. 8, 2003.
- The Urban Institute recently found that 2 million immigrants, working in these sectors, currently earn less than the minimum wage. Randolph Capps, Michael E. Fix, Jeffrey S. Passel, Jason Ost, & Dan Perez-Lopez, [Profile of Low-Wage Immigrant Workforce](#), Urban Institute, Oct. 27, 2003.
- Most service jobs, where 11.2% of the working poor are employed, are not in compliance with federal wage and hour laws. U.S. Department of Labor, Bureau of Labor Statistics, [A Profile of the Working Poor, 2004](#) (May 2006); David Weil, [Compliance with the Minimum Wage: Can Government Make a Difference?](#), at pp. 10-11, 30 (May 2004).
- There is a gap between the number of workers in the workforce and the number of workers who are successful in enforcing labor laws: the number

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<sup>3</sup> For feedback, please contact Cathy Ruckelshaus at NELP, [cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org). NELP would like to thank Shenice Franklin for her work on this Policy Update.

of workers is increasing by 55% while the number of workers receiving back pay has decreased by 24%. Annette Bernhardt and Siobhan McGrath, [Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004](#) (September 2003).

- The employer-backed Employer Policy Foundation estimated that workers would receive an additional \$19 billion annually if employers obeyed workplace laws. See Craig Becker, [A Good Job for Everyone](#), LegalTimes, Wk. of Sept. 6, 2004, Vol. 27, No. 36.
- Some employers pay a flat weekly wage, regardless of hours worked; misclassify their workers as "independent contractors" or they insert labor intermediary subcontractors to evade responsibility. See Andrew Dunn, [Contract Workers at Wal-Mart Gain in Overtime Case](#), Bloomberg News, Dec. 30, 2004; See also National Employment Law Project, [Subcontracted Workers: The Outsourcing of Rights and Responsibilities](#) (March 2004).
- If an employer is successful in characterizing an employee as an "independent contractor," the worker has no rights to labor and employment protections, including the right to be paid the minimum wage and overtime, and the right to form a union. See National Employment Law Project, [1099'd: Misclassification of Employees as Independent Contractors](#) (July 2005).
- Although the service industry is booming, there are many studies that show the existence of low wages and employer violations in the following sectors:
  - **Agriculture**
    - In 2002, there were an estimated 2,826,000 farm workers. United States Department of Agriculture ("USDA"), National Agricultural Statistics Service, [U.S. Farm Workers Quarterly Data Compared](#).
    - Nearly 80% of workers in the agriculture industry are underpaid. Associated Press, [Probe of State's Vineyards Finds Labor Violations](#), Los Angeles Times, Sept. 16, 1998.
    - DOL found that 50% to 60% of farm contractors violate the Migrant and Seasonal Agricultural Worker Protection Act ("AWPA"). Siobhan McGrath, [A Survey of Literature Estimating the Prevalence of Employment and Labor Law](#)

[\*Violations in the U.S.\*](#), NYU—Inventory of violation estimates (2005); Robert A. Williams, [\*Sweatshops in the Field: Contingent-Workers in Agriculture\*](#), Florida Legal Services (2001).

▪ **Poultry Processing**

- There are about 527,000 workers in the meat and poultry industry. U.S. Government Accountability Office: Report to the Ranking Minority Member, Committee on Health, Education, Labor and Pensions, U.S. Senate, [\*Workplace Safety and Health: Safety in the Meat and Poultry Industry, while Improving, Could Be Further Strengthened\*](#), at p. 21 (January 2005).
- In 2000, the US DOL found that 100% of poultry processing plants were violating wage and hour laws. U.S. Department of Labor, Employment Standards Administration, [\*FY 2000 Annual Performance Report Summary\*](#), March 31, 2001.
- Nationally, 60% of poultry processing plants have failed to pay overtime to their workers, 51% failed to pay for job-related tasks, and 54% charged workers for mandatory clothing and protective gear. Siobhan McGrath, [\*A Survey of Literature Estimating the Prevalence of Employment and Labor Law Violations in the U.S.\*](#), NYU—Inventory of violation estimates (2005); Deborah Thompson Eisenberg, [\*The Feudal Lord in the Kingdom of Big Chicken: Contracting and Worker Exploitation by the Poultry Industry\*](#), The Public Justice Center (2002).

▪ **Janitorial Services**

- There are approximately 5,185,000 building and grounds cleaning and maintenance workers. U.S. Department of Labor—Bureau of Labor Statistics, [\*Employed persons by occupation, sex, and age\*](#) (Jan. 2005).
- The BLS expects a 47.1% increase in facilities support services by the year 2014. U.S. Department of Labor—Bureau of Labor Statistics, [\*Fastest growing industries\*](#) (Dec. 2005).
- Cleaning contractors seek out and hire immigrant workers who will be less likely to complain for as little as \$3.50 an hour. Contractors also call janitorial workers “independent

contractors” and pay them off the books. Steven Greenhouse, [\*Among Janitors, Labor Violations Go with the Job\*](#), New York Times, July 13, 2005.

- Immigrant janitors are directed to work “off the clock” and some never collect pay for work performed. Lynda Tran, [\*New Lawsuit: Immigrant Janitors Instructed to Work “Off-The-Clock” by Houston’s Largest Local Cleaning Firm\*](#), Service Employees International Union (“SEIU”)–Press Release, June 15, 2006.

#### ▪ **Restaurant**

- There are an estimated 12.5 million employees in the restaurant industry. National Restaurant Association 2006 Restaurant Industry, [\*Fact Sheet\*](#) (2006).
- According to the BLS, the number of food preparation workers will increase 19.7% by 2014. U.S. Department of Labor—Bureau of Labor Statistics, [\*Occupations with the largest job growth, 2004-14\*](#) (Dec. 2005).
- In a random check, it was found that over 200 workers from 43 investigated restaurants were underpaid by \$250,000. K. Connie Kang, [\*41 Restaurants Violated Labor Laws\*](#), Los Angeles Times, August 22, 1998.
- In 2005, the majority of employers studied in New York City restaurants were not in compliance with overtime and minimum wage laws. Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition, [\*Behind the Kitchen Door: Pervasive Inequality in New York City’s Thriving Restaurant Industry\*](#), p. 2, Jan. 25, 2005.

#### ▪ **Garment**

- The apparel industry employs about 573,000 workers. Garment Industry Development Corporation, [\*The Fashion Industry and New York City\*](#) (September 2001).
- 77% of the garment shops in Southern California violate labor laws. U.S. Department of Labor Employment Standards Administration, Wages and Hours Division, Tino Serrano, [\*Only One-Third of Southern California Garment Shops in Compliance with Federal Labor Laws\*](#), News Release--USDLE-112/August 25, 2000 (San Francisco, CA).

- In 2001, about half of the garment-manufacturing businesses in New York City were in violation of the Fair Labor Standards Act (“FLSA”). Labor Department: Close to Half of Garment Contractors Violating Fair Labor Standards Act, DAILY LAB. REP. (BNA) 87 (May 6, 1996).
  - In 2004, garment workers were forced to work below the most basic workplace standards. See David Weil, [\*Compliance with the Minimum Wage: Can Government Make a Difference?\*](#) (May 2004).
- **Long Term Care**
    - There are about 2,921,000 workers in the healthcare support occupation sector. U.S. Department of Labor—Bureau of Labor Statistics, [\*Employed persons by occupation, sex, and age\*](#) (Jan. 2005).
    - The BLS expects a 69.5% increase in the number of home-health care workers by 2014. U.S. Department of Labor—Bureau of Labor Statistics, [\*Occupations Industries with the largest job growth\*](#) (Dec. 2005).
    - Due to poor job quality, there is a shortage of workers and a 40% to 50% turn-over rate in home care agencies. The National Conference of State Legislatures, [\*Better Jobs Better Care: Retaining Long-Term Care Workers\*](#), 25 STATE HEALTH NOTES No. 419 (April 2004).
    - In 2000, the US DOL found that 60% of nursing homes routinely violated overtime, minimum wage, and/or child labor laws. U.S. Department of Labor, [\*Nursing Home 2000 Compliance Fact Sheet\*](#) (2000).
  - **Domestic Homecare Workers**
    - There are about 4,488,000 workers in the personal care and service occupation industry. U.S. Department of Labor—Bureau of Labor Statistics, [\*Employed persons by occupation, sex, and age\*](#) (Jan. 2005).
    - 26% make wages below the poverty line or below minimum wage and 67% of workers do not receive pay for overtime hours worked. Domestic Workers United and DataCenter, [\*Home is Where the Work is: Inside New York's Domestic Work Industry\*](#), Executive Summary (2003-3004).
    - Most live-in domestic workers work 58 hours a week and 75% do not receive overtime compensation. Most live-out

domestic workers work 39 hours a week and 82% do not receive overtime compensation. Gregory Gaines, Jordan Head, Matthew Mokey, Amy Potemski, Michael Stepansky, Amy Vance, [Workplace Conditions of Domestic Workers in Montgomery County, Maryland Final Report](#) (May 10, 2006).

- These workers are sometimes not paid on time and are fired without notice or severance pay. See Domestic Workers United and DataCenter, [Home is Where the Work is: Inside New York's Domestic Work Industry](#), (2003-2004).

- **Retail**

- In 2005, employment in the wholesale trade industry averaged 5,749,800 and employment in the retail trade industry averaged 15,254,900. U.S. Department of Labor—Bureau of Labor Statistics, [Wholesale and Retail Trade](#) (August 2006).
- Wal-Mart workers across the country routinely earn low enough wages to qualify for federal Food Stamps and other public assistance programs. See e.g., Arindrajit Dube and Ken Jacobs, [Hidden Cost of Wal-Mart Jobs: Use of Safety Net Programs by Wal-Mart Workers in California](#), UC Berkeley Labor Center (2004); Andy Miller, [Wal-Mart Stand Out on Rolls of PeachCare](#), The Atlanta Journal Constitution, February 27, 2004; Congressman George Miller, [Everyday Low Wages: The Hidden Price We All Pay for Wal-Mart](#), Report by the Democratic Staff of the Committee on Education and the Workforce, U.S. House of Representatives (2004).
- Retail workers comprised 3/5 of the 2.2 million at- or under-minimum-wage workers in the BLS Survey of Households 2002 study. This was the highest proportion of low-wage workers of any sector. U.S. Department of Labor, Bureau of Labor Statistics, [Characteristics of Minimum Wage Workers: 2002](#), August 8, 2003.



❖ **The Public Sector Isn't Doing its Job Enforcing Wage & Hour Laws.**

*With some notable exceptions<sup>4</sup>, federal and state agencies charged with enforcing baseline wage and hour laws are not having an impact. Employers know that there is little to fear from public enforcement on workplace violations, and so do not change their practices.*

- The power of the federal, state, and local governments to enforce labor laws is discretionary. *See e.g.*, New York Lab. Law §196; 29 U.S.C.A. § 216.
- When the DOL does enforce its workplace laws, it makes a difference in the wage levels of more than just the workplaces it chooses to enforce against. *See* David Weil, [\*Compliance with the Minimum Wage: Can Government Make a Difference?\*](#) (May 2004).
- By 2007, the DOL's budget used to enforce wage and hour laws will be 6.1 percent less than before Bush took office. Judd Legum, Faiz Shakir, Nico Pitney, Amanda Terkel, and Payson Schwin, [\*Labor—Bush Priorities Hurt Workers, Help Employers \(Under the Radar\)\*](#), The Progress Report, June 14, 2006.
- From 1975-2004, the budget for US Wage and Hour investigators decreased by 14% (to a total of 788 individuals nationwide) and enforcement actions decreased by 36%, while the number of businesses increased from 7.8 million to 8.3 million. Annete Bernhardt and Siobhan McGrath, [\*Trends in Wage and Hour Enforcement by the U.S. Department of Labor, 1975-2004\*](#) (September 2003).
- As a result of the US DOL regulatory changes to the administrative overtime exemptions under the FLSA in 2004, six million workers may have lost their right to overtime pay. *See* Ross Eisenbrey, [\*Longer Hours, Less Pay\*](#), July 14, 2004.

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<sup>4</sup> State Attorneys General have power to enforce labor and employment protections, and several states, notably New York's Eliot Spitzer, have engaged in innovative enforcement actions. For a listing of illustrative state AG workplace efforts, *See* National Employment Law Project, <http://www.nelp.org/docUploads/State%20Jurisdiction%20Chart%2Epdf>. Keep an eye out for an upcoming publication on the NELP website: *Justice for Workers: State Agencies Can Combat Wage Theft*.



- When the risk of enforcement is small, systemic violations of wage and hour laws become the norm in these sectors, and sweatshop conditions prevail. David Weil, [\*Public Enforcement/Private Monitoring: Evaluating a New Approach to Regulating the Minimum Wage\*](#), 58 INDUS. & LAB. REL. REV. No. 2, 238-257 (January 2005).
- Over the past eight years, actual enforcement has declined in the New York State Department Of Labor (“NYS DOL”), to take one example, leaving workers in New York with little hope that one of the agencies charged with enforcing labor laws will take their claims. Jordan Rau, [\*NY Labor Law Enforcement: A Fight for Fair Pay, State Labor Agency’s Reinforcement of Rules Requiring Proper Wage for Workers Has Waned During Pataki’s Tenure\*](#), New York Newsday, p.A.06, April 11, 2004.
- Like many other states, NYS DOL settles workers' claims for less than what the workers are owed and does not seek full penalties under the law. Jordan Rau, [\*NY Labor Law Enforcement: A Fight for Fair Pay, State Labor Agency’s Reinforcement of Rules Requiring Proper Wage for Workers Has Waned During Pataki’s Tenure\*](#), New York Newsday, p.A.06, April 11, 2004.
- Over the past ten years, the California Bureau of Field Enforcement of the Division of Labor Standards Enforcement investigations decreased by 32% and the amount of citations issued has decreased severely by 46.4%. Division of Labor Standards Enforcement, [\*Bureau of Field Enforcement Annual Report\*](#).
- California’s Department of Labor Standards Enforcement failed to adequately enforce a new garment worker anti-sweatshop law, recovering only a fraction of damages owed to workers and receiving less garment contractor registrations in the years since the law was passed, according to an advocacy report focusing on Los Angeles County in 2005. Sweatshop Watch, [\*Reinforcing the Seams: Guaranteeing the Promise of California’s Landmark Anti-Sweatshop Law\*](#) (September 2005). This same report found that there was *less than a 1% chance* that the state would sanction a garment contractor by revoking its license if it failed to turn over business records during an investigation.

❖ **Workers are afraid to engage in enforcement strategies.**

- Workers fear retaliation (including termination) by their employers that may cause employees to quietly accept substandard conditions. *Mitchell v. Robert de Mario Jewelry, Inc.*, 361 U.S. 288, 292 (1960); *Contreras v. Corinthian Vigor Ins. Brokerage, Inc.*, 25 F. Supp. 2d 1053, 1058-59 (N.D. Cal. 1998).
- Employees stand to not only lose their jobs, but their dignity and their ability to provide for their family. *See Aguilar v. Baine Services Sys., Inc.*, 538 F. Supp. 581, 584 (S.D.N.Y. 1982).
- Undocumented workers are particularly vulnerable to workplace abuse, discrimination, and exploitation as well as the fear of being turned over to the INS. *See., e.g., Rivera v. NIBCO*, 364 F.3d 1057, 1064 (9th Cir. 2004), cert. denied, 125 S.Ct. 1603 (2005).
- Day laborers, like many other low-wage workers, face many barriers to asserting their workplace rights:
  - 61% in the New York City metropolitan area do not know their rights
  - 60% do not get contact information of their employer
  - 80% do not know where to report work place abuses
  - 94% have never reported abuse that has occurred in the workplace
  - 29% fear retaliation if they reported an abuse
  - 47% fear violence
  - 42% fear no more work
  - 55% fear non-payment
  - 67% fear being reported to the INS

Able Valenzuela, Jr. and Edwin Melendez, *random survey conducted in June/July 2002*. *See also*, Abel Valenzuela and Nik Theodore, [On the Corner: Day Labor in the United States](#) (reporting half of day laborers surveyed experienced wage theft, and many suffer harassment from merchants and arrests by police) (January 2006).

❖ **Workers do not have access to union representation**

- Most workers do not know what union representation is or how it can help them. See Jonathan P. Hiatt & Craig Becker, *At age 70, Should the Wagner Act Be Retired? A Response to Professor Dannin*, 26 BERKELEY J. EMP. & LAB. L. 293 (2005).
- Ninety percent of workers in this country are unrepresented by a union. See Frank Swoboda, *Labor Unions See Membership Gains*, Washington Post, p. E2, January 20, 2000.
- Most workers (57%) would vote for a union if an election was held at their worksite. Peter D. Hart Research Associates, *The Public View of Unions* (2005).
- Workers are pressured by employers not to join a union. American Rights at Work, *Fact Over Fiction: Opposition to Card Check Doesn't Add Up* (March 2006).
- Many employers do not mind going through years of litigation for firing an employee trying to organize a union with the intent of enforcing labor laws. See Lance Compa, *Unfair Advantage: Workers Freedom of Association in the United States under International Human Rights Standards*, Cornell University Press (2004) (New edition of 2000 Human Rights Watch report).
- About 30% of employers fire pro-union employees and 91% of employers force employees to attend one-on-one anti-union meetings with their supervisors. Chirag Mehta and Nik Theodore, *Undermining the Right to Organize: Employer Behavior During Union Representation Campaigns*, University of Illinois at Chicago: Center for Urban Economic Development (December 2005).
- Lack of union presence in the workplace causes workplace standards to decline. See e.g., David Weil, *Enforcing OSHA: The Role of Labor Unions*, 30 INDUS. REL. 21, 22 (1) (Winter 1991); Cynthia Estlund, *Rebuilding the Law of the Workplace in an Era of Self-Regulation*, 105 COLUM. L. REV. 319, 362 and *passim* (describing the important role unions play in monitoring worksite conditions in today's era of "chronic under enforcement" of workplace standards) (March 2005).

- There was an increase of 750% of unfair labor practice charges filed against employers from 1957-1980, showing an increase in aggressive anti-union tactics by employers. Paul Weiler, *Promises to Keep: Securing Workers' Right to Self-Organization Under the NLRA*, 96 HARV. L. REV. 1769, 1779-80 (1983).

### **What Can We Do About This?**

*We can encourage more enforcement of baseline workplace protections in the private and public sectors, by collecting current information about the extent of violations, educating workers about their rights, and supporting community organizations that have active campaigns for fair pay. Many of the strategies listed below have good examples with track records of success.*

#### **❖ Engage in and Support Research and Data Collection on the Extent of Sweatshop Conditions.**

- Establish regular reporting requirements by employers to public agencies on wage and hour practices. *See, e.g., [State of Connecticut's monthly reporting](#).*
- Send Freedom of Information Act requests to state agencies with audit powers to gather data collected in audits and in existing investigations of targeted industries. Most state unemployment insurance agencies conduct audits of employer compliance.
- Conduct surveys of workers in cities and in sectors where sweatshops prevail, such as restaurants, retail, hotels, domestic and home care work, day laborers, and janitorial, to name a few. For sample surveys and results, see, e.g. Abel Valenzuela and Nik Theodore, [On the Corner: Day Labor in the United States](#); Domestic Workers United and DataCenter, [Home is Where the Work is: Inside New York's Domestic Work Industry](#); Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition, [Behind the Kitchen Door: Pervasive Inequality in New York City's Thriving Restaurant Industry](#).
- Partner with unions and labor studies, geography or sociology departments in local universities or colleges to conduct worker surveys, research corporate practices and structures, gather state and federal information,

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NELP Immigrant & Nonstandard Worker Project [www.nelp.org](http://www.nelp.org)

Cathy Ruckelshaus [cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org)  
 Amy Sugimori [asugimori@nelp.org](mailto:asugimori@nelp.org)  
 Prita Lal [plal@nelp.org](mailto:plal@nelp.org)  
 New York, NY Office

Rebecca Smith [rsmith@nelp.org](mailto:rsmith@nelp.org)  
 Olympia, Washington Office

and run statistical and data analyses for reports on the extent of workplace violations in targeted industries and cities. *See, e.g.*, Abel Valenzuela and Nik Theodore, [On the Corner: Day Labor in the United States](#).

❖ **Encourage public agency enforcement by state departments of labor and state attorneys general.**

- Establish a fund from employer penalties collected dedicated to labor law enforcement so that the state can hire more inspectors. *See* [San Francisco Minimum Wage Enforcement Ordinance](#).
- Make public agencies like the US DOL and state agencies hire inspectors whose responsibility is to research the extent of workplace standards in key sectors to make recommendations on fixing these problems.
- Provide agency contact information and general rights information in multiple foreign languages so that immigrant workers can learn about their rights and complain of violations. *See, e.g.*, [NYS Attorney General's Labor Bureau information card](#) (available in ten languages).
- Encourage state DOLs and Attorneys General to partner with community groups who have contacts in the immigrant communities. For an example of a successful partnership in New York, *see, e.g.*, Office of the New York State Attorney General, [Brooklyn Stores to Pay Back Wages and Reinststate Workers](#) (August 2005). The Chicago Area Workers Rights Initiative between state and federal agencies and local community and labor groups is another example.
- Allow workers to file claims anonymously so that they will not fear retaliation or possible deportation. *See* upcoming NELP publication: *Justice for Workers: State Agencies Can Combat Wage Theft* (to be posted October 2006 at [www.nelp.org](http://www.nelp.org)).
- Encourage state agencies to enforce wage and hour laws against joint employers in industries where subcontracting and outsourcing diffuses the lines of responsibility for fair pay. *See* NELP Policy Update: [Subcontracted Workers: The Outsourcing of the Rights and Responsibilities](#).

- Urge state and federal DOLs to use their “hot goods” power to seize goods produced in substandard working conditions. *See* Office of New York State Attorney General Eliot Spitzer—Labor Law Obligations to Employees, [Doing Business in New York State: A Guide For Small Business](#). The federal government has this power to stop shipment of goods prepared under sweatshop conditions as well. 29 U.S.C. § 215 (a)(1).
- Enforce criminal penalties for employers who “steal” wages from their employees. *See* National Employment Law Project, [Criminal Penalties for Employers' Failure To Pay Wages](#) (Dec. 2005).
- Take away discretion of public agency enforcement on wage and hour laws, requiring annual reporting and monitoring by state agencies.
- Require random on-site investigations where agencies speak to workers about the working conditions in target industries. *See, e.g.,* California AB 633; New York State Department of Labor, [Apparel Industry Task Force](#), (March 2002).

❖ **Encourage private enforcement by workers and advocates.**

- Dismantle barriers to collective and representative claims by workers, including permitting workers to bring class and collective actions to recover unpaid wages. Private suits are difficult when individual workers’ claims are small and would not attract a private attorney. *Braun v. Wal-Mart Stores, Inc.*, No.19-CO-01-9790, 2003 WL 22990114 at \*12 (Minnesota Nov. 3, 2003). Class actions also protect workers who fear retaliation for speaking up.
- Permit worker representatives like unions or community groups to bring claims on behalf of unpaid workers. *See* [San Francisco Minimum Wage Enforcement Ordinance](#).
- Maintain confidentiality of irrelevant immigration information so that undocumented workers will feel comfortable enforcing their rights. *See* NELP Fact Sheet: [Immigration Status and Your Rights as a Worker](#).
- Ensure that attorney’s fees and private attorney general provisions are in full effect, to permit private suits to go forward. *E.g.,* Cal. Lab. Code §1197.5(g); 29 U.S.C. § 216(b).

- Enforce liability against joint employers, including building owners using janitorial contractors, groceries and retail stores using delivery companies, and garment manufacturers via private lawsuits. *See, e.g., Vega v. Contract Cleaning Maintenance et al* 03-C 9130 (N.D.Illinois, January 31, 2005); *Flores v. Albertsons*, 2002 U.S. Dist. LEXIS 6171, *Ansoumana v. Gristede's Operating Corp.*, 255 F.Supp.2d 197, (S.D.N.Y. 2003); *Lopez v. Silverman*, 14 F.Supp.2d 405, (S.D.N.Y. 1998).

#### ❖ **Pass legislation to help wage enforcement**

- Enhance liquidated damages to workers for unpaid wages up to three to four times the wages owed. *See* [San Francisco Minimum Wage Enforcement Ordinance](#).
- Close loopholes for employers who knowingly misclassify their employees as “independent contractors.” *See* NELP Fact Sheet: [Independent Contractor Legislation in the States: Models for Successful Reform](#).
- Pass stricter prohibitions against employers who retaliate against complaining employees. [SF Administrative Code CH. 12R](#).
- Enact laws permitting community organizations and unions to file complaints on behalf of workers. *See, e.g.,* IL day labor law, Public Act 094-0511; CA’s AB 633; [SF Administrative Code CH. 12R](#).
- Enact legislation requiring state agencies to do outreach and provide know-your-rights materials in multiple languages. *See* MA Gen. Laws Ch. 151A § 62A, setting benchmarks for making state agency materials available in certain languages.
- Pass legislation assuring that all workers, regardless of immigration status, are protected by labor and employment laws. *See* CA Gov’t Code § 7285.
- Enact worksite remedies where employers that violate the law have to sign and read cease-and-desist orders directly to their workers, publish a notice of their violation in local newspapers, grant unions or worker advocates access to the employment site during organizing campaigns, and give

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Cathy Ruckelshaus [cruckelshaus@nelp.org](mailto:cruckelshaus@nelp.org)  
 Amy Sugimori [asugimori@nelp.org](mailto:asugimori@nelp.org)  
 Prita Lal [plal@nelp.org](mailto:plal@nelp.org)  
 New York, NY Office

Rebecca Smith [rsmith@nelp.org](mailto:rsmith@nelp.org)  
 Olympia, Washington Office



unions the workers' names and addresses. *See, e.g., Fieldcrest Cannon v. NLRB*, 97 F.3d 65, 74 (4th Cir. 1996).

❖ **Encourage on-going monitoring for enforcement**

- Propose Codes of Conduct that lay out employer obligations under the law and commit employers to on-going monitoring. *See, e.g.,* New York Attorney General, [Greengrocer Code of Conduct](#).
- Promote self regulation, including independent monitors, where the government, employers and employees work together to decrease labor law violations. Cynthia Estlund, [Rebuilding the Law of the Workplace in an Era of Self-Regulation](#), 105 COLUM. L. REV. 319, 323 (2005).
- Inform workers of the different worker centers and organizations that are available to help police workplace standards and make claims regarding violations in the workplace. *See* Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream*, 50 N. Y. L. SCH. L. REV. 417 (2005-2006); Neighborhood Funders Group, [Worker Centers Around the Country](#) (April 2005).