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### The Barriers of Reporting Wage Theft

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Jose Cardoso

## **The Barriers of Reporting Wage Theft for Undocumented Immigrants**

Estela Hernandez has been working at the same laundromat in Queens, New York for six years. She is currently the manager and oversees operations when the owners are not around. She makes \$12.50 an hour but it's still not enough. She works between 47 and 48 hours a week, without overtime pay. The staff of nine people make between \$10 and \$11.50 an hour. In reality, they should be earning \$13.50.

Hernandez and her coworkers are aware of the pay they're supposed to receive. When the subject is brought up, the owner has excuses. "According to him, he can't pay the minimum," said Hernandez, in Spanish. "He says that there isn't enough business but with so many employees there has to be business." According to Hernandez, the owner is aware that they deserve better, "He knows that we're supposed to have a better wage but he doesn't have the money and that's where we are right now."

The owner has an office in the basement of the laundromat. He keeps the minimum wage poster there. This poster shows the employees how much they are supposed to make an hour. The poster must be in plain view at all businesses. The owner doesn't have an [updated](#) poster, "He has one from 2007, I believe, when the wage was around \$7.25."

She keeps her head up because a job is a job, "Unfortunately, this is why we are in the conditions we're in," she said. "We need the work." She has considered reporting wage theft to the Department of Labor (DOL), "If we report, he might not be able to fire us right away, but sooner or later he'll be able to fire us."

New York City is home to [3.2 million immigrants](#) or 37.1 percent of the population. The undocumented population stands at 5.3 percent. On December 31st, 2018, the minimum wage in New York City went up to \$15 an hour for employers who have 11 or more employees and \$13.50 for employers with 10 employees or less.

Whether documented or undocumented, everyone can become victims of wage theft. Though it is a right to report violations, many stay silent out of fear because their employer could retaliate. Hernandez is an undocumented immigrant, a reason why she hasn't reported. On December 31st, 2019, the minimum wage for NYC employers with 10 or less employees will raise to \$15 an hour. She's not alone as many will face the reality of not being paid what they're supposed to make.

Wage theft is the failure to pay employees full wages to which they're legally entitled, no matter the status in this country. It takes different shapes and forms, some examples: forcing employees to work "off the clock," not paying the minimum wage, failure to pay overtime once 40 hours have been reached, incorrectly classifying employees as independent contractors, in order to pay lower wages and illegal deductions.

In a recent study by the [Economic Policy Institute](#) from 2017, about 17 percent of low-wage workers earned less than the minimum wage. Wage theft costs workers approximately \$8 billion a year. According to the report, on average, when a worker is cheated off their wages, they can lose \$64 per week, \$3,300 a year for a year round worker. Those most affected are women, nonwhites or Hispanics and workers with less education.

The state Department of Labor is in charge of handling these cases. When an employer has violated the law, they will begin investigating the workplace, only when someone complains. If there is such violation, civil penalties can be imposed on the owner/employer.

Richard Blum, a staff attorney for the Employment Law Unit (ELU) at the Legal Aid Society, has been working alongside low-wage workers who are facing employment-law issues. The ELU handles cases involving wage violations towards undocumented immigrants who are often the victims. They work with various organizations, worker centers and social services organizations.

Legal Aid attorneys have seen an increase in cases specifically every January once the wage law take effect, "The last few years as the increases got phased in, there's a problem often in January, February, until the Department of Labor calls or we call when there's a lag in the increase," he said. "Some employers see it as voluntary."

There are specific obstacles that undocumented workers face in reporting wage theft.

### **Fear of retaliation.**

Many undocumented immigrants don't speak up because the employer can call immigration.

Hernandez isn't afraid of reporting her boss but wouldn't want to lose her job, "It's not really fear, I just wouldn't like to lose my job," she said. "I have so much time here, I know the area, the people and starting all over again just isn't a good idea."

But with her experience, she sees this as an advantage, "At this point, labor wise, They need me, more than I need them," she said. "My English isn't perfect but I know how to defend myself and lead the rest of the staff."

Blum understands the fear undocumented workers might feel, especially since President Trump took office. But the DOL only has one job, he says: to investigate any forms of violation. "That provides some degree of protection particularly for current workers," he said. "The Department of Labor is very scrupulous about not wanting to know people's immigration status, it doesn't matter under the law and they are not interested."

### **Other obstacles.**

However, this is only one of the many obstacles when reporting wage theft.

"They might go to the agency and have someone there who doesn't speak their language, or understand what this means to them, the fear or the time that it takes or the paperwork," Angeles Solis, a Lead Organizer in the Workplace Justice Team at Make the Road New York.

Sarah Ahn, an organizer for the Flushing Workers Center, has worked with many who have gone through wage theft. Usually, she and her team will work with employees and find other methods than going straight to the DOL. "We aim to get rid of wage theft," she said.

"We talk about all of this and if the workers are open to it, whatever is in our toolbox, if workers are wanting to and makes sense, exposing it to the community, calling to boycott, picketing."

But some workers find the biggest obstacle is their fellow workers. If it was up to Hernandez, she would've reported long ago, but most of the staff, doesn't feel the same. "I believe, one of the employees has already reported but in reality we haven't come together," she said. "I've told them once if we all agreed we can do something about this." Unfortunately, Hernandez was told from word of mouth that one or two employees calling isn't enough.

She has been reached out by non-profits but told her that one person isn't enough. This frustrates Hernandez because this is beneficial for all of them.

### **Whoever decides to report theft, there can be barriers to proving it has occurred.**

When getting paid in cash, it can be difficult to provide proof of pay. "If the employer has not met their legal obligation to maintain accurate records of time and pay, then the worker can meet their burden of proof in court by their recollection of what happened," said Blum. "It doesn't have to be extremely precise because they were not obligated to maintain records, it was the employer who was."

### **Delays and uncertainty and the process is slow.**

Make the Road New York and the Center for Popular Democracy did a [study](#) on how the DOL handles wage theft. "In 17 percent of cases filed by MRNY and pending before DOL low-wage workers still have not seen a penny after four years or more of DOL investigation time," said the report. "The DOL has insufficient resources to manage workload caseloads. DOL caseload investigators' caseloads have grown extensively over the past decade, becoming too large to effectively manage." "Between 2008 and 2017, the Department of Labor failed to recover 38 percent of stolen wages," said Solis. She notes that because of this owners aren't scared because they know the department will not follow up consistently.

"It takes years," said Ahn. "A lot of times there's no resolution in the end, our labor laws are very weak, especially when it comes to enforcement." If a worker wins and can receive money, there's another obstacle. "It's very easy for businesses to shut down, or change their name," she said. "The system is really difficult for them to navigate and not because of the language barrier but because our laws are very weak."

Then there's the question of when back wages might actually be paid. Ten workers won a judgement of \$700,000 for unpaid wages and overtime pay. The owners changed their restaurant's name and claimed to have sold it. It was named Indus Valley and changed to Manhattan Valley. This was in December 2015, fast forward to 2019, they have received around \$100,000 and are waiting for the rest.

Efren Caballero, from Guerrero, Mexico, arrived to the United States in 1999. He was paid \$3.00 an hour and wasn't paid overtime, he worked at Indus Valley for 9 years. "We talked to him, *'why don't you pay us the minimum?'*" said Caballero in Spanish.

“That’s when he got mad at us,” according to Caballero. “That’s when we went to the Department of Labor,” he said. “He’s still the owner, the food is the same, everything is just the same, he just changed the name.”

Caballero has seen the owners inside the “new” restaurant. “He’s always hiding,” he said. “He goes in and goes out, if he’s not the owner anymore, then why is his still there?” he said. “If I’m not the owner anymore, why would I be in a place that’s not mine?” “He’s taking care of it, taking care of his money.”

It bothers him that owners are able to get away because they have money. They’re capable of closing and opening businesses as they please. “If you sue, they have money, they close and open a new business,” he said. “That’s what they do, all of them do the same, there are a few exceptions where owners actually follow the law because they know what can happen.”

This adds to confusion for workers trying to figure out how the process works. “There’s also a lack of information sometimes of how the process works,” said Solis. Solis mentions that organizations like Make the Road can identify these issues, “But for a Department of Labor investigator, they might just say *‘oh your boss is not responding to the calls, they never got the letter.’*”

### **New Laws Coming?**

There are efforts underway to make it easier for workers to report wage theft.

The [EmPIRE Act \(Empowering People In Rights Enforcement\)](#), bill is currently in the Senate Labor Committee. It would allow organizations to file claims for workers/whistleblowers. This would give workers who are afraid to speak up, to be backed up by organizations. A portion of civil penalties that are recovered could be distributed to the DOL and the rest to the affected workers, whistleblowers, and the organizations representing them. “Instead of workers having to go to the DOL, they can go to organizations, unions and also do the work of the DOL in order to have their case filed.”

The [Securing Wages Earned Against Theft](#) (SWEAT) Bill was passed by the New York State legislature in June. It’s currently waiting for the signature of Governor Andrew Cuomo. If signed, the bill would allow workers to freeze employer assets, which is called a lien. Under the current law, when someone is owed money, the owner can hide their assets. “We’re calling on him, Governor Cuomo says this is a sanctuary state, New York

is welcoming of immigrants,” said Ahn. The exploitation will continue to happen until and it gives a bad image and an assumption that this is ok. “That’s I think, a very terrible message.”

“It would be nice to get paid the minimum, even if it meant to work less hours,” said Hernandez. At the moment, she plans to remain at the job because she doesn’t want to leave, “I don’t leave because I don’t want to,” she said. She’s hopeful that the DOL will come in one day and put pressure on the owner to pay what the law requires.