



Protecting Your Workers & Growing Your Business

Speaking Notes to Accompany PowerPoint Training

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Slide 1

This presentation is from the Sheller Center for Social Justice at Temple Law School. The Sheller Center seeks to advance workers' rights and immigrants' rights. The focus of this presentation is to train progressive employers how to support and protect their workers while growing their businesses.

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Important for employers to understand their obligations:

- Treating workers well is an investment in a business's workforce
- Workers return the favor and take seriously the well-being of the business
- Satisfied workers are productive, better at customer service, and stay with the business

This presentation explains:

- The basics of the laws in place that ensure workers receive protection
- What good employers do to comply with the law to protect workers and grow business

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Businesses can benefit from implementing the recommendations contained in this presentation.

Retain the best workers and reduce costly turnover

- Turnover = costs associated with departing employee, advertising the position, interviewing candidates, and training new hires
- The figure of \$7,000 is an estimate for turnover costs/employee in hospitality industry
- Treating employees well will incentivize them to stay at your business

Boost team morale, trust, & workplace harmony

* Law students at the Temple University Beasley School of Law.

- Employees working together for longer periods of time build up rapport

Improve customer service

- Studies show increasing pay is effective to incentivize better customer service

Increase reliability & productivity

- Supported and protected employees will ensure they don't lose their jobs

Market to socially conscious consumers

- Studies show consumers prefer to support businesses aligned with their social values
- Especially true in politically progressive urban areas, such as Philadelphia
- Become involved in a network of socially conscious businesses throughout the city

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Presentation identifies two areas for employers to grow their businesses by protecting workers:

(1) Workplace compliance laws, include:

- (a) Wage & hour laws,
- (b) Health & safety laws, and
- (c) Protections from retaliation.

(2) Businesses' responses to immigration enforcement in Philadelphia

For each of these areas, this presentation provides:

- (1) what the law requires of business owners
- (2) the consequences of not meeting those requirements
- (3) tips and best practices explaining how these practices benefits business

Important point: *all the laws* discussed in this presentation apply to *both* native-born workers and immigrant workers, regardless of their immigration status in the United States.

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Manuel's story was profiled in a previous Sheller Center report (see link in slide). He was a:

- Victim of wage theft (70-75 hour week with no overtime, last paycheck)
- Victim of retaliation after raising his right to be paid (employer threatened to report immigration status to the police and threatened Manuel's family and their safety)
- Victim of discrimination (verbal abuse including boss stating "all Latinos are trash")

While Manuel was able to secure legal assistance, that is not the case for many immigrant workers.

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Immigrant workers are especially susceptible to wage theft

- May be reluctant to assert their rights for fear they will be retaliated against on the basis

of their immigration status.

- Manuel's story is an example of the reality that immigrant workers in Philadelphia and across the United States face every day.
- Immigrant workers disproportionately work in low-wage work and are often paid under the table, which can make it difficult to prove instances of wage theft.

"Broken Laws, Unprotected Workers"

- Landmark study from the National Employment Law Project
- Profiled low-wage workers generally
- Made specific findings about immigrant workers
 - Detailed the prominence of workplace law violations facing immigrant workers
 - Among the undocumented immigrant workers surveyed:
 - 37% were paid less than minimum wage (during week immediately preceding the survey)
 - 76% of those entitled to overtime had not received overtime payment

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Even if an employer is paid minimum wage, it's not enough

- The minimum wage is not a living wage
- Someone who works full time earning minimum wage is unable to cover the most basic expenses:
 - Rent
 - Utilities
 - Groceries
- When minimum wage workers are victims of wage theft, their already precarious position is made even worse.

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- Minimum Wage: Federal and state law require every worker be paid *at least* \$7.25/hour
- Overtime: for every hour worked in a week above 40 hours, employees must receive 1.5 times their usual hourly rate

Slide 10 [Advocacy Tool]

Hypothetical problem to illustrate how overtime wages are calculated

- If an employee earns \$10/hour and works more than 40 hours, the employee is entitled to \$15.00 for each hour worked beyond 40.

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- Regular paydays: Federal and state law require employers pay their employees consistently and regularly.
 - If not, can cause:
 - legal problems down the road, and
 - employers to pay more in the long run
- Recordkeeping: Employers must keep certain records for each covered worker.

- No required form for the records
- The records must include accurate information about the employee, hours worked and wages earned.
- List of the basic records that an employer must maintain for one year:
 - Employee's full name and social security number
 - Address, including zip code
 - Birth date, if younger than 19
 - Sex and occupation
 - Time and day of week when employee's work week begins
 - Hours worked each day and total hours worked each workweek
 - Basis on which employee's wages are paid
 - Regular hourly pay rate
 - Total daily or weekly straight-time earnings
 - Total overtime earnings for the workweek
 - All additions to or deductions from the employee's wages
 - Total wages paid each pay period
 - Date of payment and the pay period covered by the payment

Slide 12 [Advocacy Tool]

Example of how to keep records regarding employee payroll.

- This is an excel spreadsheet with slots for:
 - Employee's name
 - Annual salary
 - Hourly rate
 - Overtime pay
 - Deductions
- Spreadsheet has plenty of space to add information every week
- There are free templates available online or you can buy already made books or sheets at any office supply store.

Slide 13 [Advocacy Tool]

Example of a paystub

Employers must keep copies of these in their records.

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Consequences of failing to comply with wage and hour laws include:

- Paying back wages,
- Paying liquidated damages (potentially doubling the amount required to pay),
- Criminal penalties (in extreme cases for repeat offenders), and
- Bad public relations and press coverage (see headline on this slide).

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Best practices for successful employers:

1. Keep accurate, comprehensive, and transparent records so that:

- Employees have access to records of their hours worked;
 - Employers can shield themselves from potential legal challenges; and
 - There are no misunderstandings either by employer or employee.
2. Pursue internal promotion policies to reward workers' good performance:
 - Provide bonuses, and
 - Provide other methods of advancement
 3. Offer paid time off to workers

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Pay employees a living wage (see [MIT living wage calculator](#): Philadelphia's living wage is \$12.64/hour)

-Benefit:

- Ensures workers have the resources to maintain a normal standard of living.
- Paying employees more than competitors do results in higher levels of customer satisfaction:
 - Workers more willing to go the extra mile for the customer and business;
 - Workers are simply more satisfied and happier while at work;
 - Workers will take steps to ensure their job security.
 - They are significantly less likely to:
 - Skip shifts
 - Be late to work
 - Call off with short notice

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Safety and Health law categories:

1. Safe working conditions regulated by the Occupational Safety and Health Administration (OSHA)
2. Paid and unpaid sick leave
3. Workers' compensation for employees who become injured or ill on the job

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Northeast Philly frozen food production facility

- Workers were aware of hazardous conditions
- Were afraid to voice concerns due to fear of retaliation
- Specifically, workers noted hazard posed by slicing machine
- One worker's hand was severely injured in the slicer and fired without explanation
- Another worker fainted due to extreme heat and was forced to pay their own expenses

Experiences like this are, unfortunately, are not limited to that facility. Immigrant workers have higher likelihoods of workplace fatalities and injuries than their U.S.-born counterparts.

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Immigrant workers are especially susceptible to workplace safety concerns:

- Often fear retaliatory consequences of reporting concerns

- More likely to work in industries that present higher risk of injury
- Immigrant workers are 15% more likely to be fatally injured than their U.S.- born counterparts

For more information, visit: <https://www.knowablemagazine.org/article/society/2018/unhealthy-work-why-migrants-are-especially-vulnerable-injury-and-death-job>

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Safety and Health laws looks different for different types of business, but employers generally have a duty to provide a safe workplace.

Employers must:

- Eliminate all hazards in the workplace, where possible
- Where hazards are inherent to the job, warn employees using posters, labels or signs
- Provide safe tools and protective equipment to all relevant employees
- Properly maintain the equipment
- Provide safety training in a language and vocabulary workers can understand
- Post an [OSHA poster](#) (or the state-plan equivalent) at a conspicuous workplace location
- Report all work-related injuries/fatalities to local [OSHA office](#)
 - Report fatalities within 8 hours
 - Report certain injuries within 24 hours

For more on employer responsibilities under OSHA, visit:

<https://www.osha.gov/as/opa/worker/employer-responsibility.html>

Slide 21 [Advocacy Tool]

OSHA poster example

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Sick leave

- Approved sick leave purposes:
 - Illness
 - Medical appointments and procedures
 - To care of a family member
 - Leave due to domestic abuse or sexual assault
- Sick leave can be either paid or unpaid.
 - Philadelphia law requires that businesses with:
 - 10+ employees are required to provide paid sick leave,
 - 9 or less employees are required only to provide unpaid sick leave
 - All business must provide at least 1 hour of leave per 40 hours worked

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Workers' compensation provides compensation for workers injured on the job or who develop a medical condition because of their job

- State law requires employers to purchase a workers' compensation insurance policy
 - A licensed insurance carrier
 - State Workers' Insurance Fund
 - Self-insurance with state approval
- Policies cover an injured employee's medical bills and lost wages if the employee is unable to work

Pennsylvania has a "no fault" policy

- Employees injured on the job are entitled to compensation regardless of whether the injury was the employer's or employee's fault
- Even if a mistake was made by an employee, they are entitled to compensation

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Penalties for failure to comply with OSHA, sick leave, and workers' compensation laws:

- Civil fines or monetary penalties
- OSHA penalties can be expensive, ranging in the tens of thousands of dollars for a single offense
- Criminal charges for repeat OSHA violations or no workers' compensation insurance

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Best practices for successful employers:

1. Implement an easy reporting system for employees to use to report their injury OR to report when they have any concerns about work safety or hazards.
 - Have a ready-made form that employees can use for reporting (see example on next slide).
2. Educate employees on protective equipment and emergency protocol and listen to employees when formulating safety procedures.
 - Employees are the ones working with tools and machinery each day. Their insight will be valuable in setting optimal safety policies.

Slide 26 [Advocacy Tool]

Example of an injury and illness incident report sheet.

- Basic form that is only one page
- It includes employee's:
 - full name
 - address
 - DOB
 - date hired
 - health care provider
 - the incident itself

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Best practices for successful employers continued:

Ensure that your workplace is safe and sanitary by having regular checks and inspections.

- Can either voluntarily have OSHA inspect workplace or employer can self-evaluate his/her own workplace
- Benefit: Having a safe workplace ensures that there are less accidents.

Offer more than the required minimum amount of paid sick leave for employees.

- Many businesses offer at least one day of sick leave for every month worked.
- Benefit: Offering paid sick leave is a great incentive to help attract the best workers and retain workers -- thereby significantly cutting down turnover rates.
 - Restaurant industry study found that restaurants that offer paid sick leave have 50% less turnover than comparable restaurants that do not.

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Retaliation: when an employer penalizes an employee for asserting their rights.

- Employers are prohibited from retaliating against any employee regardless of immigration status.

Example:

- When an employee reports a coworker for sexual harassment in the workplace and the employer proceeds to deny the employee a well-deserved raise.
- When an employee asks to be paid at least the minimum wage and an employer fires that employee because of the request.
- The examples discussed previously -- Manuel's story and the Northeast Philly frozen food plant -- are examples of retaliation.
 - In Manuel's story, his boss specifically threatened to report him to the police when he tried to exercise his rights and obtain his rightful wages.

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Consequences of failure to comply:

1. Employers can be sued by their employees.
 - Can lead to expensive and time-consuming litigation.
 - Federal and state authorities can investigate retaliation incidents leading to fines.
2. Affects public perception of an employer or business.
 - Information about employers spreads quickly.
 - An employer with a bad reputation will have difficulty attracting quality workers and bad public perception can lead to fewer customers.
3. Will undermine employee loyalty to employer and their business.
 - Employees who are afraid to speak up or who think they will be punished are more likely to leave or resent their employer.

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Best practices for successful employers:

1. Proactively inform workers of their rights
 - Demonstrates to employees that you know and respect their rights.
 - Being upfront shows that you are not hiding anything.

2. Follow proper workplace procedures
 - Schedule a time to talk privately
 - Be open-minded when they're asserting their rights
 - Figure out a way to resolve the issue that works for you and benefits the worker.
3. Cooperate with employees to resolve the issues raised.

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Immigration Enforcement: Background

- Who is ICE?
 - Immigration and Customs Enforcement (ICE) is the federal law enforcement agency tasked with enforcing the immigration laws of the United States
 - Part of their job is locating and detaining those in violation of immigration laws.
- ICE in Philadelphia:
 - ICE enforcement at worksites has increased dramatically under the Trump administration. The Trump administration is pushing for greater immigration enforcement and deportation.
 - Knowing how to respond to an ICE raid is particularly important in Philadelphia as the area's ICE office is one of the most active in the United States.
- ICE Mechanisms:
 - ICE uses many mechanisms to enforce U.S. immigration laws.
 - For businesses, the two most relevant mechanisms are:
 1. I-9 audits
 - When ICE notifies a business ahead of time that it will be conducting an audit, shows up to the business, and has legal access to employee files related to their employment with the business.
 - An I-9 audit involves a review of employee paperwork.
 2. Workplace raids

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Workplace Raids: Background

- What are Workplace Raids?
 - ICE agents show up unannounced at your workplace either looking for a specific employee or simply hoping to find immigrant employees who do not have status.
- ICE agents:
 - May or may not be uniformed when they enter your business
 - May or may not be armed
 - ICE agents must carry ICE badges
 - Will try to talk to you and your workers
 - May try to look at your files

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Why protect workers from ICE enforcement?

- Protecting workers from ICE creates a more supportive workplace culture
 - Creating a plan to respond to ICE helps employees feel more safe and confident
 - Build staff morale
 - Retain the best workers
 - Motivate workers to do their best on the job
 - Failure to have a plan can create a culture of fear which is not conducive to a satisfied and productive workforce

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- Swift & Co. Factory Raids (December 2006)
 - ICE agents conducted raids at six meatpacking factories located in Colorado, Texas, Utah, Nebraska, Iowa and Minnesota
 - In total, ICE officials detained 1,297 workers
- Effects of the raid
 - Hundreds of children returned home from school only to find one or both of their parents missing.
 - Many immigrant children were kept home from school for fear that ICE would target the schools next.
 - Immigrant neighborhoods effectively went into lockdown
- ICE raids do not only affect individual undocumented immigrants
 - Entire communities are affected by raids
 - Documented immigrants and US citizens were affected by the Swift raids
 - Many witnessed friends, family, loved ones and colleagues unceremoniously rounded up and placed in buses for transport to unknown locations
 - Whole neighborhoods felt abandoned and local businesses noticed economic impacts
- For the full story, visit: <https://www.denverpost.com/2013/01/14/fear-from-swift-plant-raid-resonates-in-greeley-six-years-later/>

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Constitutional Rights

- There are basic constitutional rights that are helpful to be aware of during ICE raids.
 - Right to Remain Silent:
 - Everyone have the right to refuse to talk to ICE agents during a raid
 - Even when directly questioned by an agent, employees can (and almost always should) refuse to speak with the agent
 - Right to Refuse Entry to Private Areas
 - Retain the right to refuse access to the private areas
 - ICE agents may not enter private areas without permission, or the express permission of a judge through a judicial warrant

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Public areas

- Areas where members of the public are permitted to enter,
- Example:
 - Restaurant: lobby, waiting room, or dining area
 - Store: in front of a counter
- If ICE does not have a judicial warrant, this is the only area they can be in, unless employer or authorized person gives them permission to enter the private areas

Private areas

- Areas where general public is not typically permitted and
- Separated from the public area of the business
- Example:
 - Restaurant: kitchen
 - Retail store: stockroom area
- If ICE has a valid judicial search warrant, they are allowed to enter/search private areas

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Two types of warrants applicable here:

1. Judicial Warrant
 - Piece of paper that authorizes ICE agents to enter private areas and detain a specific named person
 - Must:
 - be signed by a federal judge,
 - list the name of the federal court issuing the warrant, and
 - list who ICE is searching for and where they are permitted to search
 - If ICE agents have a judicial warrant, you are legally obligated to cooperate with the terms of warrant
2. Administrative Warrant
 - Only grants ICE agents permission to detain an identified immigrant
 - Must: be signed by a supervisor at the Department of Homeland Security.
 - It does not list a judge's name or a court
 - It does not allow ICE agents to enter private areas of a business

Slide 39 [Advocacy Tool]

Example of an administrative warrant on the left compared to a judicial warrant on the right.

- The warrant on the left is signed by an immigration officer and says Homeland Security
- The warrant on the right will be signed by a federal judge and has a federal court name
- For more info: <http://www.seiu521.org/files/2017/05/ILRC-Guide-v2.pdf>

Slide 40 [Advocacy Tool]

Example of an employee rights card

- If an ICE agent approaches an employee, employee can hand this card to the agent
- Card lists every constitutional right each employee is entitled to and handing the card to

the agent constitutes the employee asserting their constitutional rights on the card

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Before Raid

- The most important part of preparing for a raid is collaborating with your workers
- Educate them about their rights and create a plan together
- Everyone needs to be on the same page.

As soon as possible, develop a **Written Response Plan** that clearly explains what everyone should do during an ICE raid. It should:

- Identify a point person:
 - The person who will be in charge during a raid
 - This person should understand the applicable laws, have authority to speak on behalf of the business, and be able to remain calm during a tense situation
 - Employees should direct agents to the point person
- List the name and contact information of immigration organizations who can provide legal advice and possibly representation if an employee is detained.
- List which areas of the business are public and which are private
 - Make clear to employees that only the point person is authorized to grant access to private areas
 - Private areas should be marked clearly with a sign posted (“Private”)
 - Doors to such areas should be kept closed and windows to such areas should have blinds/curtains that obstruct views from public areas
- Be distributed/posted in areas accessible to employees so they what to do during a raid
- Be practiced ahead of time

Slide 42 [Advocacy Tool]

Example of a Written Response Plan by the National Immigration Law Center:

- Find full copy of the plan on: <https://www.nelp.org/publication/what-to-do-if-immigration-comes-to-your-workplace/>
- Find English version of the plan on: <https://www.nelp.org/wp-content/uploads/Employer-Guide-What-To-Do-If-Immigration-Comes-To-Your-Workplace.pdf>
- Use this plan as a template, but incorporate specific recommendations that are tailored to each individual business

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During Raid

- Follow the procedures in your written action plan.
- Regardless of warrant
 - When ICE enters business, point person should ask to see badges to verify
 - All employees except the point person should be instructed to wait in private areas of the business during the raid
 - Do not flee
 - Running away from ICE may create a situation in which agents are

permitted to detain employees or follow them into private areas

- If employees come into contact with ICE agents, they should refuse to speak with them and should direct the agents to the point person
- If possible, staff members should videotape the raid, or -- at the very least -- pay close attention to what ICE agents are doing so that records can be created immediately after the raid
- If ICE requests records from your workplace, you should ask if they have a valid judicial warrant or subpoena requiring the sharing of that information
- Warrant
 - If ICE agents have a warrant, the point person should ask to see it and make a copy or take a picture of it
 - Point person should determine whether it is a judicial or administrative warrant
 - Point person should make sure that if it is a judicial warrant. Ensure it contains:
 - Judge's name & signature
 - Court name
 - Details specifying where agents may search
 - If an administrative warrant, point person should refuse access to private areas
 - The point person legally must cooperate with the terms of the warrant and cannot impede the agents.
 - Point person does not need to affirmatively assist ICE agents or aid agents in accomplishing their goals
 - Point person should stay with ICE agents throughout the raid
 - Ensure agents do not exceed the scope of the warrant
 - Videotape or closely record ICE agents' actions.
- No warrant
 - If ICE agents do not have a warrant, point person should inform agents that they do not have permission to enter the private area of the business
 - Otherwise, our tips are the same as for if they have a warrant
 - The point person should stay with ICE as they search the public areas
 - Other employees should wait in the private areas or
 - Employees should refuse to speak to agents
- Encounters with ICE
 - If any employee is stopped by an ICE agent, ask if you are free to leave
 - If yes, employees are permitted to walk away without saying anything else.
 - If an agent asks for identification, assert your right to remain silent
- If you are arrested by an ICE agent
 - First invoke right to remain silent
 - Assert right to ask for the presence of an attorney

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Post Raid

- Immediately after the raid, create written records detailing facts about the raid
 - Pay close attention to:
 - Number of ICE agents present

- Whether agents were uniformed
- Whether agents were armed
- Whether agents took actions to make workers believe that they could not move freely or leave
- Whether agents used force or mistreated anyone
- If any employees were arrested by ICE
 - Give employees full support
 - Notify employees' families
 - Contact immigration organization that can provide legal support
 - If arrested employees are unable to immediately return to work:
 - Grant leave time for employees to get affairs in order
 - For employees who are unable to return at all:
 - Pay earned wages
 - Provide separation wages

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Many successful progressive businesses have embraced the ideals of respecting and protecting their workers.

- South Philly Barbacoa and Sam's Morning Glory Diner are two examples of Philadelphia businesses
 - They're trying to spread their message to the larger Philadelphia community. Both businesses have benefited from the exposure they have received as being progressive workplaces.
- For more information on both businesses, view the links below:
 - South Philly Barbacoa:
 - <https://www.phillyvoice.com/south-philly-barbacoa-cristina-martinez-immigration-undocumented-workers-fundraiser/>
 - <https://philly.eater.com/2019/1/14/18182200/south-philly-barbacoa-cristina-martinez-ben-miller-chris-jazz-cafe-fundraiser-undocumented-workers>
 - <https://placeatthetable.net/2018/10/02/lamb-barbacoa-advocacy-and-empowerment/>
 - Morning Glory Diner
 - <https://www.phillymag.com/news/2018/04/06/morning-glory-diner-south-philadelphia-restaurant-guns/>
 - <https://www.attorneygeneral.gov/taking-action/press-releases/at-philadelphia-diner-attorney-general-shapiro-stands-with-workers-to-oppose-trump-administration-tip-rule/>

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Wage Change

- A [group of small businesses](#) in Philadelphia that are dedicated to providing higher wages
 - These businesses committed to paying a minimum livable wage of \$11/hour.

- These businesses pay their employees more than minimum wage because paying higher wages has helped them retain employees, increase employee productivity, reduce the amount of training necessary, improve employee morale, and attract socially conscious consumers.
- This is another example of how small businesses in Philadelphia reap the benefits of implementing many of the good practices recommended in this training.

Slides 47-49 [Lists of Resources]

Slide 50 [Final Slide]

Please note that this presentation is current as of April 2019.