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Temple University Beasley School of Law

ENFORCING WINS BY PHILLY WORKERS:

TRANSFORMING LAWS ON PAPER
INTO REAL CHANGE



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The Social Justice Lawyering Clinic at the Stephen and Sandra Sheller Center for Social Justice is a student clinic at the Temple University Beasley School of Law. Students at the clinic learn firsthand about social justice issues that directly impact local communities, through legal representation, community education, and policy advocacy.

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EXECUTIVE SUMMARY

"I've rarely met any workers who have reported workplace issues because they say: I don't want to lose my job, I don't trust my managers, or it's way easier to leave than report it."

-ROBYN

Robyn is a full-time worker, a full-time student, and a single mother of two.¹ She has worked all over Philadelphia, including in the fast food and hospitality industry. As part of Philadelphia's workforce, she has seen managers who make employees clock in under different names to avoid paying overtime, employees forced to stay extra shifts, or employees uninformed about their right to paid sick leave. What she has rarely seen is anyone reporting these problems. To Robyn, workers do not report for several reasons. Workers do not know their rights. They are distrustful of city agencies. Even when workers do know their rights, workers are reluctant to report because they fear retaliation.

As Robyn describes, Philadelphia workers confront many challenges in the workplace. Employers commit wage theft, fail to provide workers sick leave, and engage in scheduling practices that make it difficult for workers to arrange for childcare or work a second job. As a result, Philadelphia workers struggle with holding down their jobs and being able to make ends meet.

In response, Philadelphia's City Council has enacted some of the most progressive laws in the country, including: the Wage Theft Ordinance, Paid Sick Leave, and Fair Workweek.² Without adequate implementation and enforcement, however, these laws will be ineffective. Philadelphia so far has fallen short of using these laws to protect workers, by failing to inform workers about their rights, help workers file complaints, and issue penalties against violating employers.



and not getting the paid sick leave to which they are entitled (Figure 1). We also

Our report takes a closer look at this problem. It examines the current situation of Philadelphia workers. It does so by analyzing 150 community-based surveys with workers and gathering interviews with workers and workers advocates. We found that many low-wage workers continue to suffer from violations of their rights, despite Philadelphia's worker protection laws on-the-books. Many workers, for example, are still experiencing wage theft

learned that many workers simply did not know what their rights are under these new laws. Finally, even if workers did know their rights, they would not file a complaint because they did not know how to complain or feared losing their job.

We also investigated how other cities have more successfully managed to enforce worker protection laws. Many cities, for example, provide significant funding to community based organizations to do outreach and education, recognizing that such organizations have better relationships with workers in their communities. Other cities have implemented mechanisms that help workers come forward without fear of retaliation by allowing them to file complaints

confidentially or anonymously. Finally, some cities avoid the problems of exclusively relying on worker complaints by engaging in affirmative enforcement. When cities find that there are violations committed by employers, they take real steps to issue penalties, thereby sending a message to employers that violations of the law will not be tolerated.

These experiences in other cities, therefore, point to how Philadelphia can increase the success of its own enforcement. At the end of this report, we provide the following recommendations:

- increased staffing and funding for the Mayor's Office of Labor
- significant funding for community based partnerships
- creation of a worker advisory committee or board
- affirmative enforcement of the laws
- implementation of anti-retaliation measures
- issuing penalties against employers who violate the law

Despite Philadelphia's passage of these laws, their inadequate enforcement results in continued harm to workers. Now that the work of drafting and passing the laws has been accomplished, Philadelphia needs to prepare for the large task of making its laws actually effective for workers throughout Philadelphia.

Cities roughly half the size of Philadelphia have budgets of over \$6 million dedicated to enforcing worker protection laws.³



BACKGROUND

All around the country, low-wage workers are experiencing challenges in the workplace. Philadelphia is unfortunately no exception. Low-wage workers are frequent victims of wage theft.⁴ If they get sick, they fear losing a day's pay that they cannot afford.⁵ They are also subject to unstable and variable work schedules, which can interfere with earnings and childcare obligations.⁶

Wage theft occurs in a number of different ways. Employers pay less than minimum or overtime wages, take unauthorized deductions from a worker's pay, or fail to pay for all hours worked.⁷ One study estimated that tens of thousands of low-wage workers in Philadelphia each week suffered from various wage theft violations.⁸ Such rampant wage theft not only harms workers financially but also further deprives the city of desperately needed wage tax revenue.

Workers also struggle when they are not paid for sick time. Workers may be told they have to find someone to cover their schedules when they are sick. Some workers can take off of work, but with no pay. Employers, therefore, are forcing workers to choose between taking care of their health and losing their daily livelihood. A study done before the Paid Sick Leave Ordinance became law estimated that 35-40 per cent of

workers in Philadelphia did not have access to paid sick leave.⁹

Moreover, many workers have variable schedules that create instability in their lives. Some workers get their schedules only several days in advance, making it difficult to schedule childcare, second jobs, or continuing education.¹⁰ One study surveying Philadelphia workers in the retail and food service industry found that 72% of respondents reported having conflicts between work and their caregiving responsibilities.¹¹ This same study found that 34% of respondents received their schedules less than a week in advance.¹² This constant flux in schedules also prevents workers from earning a consistent amount each week, having a potentially devastating impact on people who are surviving paycheck-to-paycheck.¹³

These issues confronting workers impact their fundamental ability to support their families and thrive. Philadelphia is the poorest of the ten largest U.S. cities, with the highest rate of deep poverty, measured as individuals living at 50 percent of the poverty line or lower.¹⁴ While work alone will not solve the complex issue of poverty, these problems confronting low-wage workers exacerbate the ability of families to lift themselves out of poverty.

PHILADELPHIA'S RESPONSE

The good news is that Philadelphia has begun to take some steps to address these issues. In fact, the city has enacted legislation directly aimed at addressing the problems described above: the Wage Theft Ordinance, Paid Sick Leave, and Fair Workweek. The most recent, Fair Workweek, will take effect on April 1, 2020.

The Wage Theft Ordinance responds to the dire need to address Philadelphia's overwhelming wage theft problem. It creates a complaint process for reporting violations and imposes penalties on employers who engage in wage theft.¹⁵

Paid Sick Leave requires all employers with over 10 employees to provide employees with one hour of paid sick leave for every 40 hours worked.¹⁶ Employers are not only required to notify their workers that they are entitled to paid sick leave but also keep records of employees' hours for this purpose.¹⁷

Fair Workweek will initially require employers to provide 10 days' notice of changes to the work schedule.¹⁸ If an employer changes an employee's schedule after posting it, they must pay the employee for an extra hour of work; if the schedule change results in a loss of hours for the employee, the employer must pay them time and a half.¹⁹



MAYOR'S OFFICE OF LABOR

The Office of Benefits and Wage Compliance, housed within the Mayor's Office of Labor, is tasked with enforcing these laws. It has as its mission to "advance and uphold worker protection laws through enforcement and outreach with a commitment to promoting economic security and racial justice."²⁰

Despite the broad and consequential reach of its mandate, the Office currently has a staff of only five.²¹ The Office has not been particularly successful in generating complaints from workers. For 2019, it received only a total of 88 complaints regarding wage theft and paid sick leave.²² The resolution rate for these complaints as follows: (1) 33 out of 57 wage theft complaints; and (2) 11 out of 31 paid sick leave complaints.²³ It is unclear if the Office is currently assessing penalties on violating employers.²⁴ To put this into perspective, as of

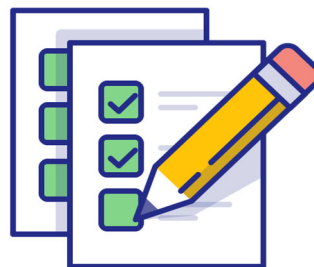
September 2019, Philadelphia has 691,400 workers actively employed in its labor force.²⁵

It is worth acknowledging, however, that the Office of Benefits and Wage Compliance has vastly improved under new leadership. The Office faced challenges largely starting from scratch.²⁶ It has now increased its staff from two to five (soon to be six) and put some mechanisms in place to address accessibility issues in filing complaints, such as access to language services.²⁷

A representative from the Office estimated that they need to target outreach to about 700,000 low wage workers in Philadelphia.²⁸ Yet given its extremely limited resources, it has so far been unable to adequately protect Philadelphia workers.

CHALLENGES AHEAD

Workers cannot use these laws if they are unaware of their existence. One worker, for example, reported that she did not know she was entitled to paid sick leave until 2018, three years after it went into effect.²⁹ Worker advocates confirm that many Philadelphia workers still remain unaware of these laws.³⁰ Education of the workforce as to their rights under these laws is essential for these laws to be effective. Beyond workers themselves,



employers too need to be informed of these legal obligations.

Even an informed workforce, however, cannot assert their rights if they do not feel comfortable or know how to navigate the complaint process with the City.³¹ Workers can be distrustful of city agencies and do not believe they will do anything to help.³² Workers tend to be more comfortable talking with community members than with government employees in the Office of Labor.³³

Retaliation against workers too is a large concern. Workers in Philadelphia are very afraid that filing a complaint might result in losing their jobs.³⁴ Workers may decide that it is easier to quit than to report issues to their managers.³⁵

For immigrant workers, the fear of retaliation is more pronounced. Workers may choose not to rock the boat because of their precarious immigration status. Employers may explicitly threaten undocumented workers with calling the police or ICE.³⁶ For these reasons, immigrant workers are sometimes reluctant to

step forward and file complaints with government agencies.³⁷

Enforcement of these laws will encourage workers to come forward. One worker advocate suggested that the Office of Labor should focus on investigating a large business or doing a sweep of a commercial corridor, which would help bring media attention to the issues.³⁸ Such enforcement actions would draw attention to the violations that are occurring and to what the new laws are.³⁹ Once word of the new laws and the government's interest in investigating and penalizing non-complaint employers got to workers, these efforts might prompt workers to then file complaints.⁴⁰

These new laws will not protect Philadelphia workers until they are implemented effectively. Without measures to educate workers and employers, provide alternative mechanisms for investigating

workplaces where workers are reluctant to come forward, and

"Working as a chef, I got sick. My doctor told me I would not be able to work for two weeks. I took four days off but that was enough for my employer to tell me that they doubted my commitment to the job and fire me. Without real penalties for employers, they will continue to violate the law."⁴¹

-Calvin, Former Restaurant Worker

penalize employers who do not comply, Philadelphia will fall far short of advancing and upholding worker protection laws.

This remainder of this report will: (1) present a snapshot of Philadelphia workers, (2) examine how other cities are enforcing their labor laws, and (3) provide a series of recommendations about how the city can improve enforcement and make the goals these laws are meant to achieve a reality.

SNAPSHOT OF PHILADELPHIA WORKERS

This section reports how Philadelphia workers are experiencing issues like wage theft, paid sick leave, and unstable and variable schedules. It primarily draws from survey data collected by One Pennsylvania and Make the Road Pennsylvania, organizations that work with working class communities across Philadelphia. Together, they conducted a total of 150 surveys with community members (see Methodology in Appendix). Further, we supplemented the survey results by talking directly to workers, advocates, and lawyers, who have firsthand experience concerning these issues. We found that Philadelphia workers have a lot to gain from the effective enforcement of Philadelphia's trio of worker protection laws.

WAGE THEFT

Almost one-third (31%) of surveyed workers reported that they were not paid at all or underpaid for the work they did. These workers provided a varied explanation for their employers' underpayment, including the failure to pay overtime wages, taking unauthorized deductions from pay, or outright failure to pay for all hours worked. This question likely undercounts the number of workers who have experienced wage theft because some workers may fail to recognize that wage theft is happening to them.⁴² In particular, employers may use more subtle methods to commit wage theft that confuse workers, such as skimming tips or paying workers a weekly salary in order to avoid overtime obligations.⁴³

Unpaid overtime is one of the most common forms of wage theft. Of the

31% of survey
respondents said that their
employers had failed to pay
them for all wages or
minimum wage or overtime.

respondents who reported working over 40 hours per week, over one-third (40%) answered that their employers did not compensate them for their overtime hours. The Broken Laws study, a large-scale study focused on low-wage workers in three cities, found that 76% of workers who worked overtime hours experienced an overtime violation.⁴⁴ The higher rate of overtime violations in the Broken Laws study as compared our survey results may be explained by differences in methodology. Rather

than rely on workers themselves to identify whether or not they have been paid overtime, Broken Laws' researchers requested information from workers that allowed them to independently determine whether workers were experiencing overtime violations.⁴⁵ The reporting in our survey results, therefore, may be undercounting overtime violations.

Further, the survey questioned workers about specific kinds of wage theft that they have experienced over the past three years (Figure 2). A little less than one-third (28%) of respondents reported that they had been made to work "off-the-clock," meaning they worked before their

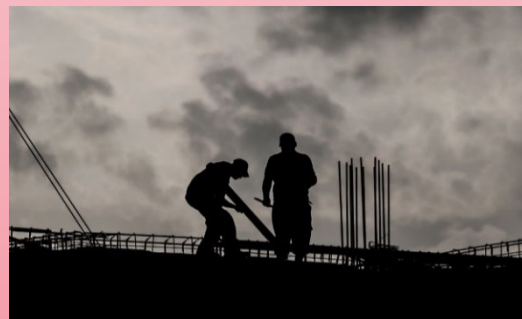
Figure 2. Percentage of Respondents Experiencing Specific Kinds of Wage Theft.

Off-the-clock work	Working during lunch break	Travel time
28%	37%	45%

shifts began or after their shifts ended without compensation. Additionally, a little more than one-third of respondents (37%) were required to work during their lunch break but not compensated for that time. While only a fraction of respondents were required to travel for work, a little less than half of these respondents (45%) reported not being paid for their travel time.

Profile of a Philadelphia Worker

Mr. Washington came across a contractor looking for construction workers. He got the job and quickly found that he liked the work. While he was not paid on a regular basis, he tried to give the employer the benefit of the doubt. One day his boss handed him a check that bounced. When he confronted the boss about the bounced check, the boss paid him several hundred dollars in cash – far short of what Mr. Washington was owed. Why did he stay at a job for three months without ever receiving all his pay? For Mr. Washington, the answer was the mortgage to the house that he shared with his father. The longer he worked the harder it got to walk away from the job. Mr. Washington lost his house and is still seeking the thousands of dollars he is owed.⁴⁶



These results are not surprising for those advocates who work closely with workers. Samuel Jones, Director of the Restaurant Opportunities Center of Philadelphia (ROC PA), states that some restaurant workers in Philadelphia, for example, are still doing unpaid prep work before being "on-the-clock."⁴⁷ ROC PA published a report in 2012 that exposed similar workplace violations occurring in the

Philadelphia restaurant industry. The study found that, of the workers surveyed, 58% had experienced an overtime violation, 40% had worked off the clock without pay, and 10% had their managers steal tips.⁴⁸ Nicole Kligerman, Executive Director of the Pennsylvania Domestic Worker Alliance, explains how domestic workers similarly encounter wage theft issues.⁴⁹ In particular, she explains how the non-traditional work environment facilitates such wage theft, particularly when wages are almost always paid in cash “under the table.”⁵⁰ The domestic worker-employer relationship is almost always one-on-one, with a significant power differential between the employer and the employee.⁵¹ Common scenarios, according to Kligerman, are employers not paying or refusing to pay their employees, or even employers promising to pay the following week, but failing to do so.⁵²

A 2015 study of wage theft throughout Pennsylvania estimated numbers of workers in Philadelphia that suffered violations each workweek. According to those estimates, the following figures indicate the number of workers in Philadelphia who experienced a particular kind of wage theft violation each week: 36,435 for minimum wage violations; 29,518 for overtime violations; and 28,255 for off-the-clock violations.⁵³ Such widespread violations end up costing workers substantial amounts of

money. Based on a study of wage theft violations in New York and Los Angeles commissioned by the United States Department of Labor, the Economic Policy Institute (EPI) estimates that minimum wage violations alone cause workers across the United States to lose anywhere from \$8.6 billion to \$13.8 billion per year.⁵⁴ Overall, it is estimated that wage theft costs workers across the country upwards of \$50 billion a year.⁵⁵

PAID SICK LEAVE

Forty five percent of workers who worked for qualifying employers with



more than 10 employees reported that they did not receive paid sick leave. The law also requires that employers place posters about paid sick leave in visible areas of the workplace.⁵⁶ Almost three-quarters (71%) of survey respondents employed by qualified employers either said there were no paid sick leave posters at their places of work or that they did not know if

such posters were posted, even though the law has been in effect for over four years (Figure 3).

Moreover, all employers, regardless of size, are required to provide unpaid sick leave. Over 26% of workers say their employers had refused to let them take a day off when they were sick in the past four years. Over a fifth (22%) of respondents also reported that their employers have retaliated against or threatened them for taking a day off because they were sick.

According to the Center for Economic and Policy Research, “at least 40 percent of the private sector workforce in the United States does not have paid sick days or leave.”⁵⁷ Marianne Bellesorte of PathWays PA described that prior to the enactment of paid sick leave, restaurant workers forced to continue to serve despite being ill or even injured.⁵⁸ A school nurse testified that sick children ask her not to call their parents because they cannot miss work.⁵⁹ The New York Times reported that “at least half of employees of restaurants and hospitals—two settings where disease is easily spread—go to work when they have a cold or the flu.”⁶⁰

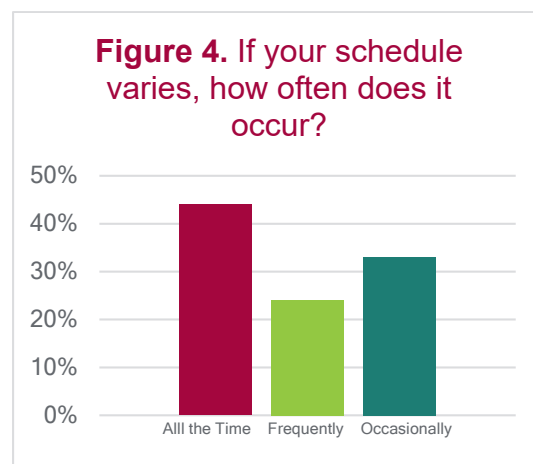
Since federal law does not require paid sick time to employees, the regulation of paid sick leave falls to local governments. While the Philadelphia ordinance can potentially benefit hundreds of

thousands of workers, it can only do so if it is effectively enforced.

WORK SCHEDULES

Philadelphia’s Fair Workweek law does not take effect until April 1, 2020. The survey, however, sought to capture a snapshot of existing employer practices with worker schedules. Since the law will only apply to employees who work for chains in retail, hospitality, or food service, our results focus on workers who reported that they worked for such chains.

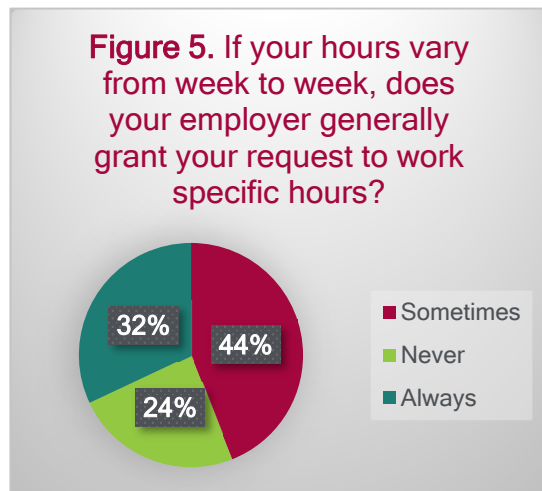
Overall, we found that many workers reported inconsistent work schedules, sometimes with changes being made to schedules at the last minute. Over



one-third (44%) of survey respondents stated that their work schedules vary “all the time,” while nearly another quarter (24%) stated that their work schedules vary “frequently” (Figure 4). More than one-third of survey

respondents received their schedules with less than three days' notice (35% three days before and 15% one day before).

Employers also provide little to no control to workers over the hours and



days that they work. Among survey respondents, close to one half (44%) stated that employers only sometimes granted requests to work specific days, while a little less than a quarter (24%) stated that employers never grant such requests (Figure 5). Almost half (59%) said that when their employer made last-minute changes to their schedule, they were still required to work the revised schedule even when it was inconvenient for them.

National data similarly reveals such scheduling variations. EPI reported that 9 out of 10 “workers in retail and fast food service jobs report variable hours,” while “part-time workers are even more likely to have variable and unpredictable schedules.”⁶¹ It also found that “[n]early half of low-wage

and/or hourly workers have no input into their work hours, including the inability to make even minor adjustments.”⁶²

Employers too may reduce workers' hours to avoid paying additional wages or overtime. Survey respondents were asked if their work hours were ever reduced so they get less pay. Nearly half (48%) of survey respondents reported that their schedules had been so reduced. Naturally, these reduced hours deprive employees of pay, which can cause economic hardship. Many survey respondents who indicated that their schedules had been reduced also indicated that these reductions “sometimes” or “always” caused hardship.

WORKER KNOWLEDGE & RELUCTANCE TO COMPLAIN

In theory, although worker protection laws are designed to help workers, workers do not always know about their rights under the law. Even when workers do know their rights, there are other barriers that make it difficult for them to come forward and complain about a violation of their rights. One national study, for example, estimates that there are about 130 overtime violations for every complaint lodged.⁶³ Another study found the rate of worker complaints under the federal wage

and hour law to the U.S. Department of Labor to be “exceedingly low” (approximately 25 complaints filed for every 100,000 workers).⁶⁴

Multiple advocates have confirmed that Philadelphia workers are unfamiliar with their rights under these newer worker protection laws.⁶⁵ Nicole Kligerman of PDWA noted that it was extremely common for workers to be completely unaware of their rights under the law. She explained that the consequences of this were severe, resulting in “really widespread abuse . . . that reinforces peoples’ fear.”⁶⁶

Many workers, for example, do not fully understand what wage theft is and may not realize that it is happening to them. One study found that more than three-quarters of surveyed workers did not know where to file a government complaint about a problem on the job, and almost 60% of these workers misunderstood their minimum wage and overtime rights.⁶⁷

Further, workers who may understand that their rights are being violated may simply decide not to come forward. As discussed above, roughly one-third (31%) of survey respondents reported that their employers had failed to pay some of their wages. Yet among these workers, a little less than one-third (27%) stated that they did not attempt to retrieve

their wages from the employer. When asked why they did not attempt to get their wages, workers provided a variety of explanations: had a fear of losing their job, lacked the know-how, and believed that it was not worth their time.

Nadia Hewka, Senior Attorney at Community Legal Services, confirms these results: many people do not know how to report wage theft or are afraid to do so.⁶⁸ Her explanation is that workers may fear being fired or receive misleading statements from the employer that they will be paid eventually.⁶⁹ She further noted that for every person at a workplace who does come forward to report wage theft, there are many more experiencing wage theft at that same workplace who do not come forward.⁷⁰

As one advocate explained: workers are fearful “because they experience systemic and structural violence in every aspect of their identity. . . [s]peaking up for their rights could mean unemployment, homelessness, and economic hardship.”⁷¹

These fears about retaliation are real. In the Broken Laws Study, employers had illegally retaliated against 43% of the workers who did complain about workplace violations.⁷² Reported retaliation included being fired or suspended, threatened by calling immigration authorities, or threatened with cuts to hours or pay.⁷³

For immigrant workers, this fear of retaliation includes negative consequences related to their immigration status. While the survey reached very few immigrant workers (only 11% of survey respondents reported being born outside the United States), some of these workers reported that ICE had come to their workplace to question or arrest employees for deportation. Troublingly, they also reported being threatened by their employers due to their immigration status. Hewka confirms that the fear of complaining about workplace violations is even greater in immigrant communities because employers threaten to retaliate against them by calling ICE.⁷⁴

As a result, immigrant workers disproportionately suffer from workplace violations because they fear “rocking the boat.”⁷⁵ One study of domestic workers, for example, found that undocumented workers were more likely to be threatened, pressured to work more hours, or pushed or physically hurt.⁷⁶

For this reason, an enforcement system that is entirely premised on workers filing complaints is problematic. The consequences of a failed complaint-based system, therefore, are that workers will continue to suffer injustices and employers will feel empowered to continue violating the laws as they experience no real consequences.

DISCRIMINATION

Workers in Philadelphia are also encountering issues related to discrimination. While the survey did not comprehensively cover the issue of discrimination, it did ask a handful of questions about their experience.

Eleven percent of our survey respondents reported that they have been denied or fired from a job based on one or multiple of the following: race/ethnicity, gender, sexual orientation, and/or disability. Nearly 18% reported that they had been treated differently in a job, such as being paid less or denied a promotion due to their race/ethnicity, gender, sexual orientation, or disability.

In the service industry in Philadelphia, workers experience racism by being segregated into lower paying jobs, such as “back of the house jobs.”⁷⁷ Such issues can also impact the access of workers of color to sufficient hours, fair scheduling, and freedom from retaliation.

Over 23% of survey respondents reported that they had been sexually harassed by an employer or co-worker in the last three years. Of those who suffered from sexual harassment, 78% did not report the behavior. Only a small number of those who experience harassment, about ten percent, ever formally reported any such incidents of harassment.

OTHER JURISDICTIONS ADDRESS WORKERS' RIGHTS

Though the preceding pages certainly paint a bleak picture of the many problems facing Philadelphia workers, the problem is not unsolvable. In fact, cities across the nation have recognized these challenges. They are effectively implementing and enforcing worker protection laws and have begun taking affirmative steps to address them. This section highlights the innovations of these cities as they attempt to plug the biggest gaps in their worker protection systems.

COMMUNITY PARTNERSHIPS

Even the strongest enforcement agency is ineffective if it does not have the trust of the workers that it is meant to protect. Such a lack of trust not only discourages workers from initiating complaints but also creates a hesitancy to pursue claims even after they have been filed.⁷⁸ Moreover, workers most vulnerable to employment violations – namely immigrant communities and communities of color – are often the most mistrustful of such agencies.⁷⁹ An effective enforcement agency, therefore, must find ways to build trust amongst these marginalized populations. We provide several examples of efforts in other cities to bridge this gap.

Cities have begun to recognize that while many low-wage workers do not trust government agencies, they do trust their local community groups.⁸⁰ Sociological research has demonstrated the positive effects that community groups can have on both the implementation and enforcement



of employment laws.⁸¹ To take advantage of these benefits, cities have begun to focus on partnering with these organizations in a number of different ways.

A number of cities fund community organizations to help with education and outreach to vulnerable worker communities.⁸² Such initiatives have not only increased the number of complaints that agencies receive but also serve as an entree into these

previously unreachable groups. In one particularly notable example, a partnership between San Francisco's Office of Labor Standards Enforcement and the Chinese Progressive Association resulted in a \$4 million settlement against a restaurant for employment violations.⁸³ It is highly unlikely that the case would have been successful without the partnership, as "[t]he organization was able to build on its existing relationship with workers, many of whom were monolingual Chinese speakers, so that workers felt safe coming forward and pressing their case."⁸⁴ San Francisco has also partnered with community-based legal clinics as well as organizations with strong ties to high-risk industries.⁸⁵ In contracting with these community groups, the city requires them to refer or resolve a particular



number of cases each year.⁸⁶ By developing these relationships, the city has been able to recover more in unpaid wages through its partnerships than through complaints alone.⁸⁷

Nor are California cities alone in their recognition of the important role that community groups play in enforcement. In September of 2019, Seattle announced the availability of \$1.5 million in funding for local community groups that provide outreach, education and technical assistance to the city's low-wage worker communities.⁸⁸ The funds are administered through its Community Outreach and Education Fund (COEF). Since 2015, COEF "has supported community-based organizations in efforts to educate workers about labor standards, provide technical assistance, and deepen partnerships between community organizations and [Seattle's Office of Labor Standards] in order to reach a diverse group of vulnerable workers."⁸⁹ In addition, the city's Business Outreach and Education Fund (BOEF) provides similar support to small businesses with a particular focus on those owned by immigrants and people of color.⁹⁰ In 2018 alone, 20 community organizations and 17 business organizations assisted Seattle's office in various capacities.⁹¹

Chicago has similarly recognized the vital role that community groups have in improving enforcement of its worker protection laws. The Chicago Area Workers Rights Initiative is a partnership between nonprofit organizations and state and federal agencies.⁹² Participating community

groups have helped to streamline the complaint process, making it easier for both workers and agencies to move forward with claims.⁹³ They have also played a crucial screening role for a system that receives thousands of complaints a year.⁹⁴ The partnership was created in response to a growing concern that employment-related violations were rampant while complaints were few and far between.⁹⁵ According to the agencies involved, the community groups helped to identify both problem industries and problem employers and connected them to employees they likely would never have reached.⁹⁶

Other cities have employed more formal means by which community based organizations can play an active role in shaping and directing enforcement. Minneapolis, for example, has created a permanent advisory committee comprised of representatives of both employers and



employees.⁹⁷ The committee provides the city with advice and recommendations regarding present and future legislation, monitors the implementation of laws, and provides

a forum for employment-related issues to be discussed.⁹⁸ Seattle likewise has created a board specifically to address issues related to domestic workers. Its Domestic Workers Standards Board provides a place for domestic workers, employers, private households, worker organizations, and the public to consider and suggest ways to improve the working conditions of domestic workers.⁹⁹ The Board makes these suggestions to the Office of Labor Standards (OLS), Mayor, and City Council.¹⁰⁰ Examples may include new laws or programs, and changes to the city's outreach and enforcement efforts. The Board consists of nine members who reflect the domestic work industry and who have a demonstrated interest in improving domestic work industry standards.¹⁰¹ Some view worker boards as vital, because while “the withered legal framework is slow to move, [such boards] can spur important action.”¹⁰²

ANTI-RETALIATION PROTECTIONS

Simply knowing the law is not enough to encourage workers to assert their rights. In fact, many workers believe that there is a conflict between asserting their rights and jeopardizing their jobs. While Philadelphia has anti-retaliation provisions written into its employment laws, these provisions simply do not go far enough. Even if

the anti-retaliation provision is enforced flawlessly, the interim between being unlawfully fired and being reinstated is one filled with enormous financial uncertainty.¹⁰³ For many low-wage workers who cannot afford to be jobless, this uncertainty is unacceptable.¹⁰⁴ This, paired with the fact that high numbers of workers do report retaliation by employers when enforcing their rights,¹⁰⁵ makes strong anti-retaliation measures vital to an effective enforcement regime.

Cities have developed a number of strategies to protect workers from retaliation. Washington, D.C., for example, allows workers to file complaints confidentially and guards the worker's information to the fullest extent allowable by law.¹⁰⁶ Further, if disclosure of the information becomes necessary to pursue the case, such disclosure is not made without the employee's consent,¹⁰⁷ giving the employee the opportunity to consider his or her next steps. Other measures to protect workers include permitting anonymous complaints or allowing complaints to be filed through third parties, such as worker centers or community groups.¹⁰⁸ Studies confirm that low-wage workers want some kind of means by which to file confidentially.¹⁰⁹

Another way in which cities have addressed retaliation is by investigating the entire workforce on the basis of a single complaint by a

worker.¹¹⁰ This practice strengthens enforcement because employers are unlikely to be subjecting only one of their workers to employment violations.¹¹¹ Further, enforcement that relies on both complaints by employees and proactive investigations by the enforcement office will make it impossible for an employer to know why it is being investigated, thereby reducing the chances of retaliation.¹¹²

AFFIRMATIVE ENFORCEMENT

Enforcement systems for employment violations based solely on complaints are ineffective.¹¹³ As mentioned earlier, research suggests that for every complaint filed for workplace violations, many more go undetected.¹¹⁴ Basing a system solely on complaints, too, may in fact incentivize an employer to continue its unlawful practices.¹¹⁵ Employers then may choose to engage in wholesale violation of employment laws because they know that they will rarely be caught.

Recognizing this problem with complaint-driven systems, cities have begun implementing more affirmative means of enforcing their laws. San Francisco's OLSE, for example, will conduct an investigation of an entire workforce based on a single complaint.¹¹⁶ If violations are found, the office will file a claim against the

employer on behalf of all employees subject to violations.¹¹⁷ Chicago has adopted a similar model, with its Office of Labor Standards having the authority to initiate a company-wide investigation on the basis of a single complaint.¹¹⁸ This model of enforcement achieves a number of goals. First, as detailed above, it increases the complaining employees' anonymity, encouraging complaints and reducing retaliation. Second, it changes the cost-benefit analysis of an employer engaging in wholesale employment violations. Third, it results in the recovery of unpaid wages for employees who may be unlikely to have filed their own complaints.

These expanded enforcement models, however, continue to suffer from the need to have at least one employee file a complaint. Directed enforcement, or "enforcement actions taken by [an] agency based on its own research and knowledge," is a necessary complement to complaints.¹¹⁹ A study conducted by Dr. David Weil, who served as Administrator of the U.S. Department of Labor's Wage and Hour Division, found a staggering difference in the effects of directed enforcement when compared to solely relying on complaints.¹²⁰ In essence, directed enforcement, in comparison to purely complaint-driven systems, reduced the severity of violations and had a "ripple effect" on employers in the same industries.¹²¹

Cities have begun to recognize the effectiveness of such directed enforcement. Seattle's OLS, for example, initiates proactive investigations of industries employing high numbers of vulnerable workers.¹²² Recognition of the importance of affirmative enforcement can also be seen in newly created enforcement offices. Chicago and Santa Clara, both with relatively new workplace protection offices, have committed to making proactive investigations an important part of their enforcement arsenal.¹²³

ENFORCEMENT WITH PENALTIES

An effective enforcement system must make use of the penalties that can be imposed on employers. If an employer knows that violating employment laws will only result in having to pay wages already owed, the incentive is high for noncompliance as they risk nothing by violating the law.¹²⁴ Further, weak or inconsistent use of penalties creates a "perverse incentive: it's cheaper to break the law and include the small risk of getting caught into [the] normal cost of doing business."¹²⁵ An effective enforcement system, then, must both deter potential violators and compensate workers who do experience employment violations.

Unsurprisingly, better enforcement paired with stiffer penalties increases the incentives to comply.¹²⁶ This dual approach not only sends the message to scofflaw employers that they cannot act with impunity, but also sends the message to workers that their complaints will be taken seriously.

In 2018, for example, Seattle's OLS filed 106 investigations, resolved 194 investigations, and assessed over \$2 million for the benefit of 2,521 employees.¹²⁷ To put this in perspective, the office assessed nearly double the amount of money in 2018 than it did in its first 5 years of existence combined.¹²⁸ The office too has significantly reduced the backlog of cases that have accrued since its inception.¹²⁹ Seattle has managed to demonstrate to employers and workers alike that the city takes its worker protection laws very seriously.

Another measure used by cities to promote deterrence is to make information about employers who are violating the laws readily available to the public. Houston, for example, keeps a public database of companies that have committed wage theft in the preceding 5 years.¹³⁰ Seattle, as well, devotes an entire section of its website to detailing employers found in violation of its worker protection laws (Figure 6).¹³¹ Philadelphia has just recently placed "bad actors" in its Office of Benefits and Wage

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Aramark Sports & Entertainment Services LLC dba Aramark Washington State Convention & Trade Center ("Aramark"), a large company that provides food, facilities, and uniform services, settled allegations of retaliation under the Paid Sick and Safe Time (PSST) ordinance. The total financial remedy was \$3,970.13 to the aggrieved worker.

Figure 6. Seattle's OLS Website

Compliance Report, which has to be downloaded from their website.¹³² The publication of such information serves a dual purpose: it deters employers who fear a loss of reputation and demonstrates, to workers and the broader public, that the city is indeed enforcing its laws.

A robust enforcement system must make good use of penalties, fines, and liquidated damages. They serve as an important deterrence for employers and compensate employees for past misconduct. Los Angeles, for example, assesses a penalty of \$100 per day for wages that go unpaid while Oakland and San Diego allow for up to \$1,000 per day.¹³³ Not only does this dissuade employers from violating the law to begin with, but it also increases the chances of prompt repayment when an employer is

found in violation.¹³⁴ Further, the ability to collect wages beyond what an employer owes can help fairly compensate workers who have suffered as a result of wage theft.

These penalties, however, must actually be imposed if they are to have any effect. In San Francisco, the agency itself collected penalties totaling \$153,828 on 60 complaints concerning its minimum wage and paid sick leave ordinance in fiscal year 2013.¹³⁵ Seattle too has been pursuing penalties under its worker protection laws. To take just one example, in July of 2018 its OLS ordered Phinney Ridge Painting, LLC to pay over \$120,000 for various violations of the city's worker protection laws.¹³⁶ The remedy included \$29,000 in liquidated damages and \$13,000 in interest to 32 of the company's employees.¹³⁷ Earlier that year, the OLS imposed \$18,000 in liquidated damages and \$5,900 in civil penalties and fines on Bright Horizons Children's Center, a child care provider.¹³⁸ As it does with each of its investigations, OLS posted this information on its website, putting employers on notice of the consequences of failing to comply with the law.

RESOURCES

Much like Philadelphia's Office of Labor, Seattle's OLS began with more of a whimper than a shout. In 2017,

however, Seattle's OLS saw its budget doubled and its staff increased.¹³⁹ As a result, it increased its staff to 23 in a city with about half the population of Philadelphia.¹⁴⁰ Its 2018 staff is 28 and its 2019 budget was



\$6.6 million, with over 40% of that budget being used for contracts with community organizations.¹⁴¹ The results of these investments are plain to see: Seattle is widely considered to set the standard for enforcement of worker protection laws.¹⁴²

San Francisco, a city similar in size to Seattle, has a budget for its OLSE of around \$6.3 million.¹⁴³ Further, about 14% of its budget is dedicated to contracts with community organizations,¹⁴⁴ with the office partnering with organizations such as Young Workers United and La Raza Centro Legal.¹⁴⁵ The office currently has a staff of twenty-seven, twenty-two of whom are employed as investigators ("compliance officers").¹⁴⁶ Much like Seattle, San Francisco's investment has paid enormous dividends. Since 2010, the OLSE has helped workers recover over \$57 million in wages and penalties.¹⁴⁷

Washington, D.C., with a population just over 600,000, has 27 full-time employees in its Office of Wage-Hour, 15 of whom investigate both individual and agency-generated

complaints.¹⁴⁸ Further, the office conducts numerous outreach efforts with both employees and employers and offers two grants to community organizations that educate the public on the city's workplace protection laws.¹⁴⁹ Its approved budget for 2020 is \$3,625,000.¹⁵⁰

Even Minneapolis, a city with a population roughly a quarter the size of Philadelphia's, allocated \$578,000 in its 2019 budget to its Labor

Standards Enforcement Division (LSED).¹⁵¹ Additionally, the city designated \$100,000 to launch its Collaborative Enforcement Pilot Program (CEPP), meant to build and maintain the division's growing partnerships with community-based organizations.¹⁵² In commenting on the increase in budget of the LSED and the launch of CEPP, the city explicitly recognized that it was falling behind cities that were setting the pace in workplace enforcement.¹⁵³

RECOMMENDATIONS

While there are many challenges to effective enforcement, there are also concrete ways to dramatically increase the success of Philadelphia's worker protection laws. Based on our investigation, we provide the following recommendations for how Philadelphia can better enforce these laws.

1. INCREASE STAFFING AND FUNDING

The resources allocated to the Office of Labor are woefully inadequate given the enormity of the problem facing Philadelphia's low-wage workers. Philadelphia operates on a budget nearly one tenth the size of Seattle's despite having over double the population.¹⁵⁴ Put simply, the city of Philadelphia must greatly increase the budget of its Office of Labor if it wishes to make any progress in enforcing worker protection laws.

2. FUND COMMUNITY PARTNERSHIPS

Philadelphia has vibrant community based organizations that will have to play a crucial role going forward if the city is to combat these issues.¹⁵⁵ Community groups have been advocating for workers for years, gaining the trust of workers. In order to leverage the expertise of such community based organizations, Philadelphia must follow the lead of other cities and provide sufficient funding for education, outreach, and technical assistance. In terms of community grants, San Francisco allocates approximately \$825,000 annually, while Seattle provides approximately \$2.2 million annually.¹⁵⁶



3. CREATE A WORKER ADVISORY COMMITTEE OR BOARD

Community based organizations and the workers they support are best positioned to address the issues of Philadelphia's working poor. Creating a board or committee of low-wage workers, along with employers, would give everyone an ongoing stake

in how the laws should be best implemented. Such a board should also be given the power to make policy suggestions to city council and the mayor.

4. AFFIRMATIVELY ENFORCE WORKER PROTECTION LAWS

An enforcement system based solely on worker complaints is simply ineffective. An effective system must actively police employers, especially high-risk employers and industries with the most vulnerable worker populations. While complaints should remain a vital part of the Office of Labor's enforcement efforts, it must also affirmatively conduct investigations by focusing on problematic industries.

5. ADDRESS EMPLOYER RETALIATION

Fear of retaliation stands as a major impediment to worker complaints. As detailed above, anti-retaliation provisions alone do not extinguish these fears. The city can incentivize employees to come forward in a number of ways. The Office of Labor should adopt a policy of wall-to-wall investigation of an employer based on a single complaint. Further, the office should establish mechanisms that allow anonymous or confidential reporting by workers. Community based organizations too should be able to lodge complaints on behalf of individual workers.

6. PENALIZE NON-COMPLIANT EMPLOYERS

The Office of Labor should commit to imposing penalties on non-compliant employers. Without such a commitment by the Office of Labor, the deterrent effects of the penalties will be minimal and employers will have nothing to lose when violating the law. Philadelphia, for example, does have the power to impose penalties and revoke business licenses for wage theft violations, although it has never done so.¹⁵⁷ Further, like Seattle and Houston, it can publicly post information about violating employers, using the loss of reputation to encourage compliance. In short, if Philadelphia is serious about protecting its low-wage workers, it should get serious about imposing penalties.



APPENDIX

METHODOLOGY

The results from the survey comprise a total of 150 respondents from West and Northeast Philadelphia. The surveys were conducted by One Pennsylvania and Make the Road Pennsylvania. More than half the surveys were administered by advocates online or by hand, while the remaining ones were distributed to workers to fill out on their own.

While the goal was to obtain a response to all survey questions, respondents may have skipped or declined to answer a question. This “item non-response” is typical in field surveys. As a result, where the data from the survey is reported, percentages are based on the total number of responses to the particular question. The non-proctored surveys sometimes also included inconsistent information (e.g., a respondent identifying that they had not experienced wage theft but then responding to the different forms of wage theft by their employer). We excluded any inconsistent results from our analysis.

Finally, the results are not statistically significant due to the methodology used for conducting the survey. They still serve, however, an important illustration of the problems facing Philadelphia workers.

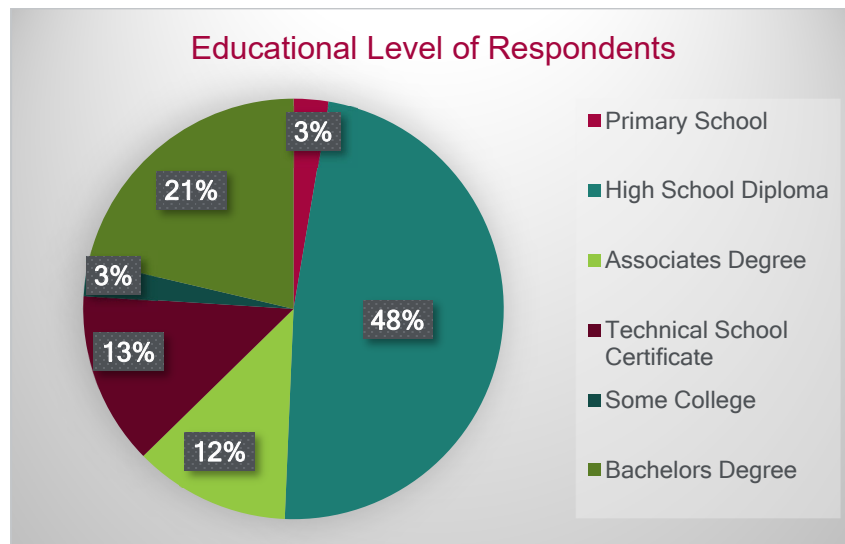
DEMOGRAPHIC INFORMATION

We include here information about the survey respondents.

Age of Worker Surveyed	Percentage of Respondents
18-24	44.6%
25-30	12%
31-40	13%
41-65	19.6%

Race/Ethnicity	Percentage of Respondents
Black/African American	69.3%
Latinx/Hispanic	14.3%
White/European Descent	11.4%

Asian/Pacific Islander	3.6%
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Of our survey respondents, 18% work more than one job. Nationally, only 5% of workers in the U.S. worked multiple jobs in 2017.¹⁵⁸ Respondents to our survey tended to be low-wage vulnerable workers, which could explain why our number is substantially higher than the highest recorded percentage of workers holding multiple jobs, just over 6%.¹⁵⁹

Hours Worked Weekly	Percentage of Respondents
Less than 20 hours	13.2%
20-35 hours	40.8%
35-40 hours	30.7%
More than 40 hours	15.8%

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¹³⁵ See City of San Diego, Office of Independent Budget Analyst Report (Jul. 10, 2014) (detailing penalties collected by San Francisco), https://www.sandiego.gov/sites/default/files/legacy/iba/pdf/reports/2014/14_26_140710.pdf (last visited Dec. 11, 2019).

¹³⁶ Case Stories: July-September 2018, Seattle Office of Labor Standards, <https://www.seattle.gov/laborstandards/investigations/july---september-2018>.

¹³⁷ *Id.*

¹³⁸ *Id.*

¹³⁹ Juliana Feliciano Reyes & Aaron Moselle, *Seattle is the Leader in Worker Protection Laws. What Can Philly Learn as it Considers a ‘Fair Workweek’?*, PHILA. INQUIRER, Oct. 15, 2018.

¹⁴⁰ *Id.*

¹⁴¹ Reyes, *supra* note 3.

¹⁴² Reyes & Moselle, *supra* note 139.

¹⁴³ Email from Love I, *supra* note 3.

¹⁴⁴ Email from Ellen Love, Administrative Assistant, Office of Labor Standards Enforcement, City and Cty. of San Francisco, to Ryan Dickinson, Legal Intern, Sheller Ctr. for Social Justice (Dec. 12, 2019, 06:01 PM) (on file with authors) [hereinafter Email from Love II].

¹⁴⁵ Office of Labor Standards Enforcement, For Workers, CITY AND COUNTY OF SAN FRANCISCO, <https://sfgov.org/olse/workers> (last visited Dec. 11, 2019).

¹⁴⁶ Email from Love II, *supra* note 144.

¹⁴⁷ Office of Labor Standards Enforcement, For Workers, *supra* note 145.

¹⁴⁸ GOVERNMENT OF THE DISTRICT OF COLUMBIA, DEPARTMENT OF EMPLOYMENT SERVICES, RESPONSES TO FISCAL YEAR 2018-2019 PERFORMANCE OVERSIGHT QUESTIONS 18 (Feb 15., 2019), <https://dccouncil.us/wp-content/uploads/2019/02/DOES-2019-PO-responses-02-18-19.pdf> (last visited Dec. 11, 2019).

¹⁴⁹ *Id.* at 19-21.

¹⁵⁰ Office of the Chief Financial Officer, 2020 Department of Employment Services, FY 2020 Proposed Budget for the District of Columbia, DC.GOV (Jul. 25, 2019) (clicking on “Tables” for the figure for the Office of Labor under Labor Standards), <https://cfo.dc.gov/node/1392491> (last visited Dec. 11, 2019).

¹⁵¹ City of Minneapolis, 2019 Budget F189 (2019), <http://www.minneapolismn.gov/www/groups/public/@finance/documents/webcontent/wcmsp-215579.pdf> (last visited Dec. 11, 2019).

¹⁵² *Id.* at F193.

¹⁵³ *Id.* at F190 (“Minneapolis currently lags far behind peers in Seattle, San Francisco, New York, Los Angeles and Washington DC in its ratio of labor standards investigators per capita.”).

¹⁵⁴ Reyes, *supra* note 3.

¹⁵⁵ Philadelphia already has experience partnering with community based organizations through other programs, such as the Targeted Community Investment Grant Program. <https://www.phila.gov/2019-04-09-new-community-grants-support-grassroots-violence-prevention/>

¹⁵⁶ See *supra* notes 82-88.

¹⁵⁷ PHILA., PA., CODE § 9-4308.

¹⁵⁸ TED: The Economics Daily, *4.9% of Workers Held More than One Job at the Same Time in 2017*, BUREAU OF LABOR STATISTICS (Jul. 19, 2018), https://www.bls.gov/opub/ted/2018/4-point-9-percent-of-workers-held-more-than-one-job-at-the-same-time-in-2017.htm?view_fulll (last visited Dec. 11, 2019).

¹⁵⁹ *Id.*

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