

H. UNREGULATED WORK IN THE CONSTRUCTION INDUSTRY IN NEW YORK CITY

The construction industry in New York City is in the middle of a veritable building boom, both commercial and residential. In the unionized segment of the industry, a long history of negotiation and regulation has resulted in standardized wages, working conditions, and formal hiring and training systems. But unions' share of construction has dropped to below 50 percent in New York. This decline, combined with the inherent short-term nature of small residential construction, has fueled a growing world of unregulated work driven by small contractors.

INDUSTRY SEGMENTS

With roughly 100,000 workers, the construction industry in New York City is divided into several segments. *Private sector construction* is divided into (a) small and medium-sized residential projects, and (b) large private projects, both commercial and residential. *Public sector construction* is divided into (a) small and medium-sized public agency projects worth less than \$20 million, and (b) large public projects worth over \$20 million.

It is small residential projects (construction, renovation and landscaping) that drive much of the demand for low-wage, non-union workers. This is also where unregulated work is the most prevalent. The employers, usually small contractors or the property owners themselves, take more risks than larger companies and are less scrupulous about violating workplace laws. Small public agency projects (e.g. affordable housing construction) also can feature poor working conditions. Union construction firms often do not bid on these projects, since their bids would not be competitive with those of contractors who keep costs down with low wages and off-the-books employment. That combined with lax enforcement opens up the space for non-union contractors, who use a variety of strategies to side-step prevailing wage requirements on jobs where these requirements apply (see Table H).

By contrast, large construction projects (both public and private) are dominated by established union contractors, who typically source out various pieces of work to one or more layers of union subcontractors. Wages are significantly higher, and workplace violations are much less prevalent (though not entirely absent among the lowest-tier subcontractors).

WORKERS & MOBILITY

In the unregulated part of the industry, workers are hired directly by contractors or subcontractors (rather than through a union hiring hall). Some find jobs through social and family networks, in which case they may work together for the same contractor over a period of time. Others find jobs through day labor corners and storefront employment agencies, and the use of both intermediaries is growing. Among the dozens of day labor corners throughout the city, most are unorganized, although there are growing attempts to engage in standards setting, especially at the formal day labor hiring center in Bensonhurst run by the Latin American Workers Project (for a more detailed discussion, see Section VI).

Workers tend to be recent immigrants, both documented and undocumented, and come to the industry with widely varying skills. Compared to other jobs, construction work is more seasonal, unpredictable, and dangerous. Still, workers told us that for recent immigrants, even low-end construction jobs are considered a step up from other options such as dishwashing.

Entry-level workers hope to move to better construction jobs, and some may get higher wages as they develop more skills and develop a steady relationship with one contractor. But there is little movement from unregulated jobs to the higher-paying unionized jobs. Exit to other industries may be a better option (and industry tenure among day laborers is in fact quite short). Among South Asian workers, for example, many current taxi drivers are for-

mer construction workers and have shifted because of the greater independence in the taxi industry. Some workers hope to learn enough about the construction industry and become contractors, although few actually do.

WORKPLACE VIOLATIONS & JOB QUALITY

Construction jobs have always been some of the most difficult in the economy, but as shown in Table H, in the unregulated parts of the industry, workers face the additional hardship of systematic violations of employment and labor laws.

In a comprehensive survey of day laborers in New York City, about 50% of workers experienced non-payment of wages at least once, and usually more often than that (Theodore, Valenzuela and Melendez 2006). Some “fly-by-night” contractors simply don’t pay their workers, closing down shop and disappearing the minute a project is done. Others tell workers that they will get paid once payment for the current project is received. In that case, workers may begin working on a next job for the same contractor, before receiving payment for the first job. A lawyer who works with day laborers has seen this scenario often: “Some of the guys are going three months are not getting paid. There tends to be a promise that eventually they will get paid. So they continue to work for free. The thing is the promise is never kept.”

On small public agency projects, workers also face frequent violations of prevailing wage laws (which require

contractors on many public projects to pay wages equal to the prevailing level in the city, which usually works out to union scale). Contractors skirt the prevailing wage requirements in any number of ways, and as a result may pay as little as \$10-\$12 per hour for jobs that have prevailing wages of \$45 or more per hour with benefits. This practice often occurs when subcontractors are used, many of them small firms that hire workers within their own ethnic community (e.g., South Asian contractors in Queens).

Overtime violations are routine, because workers typically put in very long weeks with no time-and-a-half pay. Similarly, small contractors, subcontractors and home owners rarely, if ever, contribute to workers’ compensation. And meal breaks are infrequent and haphazard because of the intense time pressure to complete projects. One worker reported, “In our job, the boss says we have to finish a given task today. We have to finish it, it doesn’t matter how hard or fast we have to work. It saves them money from having to pay workers for more days.”

In the end, though, it is the unsafe working conditions that are the most harrowing. Unregulated workers lack protective equipment, rarely receive mandated safety training, and can be exposed to hazardous materials. “If you go to a site and see someone with a hardhat on, that’s the exception to the rule,” as one organizer put it. Several recent studies documented that at least half of Latino work fatalities were disproportionately coming from the construction industry, largely in the non-union sector.

TABLE H.
CHARACTERISTICS OF UNREGULATED WORK IN THE CONSTRUCTION INDUSTRY
IN NEW YORK CITY

INDUSTRY SEGMENTS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Industry segments	Violations are most common in: <ol style="list-style-type: none"> 1. Small private residential construction and landscaping projects, as well as medium-sized private projects such as condominiums. 2. Small and medium-sized public agency projects and renovation (e.g. Housing or Transportation Authority, schools).
Ownership and size	Typically small non-union contractors and especially subcontractors. But occasionally, larger contractors may also hire a few unregulated workers on a given project, or subcontract out to unregulated subcontractors.
Union density	Very little union density in the segments with violations. Unionized contractors generally only bid on larger public projects (\$20 million or higher), where density is very high.
THE JOBS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Occupations	In unregulated segments, violations are prevalent in the following occupations: general labor, demolition, scaffolding, material moving and clean-up, and landscaping. To a lesser degree, violations are also found in the skilled trades such as roofing, dry walling, sheet metal, electrician, plumbing carpentry, and painting.
Typical wages	<p>Workers hired on day labor corners and through employment agencies: Average is \$6-8 per hour, up to \$10 per hour.</p> <p>Direct hire workers: Wide range in average wages (\$6 per hour to \$25 per hour). But significant numbers of workers receive daily wages, as low as \$40-\$60 a day.</p> <p>Workers on small public projects: Prevailing wage laws can push wages of unregulated workers to about \$10/hour (which is still much lower than prevailing wage law mandates).</p>
Typical hours	In the spring, summer and fall, workers work as much as 12 hours a day, six days a week, on a given project – but the supply of work can be very sporadic, particularly for day laborers. Much less work is available in the winter.
Payment method	Mainly off the books, though on public projects some workers may be either partially or fully on payroll.
Health benefits	Usually no health benefits.
Vacation & sick days	Usually no vacation or paid sick days.
THE WORKERS MOST AFFECTED BY WORKPLACE VIOLATIONS	
Demographics	Workforce is largely young and almost exclusively male. Day laborers are largely Latino, South Asian, and Chinese immigrants. Eastern European and Irish immigrants more often work as direct-hires for contractors, as do some Latinos and African-Americans.
Immigration status	Many undocumented immigrants, but not exclusively.
INTERMEDIARIES PLACING WORKERS IN UNREGULATED JOBS	
Key intermediaries are day labor corners as well as storefront employment agencies, and some registered temp agencies.	
INDUSTRY-SPECIFIC LAWS AND REGULATIONS	
<p>Most workers are covered by standard employment and labor laws. Industry-specific laws include:</p> <p>(1) Davis-Bacon prevailing wage law mandates union-level wages on construction projects receiving federal funding.</p> <p>(2) New York State prevailing wage law mandates union-level wages on construction projects receiving state funding.</p>	

COMMON WORKPLACE VIOLATIONS

Minimum wage and overtime	<p>Minimum wage: Hourly wages are generally above the minimum wage. But when payment is by the day or by the week, wages can drop below the minimum. For example, a helper earning \$60 a day, working 10 hours a day for six days a week, would earn \$6 an hour (without considering time-and-a-half pay for overtime hours).</p> <p>Overtime: Long work weeks are the norm, but overtime is rarely paid.</p>
Prevailing wage	Prevailing wage violations are common on small and medium-sized public projects being built by non-union contractors and subcontractors.
Non-payment of wages	Non-payment of wages by small contractors is common; workers may be paid less than the agreed-upon rate, or not paid at all.
Illegal deductions	Contractors sometimes hold first week's pay as a "deposit" or "insurance." Some employers dock pay for broken equipment or poor quality of work.
Meal breaks	Day labor shifts can run as long as 8-10 hours without a meal break.
Employer taxes	Employers rarely pay required taxes on wages paid in cash.
Misclassification	When a worker makes violation claims, contractors may argue that the worker was an independent contractor and therefore not covered by workplace laws.
OSHA	Health and safety violations are routine on residential projects, and include failure to provide proper safety equipment (e.g. hardhats, protective goggles); exposing workers to hazardous materials such as asbestos without protection; and insecure scaffolding resulting in high incidence of falls.
Workers' Compensation	Small contractors either do not carry workers' compensation, or dissuade workers from filing claims. When injured, workers report not being allowed to return to the job, or not getting paid for the time injured.
Discrimination	South Asian workers report harassment post-9/11.
Retaliation & the right to organize	Workers report retaliation, immigration threats and firing for organizing activity, or sometimes for more modest actions such as requesting safety equipment.

Note: All violations were assessed using legal standards in effect when interviews were conducted, and in particular, wage rates are from late 2003 to early 2005.

Sources: Original data gathered by authors during fieldwork from 2003 through 2006 in New York City, as well as the following secondary sources: Bernstein (2004), Chan (2006), Chen and Kilgannon (2004), Fiscal Policy Institute (2003a), Greenhouse (2006), Kamber (2001), Larraetta (2004), New York State Department of Labor (2007b), New York State Department of Labor (2007c), New York State Trial Lawyers Association (2005a), New York State Trial Lawyers Association (2005b), Robbins (2006), Schuerman (2003), Theodore, Valenzuela Jr. and Melendez (2006), Tung (2005), United States General Accounting Office (2002c), Valenzuela Jr. and Melendez (2003), Valenzuela Jr. and Melendez (2004).