

M. UNREGULATED WORK IN THE PERSONAL SERVICES INDUSTRY IN NEW YORK CITY

A dense array of beauty salons, hair braiding shops, nail salons, day spas, and massage parlors populate New York's neighborhoods, making up the core of the city's personal services industry. Far from only a luxury niche, the industry in fact runs the gamut from low-price to high-price services. In the lower-priced segments, the jobs are a mainstay for immigrant women and ethnic specialization dominates – nail salons draw on Korean, Chinese, Vietnamese and other Southeast Asian women, and increasingly Latina women; African women specialize in hair braiding; South Asian women specialize in eyebrow threading; and Chinese and Russian workers specialize in massage. While the work may be familiar, it is not often easy or well-paid. The small size of the businesses, combined with a myriad of different employment relationships, create an open door for evasion or outright violation of workplace protections.

OVERVIEW OF THE JOBS

Assessing working conditions in this industry is a challenge. Some of the workers are either entirely or partially self-employed. Massage therapists, for example, may be self-employed as independent contractors, but also work at a massage parlor, spa or gym as an employee. Hair braiders, stylists and barbers are also in an ambiguous category, renting their chairs from salons or braiding shops (which may cost \$150 to \$200 per week). But while some workers keep all of the customers' payment, others only receive a commission from the shop owner. Depending on the details of these arrangements, the worker might either be an independent contractor or an employee. As a result, accurately estimating the number of workers in this industry is quite difficult, though official data suggest at least 20,000.

Complicating matters, there is wide variation in how pay rates are determined. Nail technicians are paid by the day or week, while massage therapists are paid per client-hour and hair braiding is paid by the piece. In spas, the commission that workers earn on selling

products to customers is factored into their pay. And many workers in the industry earn tips, though in small amounts.

Finally, working conditions also vary by establishment. For example, in luxury spas in hotels, earnings can be quite high and unregulated work is not the norm. But in the low-price segments, more common are small establishments run by an owner with one or two shops (though chains are increasingly showing up in the nail salon segment). Here, "job creep" is a recurring problem, with workers forced to perform duties that are not part of their job, and nail salon workers in particular report verbal abuse from their employers. One legal advocate described a spa worker case she was working on: "The owner wanted her to give a massage to a male customer even though the customer would try to grope or touch her in the private room, and the owner refused to excuse her from giving the massage."

WORKPLACE VIOLATIONS

The upshot is that workplace violations take different forms in different parts of the industry, as shown in Table M. The nail salon segment has been growing rapidly in recent years, and is also where we most consistently found minimum wage and overtime violations. Workers are paid by the day or week and are expected to work long hours; a twelve-hour day is typical, and meal breaks are not always allowed. Wages can fall below the minimum wage, and time-and-a-half is not paid. In the assessment of a lawyer we interviewed, "Nail salons are often on the verge of Fair Labor Standards Act violations."

The problem is particularly acute in the low-income neighborhoods, noted one industry observer: "If you go around places like Washington Heights or Midwood or Bed-Stuy, they are still offering manicures for \$5. That takes about an hour, so the owners must be working them constantly on two customers at a time and it would still be difficult to pay them minimum wage."

The earnings of hair braiders are similarly driven down by the low rates on their services. A braider might earn \$40 for three hours of braiding a client's hair – very low by beauty salon standards where a simple haircut can run \$100, and not nearly enough to make up for the additional hours spent waiting for clients. In the end, wages can easily fall below the minimum; workers report that \$20 a day is common on 125th Street in Harlem, a strip packed with hair braiding shops.

Low-priced spas are able to deliver super-cheap massages (\$40 an hour, far below the industry norm) by cutting workers' commissions, hiring unlicensed workers, and not paying for time waiting for customers. An extreme case recounted to us involved a spa that was effectively keeping its workers captive. A handful of workers performed every task, from giving massages to cleaning the premises, and slept in the massage rooms overnight. Their pay was below the minimum wage, and tips were frequently taken by the employer. While the workers managed to leave this particular spa, most are still either

in the personal services or domestic work industry. (Lack of mobility and opportunity was a recurring refrain in all of our interviews.)

For nail technicians, exposure to nail polish, solvents, and other chemicals is a growing source of concern. The National Asian Pacific American Women's Forum reports that these chemicals are generally not subject to approval by the Food and Drug Administration and many have not been tested for safety. OSHA has not issued detailed regulations regarding their use in nail salons, even though a number of them have been linked to liver damage, cancer, birth defects and miscarriages. In a survey conducted by the community group YKASEC and the New York Committee for Occupational Safety and Health, nail technicians reported a number of symptoms – such as allergies, dizziness, skin rashes, eye irritation, headaches – at high rates. These symptoms were even more common for workers where appropriate safe guards such as masks and ventilation systems were not used.

TABLE M.
 CHARACTERISTICS OF UNREGULATED WORK IN THE PERSONAL SERVICES INDUSTRY
 IN NEW YORK CITY

THE INDUSTRY SEGMENTS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Industry segments	Violations are common in nail salons, which tend to be independently-owned although the number of chains is growing. Violations also occur in hair braiding shops, low-priced spas hiring unlicensed massage therapists, and some beauty salons.
Union density	No union density in any of the segments.
THE JOBS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Occupations	Violations are common among nail technicians and hair braiders; some violations are found among massage therapists working in low-price establishments. Other jobs in beauty salons and spas may also be affected, such as attendants, janitors, and shampooers.
Typical wages	Nail technicians: Average is around the minimum wage, but can go as high as \$10 per hour in spas. Hair braiders: Wages vary significantly depending on client flows. When actually working, the hourly rate can be \$10-\$12 an hour, but dead time in between means pay is low, ranging from \$100 - \$150 a week. Massage therapists: Wages vary widely; in the low-price segment, weekly earnings can range from \$275-\$500 a week.
Typical hours	Nail salon workers typically put in long hours (i.e. 60 hours per week). Workers paid by the client struggle to get full-time hours, and will work more during peak periods such as holidays.
Payment method	Mix of payroll and cash payment.
Benefits	Generally no health benefits or sick days.
THE WORKERS MOST AFFECTED BY WORKPLACE VIOLATIONS	
Demographics	Workforce is largely immigrant and female, with significant ethnic specialization.
Immigration status	Significant number of undocumented workers in nail salons and hair braiding shops.
INTERMEDIARIES PLACING WORKERS IN UNREGULATED JOBS	
Intermediaries are sometimes used to find jobs, including storefront employment agencies that charge workers for each job placement.	
INDUSTRY-SPECIFIC LAWS AND REGULATIONS	
<ul style="list-style-type: none"> • Assessment of whether workers are covered by employment and labor laws is difficult in some parts of this industry, opening the door to misclassification (see below). • Licenses are required for most occupations. If obtained in New York State, licenses require from 250 to 1,000 hours of training. Many workers obtain the licenses elsewhere, but about six months of training is still required in order to work in the city. • Some workers in the industry receive tips; if those tips are sufficiently large, they are covered by the New York State 2007 minimum wage for tipped employees of \$5.40 or \$6.05 an hour (depending on the weekly tip average) – but if a worker’s combined wages and tips do not at least equal the regular state minimum of \$7.15 per hour, the employer must make up the difference. 	

COMMON WORKPLACE VIOLATIONS

Minimum wage and overtime	<p>Minimum wage: In nail salons and independently-owned spas, long hours combined with flat weekly wages can translate into minimum wage violations. Workers classified as independent contractors (see below) in hair braiding shops and beauty salons can also earn below the minimum wage, given unstable hours.</p> <p>Overtime: Non-payment of overtime is common in all segments.</p> <p>Tips: Workers report having their tips taken by the employer, or employers failing to pay enough of a base wage to bring total earnings (tips plus base wage) above the required minimum.</p>
Non-payment of wages	Workers report non-payment of wages in independent spas and nail salons.
Meal breaks	Nail technicians are sometimes denied meal breaks in nails salons. Workers classified as independent contractors may not be granted meal breaks which would be required for employees.
Employer taxes	Employers rarely pay taxes on cash wages.
Misclassification	While there are true independent contractors in the industry, some massage therapists working in low-price spas and some hair braiders and stylists that rent chairs from salons are misclassified as independent contractors, with shop owners controlling their pay and conditions of work.
OSHA	Health and safety issues – especially exposure to chemicals and repetitive stress – are significant in the industry (although many of these hazards are not specifically cited in OSHA standards).
Discrimination	Massage therapists report failure by employers to protect them from sexual harassment and abuse by customers.
Retaliation & the right to organize	Nail salon workers report immigration-related threats for complaining about working conditions; there are virtually no attempts to organize unions in the industry.

Note: All violations were assessed using legal standards in effect when interviews were conducted, and in particular, wage rates are from interviews conducted in 2004-2006.

Sources: Original data gathered by authors during fieldwork from 2003 through 2006 in New York City, as well as the following secondary sources: Asian American Legal Defense and Education Fund and YKASEC (2006), Nails Magazine (2006), National Asian Pacific American Women's Forum (2006), New York State Department of Labor (2007b), New York State Department of Labor (2007c), US Department of Labor (2006e), Willett (2005), YKASEC and New York Committee for Occupational Safety & Health (2004).