

## C. UNREGULATED WORK IN THE RESTAURANT INDUSTRY IN NEW YORK CITY

After being hit hard by 9/11 and the recession of 2001, New York City's restaurant industry has rebounded and is currently one of the strongest growth sectors in the local economy. At the same time, the industry is inherently volatile, with high business failure rates, culinary trends and restaurant formats that change quickly, and marked seasonal swings in demand. The industry is also beginning to lose its independent roots, as management companies running several different restaurants are beginning to dominate, exploiting their economies of scale.

The result is fierce and unceasing competition, driving many restaurants to compete on the basis of cost cutting. Because rent and food costs are essentially fixed, it is wages and benefits that often end up being cut. And while fifty years ago unions were able to set a wage floor for the industry, currently there is very little union presence. The upshot is that the workers (currently about 160,000) face difficult working conditions, with frequent workplace violations.

### THE WORKERS & MOBILITY

According to the 2000 Census, about two-thirds of the industry's workforce was born in countries other than the U.S. But the mix of immigrants is constantly shifting. Twenty years ago, Chinese workers dominated kitchen jobs, but now are moving to other industries or opening their own restaurants. And while Mexican workers are currently the main workforce in the kitchen, there are already signs of displacement by Central and South Americans.

At the same time, there is continued segregation in the industry on the basis of race and immigration status, with workers of color concentrated in kitchen jobs or in the lower-rung jobs in the front of the restaurant (i.e. bussers). Waiter and bartender jobs are considered the best jobs in the industry, and Census data show that they are disproportionately filled by white workers, some of whom are also immigrants. Mobility from the back to the front of

the restaurant is infrequent: workers and employers alike reported that the two are effectively separate worlds. In addition, employers almost always hire waiters and bartenders from the outside, rather than promoting bussers or runners. In the kitchen, entry-level workers may try to move from dishwasher to salad or prep cook, but further upward mobility (e.g., to chef) is extremely rare.

While job turnover is high, there is a substantial amount of *industry* tenure – restaurant workers often stay in the industry for years and even decades. Still, workers talk about moving to construction work, which is more dangerous and less consistent, but better paid.

### JOB QUALITY & WORKPLACE VIOLATIONS

Intense competition and cost cutting mean that restaurant jobs are often difficult, hectic, and not infrequently dangerous. Restaurants are increasingly running lean – workers commonly do multiple jobs, and even with health and safety training (which is rare), there will inevitably be accidents. Workers also frequently talk about verbal abuse: “It's hot, workers are screamed at. Plates are thrown at them. There's also out-and-out racial language, everything from national origin to post-9/11 terrorist stuff.”

Many – but not all – restaurant jobs are low wage. The exceptions are head cooks, chefs, bartenders and waiters, who can make decent money (for example, \$800 a week for head cook in a good restaurant). Unlike some other industries, pay is uniformly low across the various segments – a dishwasher or line cook will make roughly the same whether employed in a diner or a four-star restaurant. That said, workers report that recent immigrants tend to be paid less.

As shown in Table C, violations of employment and labor laws are many and varied and reported for all types of restaurants and most positions. Recently, a survey of restaurant workers was conducted by the Restaurant

Opportunities Center of New York (ROC-NY), an advocacy group organizing workers in the industry (see Section VI for more detail). While not a random sample survey, it showed that 13% of workers earned less than the minimum wage and 59% experienced overtime violations. The high rate of overtime violations was often acknowledged in our interviews; according to one employer, “At plenty of places there is no such thing as overtime.” And workers are not infrequently owed wages from several weeks or even months ago (we heard as much as 40 weeks’ worth of pay owed). One group of workers described their restaurant:

“On payday, we finish work at 10:30 and they started making us wait one to two hours just to tell us there’s no money. If you work 12 hours and you’re tired, and then you have to wait until 1 or 2 in the morning, and for no money, it’s terrible. Then the next week we’d just get one week’s pay. Many workers were scared and just left.”

Other violations include violations of health and safety laws, resulting in high reported rates of on-the-job injuries. And employers actively discourage filing workers’ compensation claims, even when they carry the insurance. One worker reported: “If there’s an injury, you’re sent home and docked pay. You have to pay for the doctor out of pocket.” Finally, there is the threat of retaliation if workers complain: short of firing, managers can retaliate by giving wait staff bad tables, by stealing tips, and by assigning bad hours.

Clearly these practices do not describe all restaurants in New York City. But it is striking how common workplace violations are across the range of industry segments. Even in franchises and chain restaurants, where workers are largely on the books, several workers told us that “workers had to punch out as if they had worked eight hours. So after eight hours, they’d punch out and then work four more hours. It was almost like a threat that if you don’t punch the card you’re fired.”

TABLE C.  
CHARACTERISTICS OF UNREGULATED WORK IN THE RESTAURANT INDUSTRY  
IN NEW YORK CITY

INDUSTRY SEGMENTS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Industry segments	Violations reported in all industry segments, but appear to be concentrated in (1) expensive “white table cloth” restaurants and (2) independent family-style restaurants, including ethnic restaurants. Fast food and chain and franchise restaurants appear to have fewer violations.
Ownership and size	Small restaurants with independent ownership, as well as corporate chains or management groups with larger establishments.
Union density	Very low.
THE JOBS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Occupations	<b>“Back of the house” restaurant jobs:</b> Dishwashers, delivery persons, food prep, line cooks, and porters. <b>“Front of the house” restaurant jobs:</b> Bussers, runners, bathroom attendants, barbacks, cashiers, counter persons and coat checkers (and in some restaurants, waiters, waitresses and hosts).
Typical wages	<b>Back of the house jobs:</b> Dishwasher: \$180 - \$300 per week. Delivery person: \$120 - \$200 per week. Line cook/food prep: \$250 - \$400 per week. <b>Front of the house jobs:</b> Busser/barback: \$150 - \$200 per week including tips. Runner: \$120 - \$180 per week (rush hours only, usually paid as percentage of tips). Coat check & bathroom attendants: \$20 - \$80 a night. Cashiers/counter persons: \$222 - \$320 per week. Waiters/waitresses: \$300 - \$480 per week including tips.
Typical hours	On average, kitchen staff tend to work 6 days a week, between 8 and 12 hours a day, with some dishwashers and cooks working double shifts. In the front of the restaurant, bussers and runners work the same hours as kitchen staff. Wait staff tend to work 3-5 days per week (hours can range from 20 – 45 per week).
Payment method	Dishwashers, runners, bussers, and delivery persons tend to be off the books, while servers, bartenders and managerial jobs are more likely to be on the books. High-end and chain restaurants have the majority of their sales on credit cards, which can force more jobs to be on the books.
Benefits	Health benefits are generally not offered to front-line staff; when offered, the employee co-pay is usually high, resulting in low take-up rates. In the kitchen, workers may get one week unpaid vacation, but no sick days.
THE WORKERS MOST AFFECTED BY WORKPLACE VIOLATIONS	
Demographics	<b>Back of the house jobs:</b> Almost exclusively immigrants (typically first generation), especially Latino, South Asian, Asian and African. <b>Front of the house jobs:</b> Mix of U.S. born and foreign-born workers. Bussers, barbacks, and runners are largely immigrant. Waiters more likely to be young, white and U.S. born. Some African Americans in cook and waiter positions. Workers are disproportionately men; ages range from early teens to mid 50’s.
Immigration status	High representation of undocumented immigrants in back of the house jobs (as well as some lower-wage jobs in the front). But long tenures in the industry mean that there are also significant numbers of documented immigrants.

## INTERMEDIARIES PLACING WORKERS IN UNREGULATED JOBS

(1) Employment agencies for immigrant workers and (2) much less frequently, non-profit public agencies for people transitioning off welfare or out of prison. At employment agencies, placement fees range from \$50 up to a weeks' earnings, paid by the worker, plus possibly an additional \$25 application fee. Some employment agencies specialize in restaurant placements for Mexican workers.

## INDUSTRY-SPECIFIC LAWS AND REGULATIONS

Most workers are covered by core employment and labor laws. Additional regulations include:

**Tip credit:** The New York State 2007 minimum cash wage for tipped restaurant food service employees is \$4.60 an hour, 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.

**Deductions:** An employer generally may not make deductions from paychecks (e.g., for uniforms or customer theft).

**Cost of meals:** If an employer provides meals, the employer may deduct a limited amount from a worker's paycheck, even if that means reducing wages below the minimum.

## COMMON WORKPLACE VIOLATIONS

Minimum wage and overtime	<p><b>Minimum wage:</b> The industry's pay structure of flat weekly wages for more than full-time work suggests that minimum wage violations are common. For example, typical earnings of \$300 per week for 60 hours translates into an hourly wage of \$5 (without considering time-and-a-half pay for overtime hours). Coat checkers and delivery persons can make as low as \$3 an hour.</p> <p><b>Overtime:</b> Non-payment of overtime appears common for almost all positions.</p> <p><b>Tips:</b> For tipped positions, common violations include being paid only in tips, or the employer taking a percentage of tips. Bussers often do not get tips owed them.</p>
Non-payment of wages	Occurs mainly for kitchen jobs, especially dishwashers. Can take the form of full non-payment, partial non-payment, or several months backlog of payment.
Illegal deductions	Workers report employers deducting arbitrary amounts from wages for broken plates, spoiled food, etc.
Meal breaks	Lack of meal breaks, or erratic meal breaks, is a pervasive problem. A single meal break for a 12-hour shift is common.
Employer taxes	Restaurants are heavily cash-based, and most workers do not receive pay stubs. Employer taxes are often not paid, or not paid for the actual number of workers on site.
OSHA	Health & safety violations occur mainly in kitchens: electrical dangers, inadequate fire safety, lack of cutting guards on machines, lack of slip mats, lack of required ventilation.
Workers' Compensation	Rarely offered. Employers may pay a one-time hospital bill out of pocket in order to avoid an official claim, and instruct workers to say that the injury did not occur at work.
Discrimination	Evidence of discrimination in hiring and promotion on the basis of race, ethnicity, national origin, and accent – particularly for front of the house jobs. Harassment based on national origin and gender.
Retaliation & the right to organize	Employers' retaliation in response to complaints about working conditions and attempts to organize include threats to call immigration, punishing the worker with bad shifts or bad hours, and outright retaliatory firing.

*Note:* All violations were assessed using legal standards in effect when interviews were conducted; however, wage rates are updated to 2006.

*Sources:* Original data gathered by authors during fieldwork from 2003 through 2006 in New York City, as well as the following secondary sources: Ellick and Severson (2007), Greenhouse (2004f), Greenhouse (2005c), Jacobs (2004), Jayaraman (2003), Kimeldorf (1999), McGeehan (2005), New York Mayor's Office of Immigrant Affairs (2006), New York State Department of Labor (2007b), New York State Department of Labor (2007c), Office of the New York State Attorney General (2004b), Office of the New York State Attorney General (2005d), Restaurant Opportunities Center of New York and New York City Restaurant Industry Coalition (2005), Restaurant Opportunities Center of New York and the New York City Restaurant Industry Coalition (2006), Shu (2004), US Department of Labor (2005b), US Department of Labor (2006c), Von Bergen (2005).