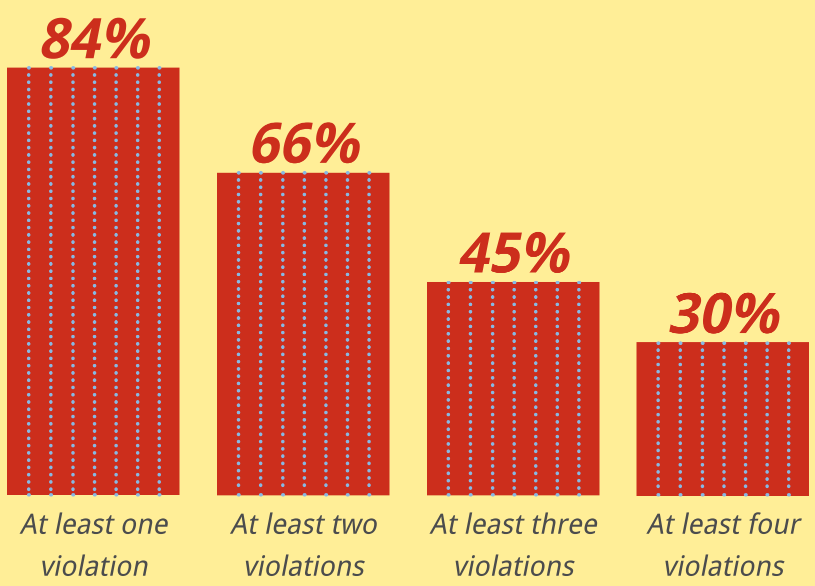
WAGE THEFT AND NYC'S FAST FOOD WORKERS

NEW YORK'S HIDDEN CRIME WAVE

FAST FOOD FORWARD

There is a hidden crime wave sweeping New York City. The overwhelming majority of fast food employees—working at some of the most recognized and profitable American corporations—report that their employers are stealing their hard-earned wages, according to a recent survey. At McDonald's, Burger King, Domino's, and other chains, workers are experiencing wage theft in a variety of ways—from getting paid less than the legally mandated minimum wage to being required to work off the clock to receiving paychecks with improper deductions or missing hours.

In a survey of 500 New York City fast food workers conducted in April 2013 by Anzalone Liszt Grove Research, **84 percent of workers surveyed responded that their employer had committed at least one form of wage theft** in the past year. Two-thirds of workers surveyed reported that their employer had perpetrated two forms of wage theft and **nearly half reported their employer had committed at least three kinds of wage theft**.



84% OF FAST FOOD WORKERS SURVEYED REPORT EXPERIENCING WAGE THEFT

Source: Anzalone Liszt Grove Research survey of NYC fast food restaurant workers conducted in April 2013.

Some of the most prevalent types of abuses include:

- **Unpaid Work:** Thirty-six percent of the fast food workers surveyed report that they have performed work tasks that they were not paid for before clocking into work or after clocking out at the end of their shift.
- **Overtime Violations:** Of the workers surveyed who work more than 40 hours a week, 30 percent were not paid time-and-a-half for overtime hours.
- **Not Receiving Required Breaks:** A quarter of workers surveyed did not receive a required meal break, and 41 percent have been asked to perform work duties while clocked out on break.
- **Delivery-Related Issues:** Every single worker surveyed who delivers food to customers, either by bicycle or car, reported experiencing wage theft. Many report not being reimbursed properly for money spent on gas, cell phone bills, bicycle safety equipment or other mandatory, job-related expenses that they incur in the performance of their jobs. This results in lowering their wages below the statutory minimum wage.

While these violations are not a comprehensive list of the many ways fast food workers experience wage theft, they demonstrate how a $200 billion industry takes advantage of its low-wage workforce. In an industry that already pays the bare minimum, workers cannot afford to have their wages stolen. According to the Anzalone survey, 49 percent of workers surveyed reported earning $7.25 or less an hour, with 40 percent having never received a raise to date. In fact, 25 percent of workers surveyed who have been at their fast food jobs for over two years had never had a raise, and over a quarter of workers surveyed have a second or third job.

Bureau of Labor Statistics data show the median hourly wage for fast food workers is $8.77,[1] and employees work 24.4 hours a week, on average.[2] This translates into an annual income of approximately $11,300, which is more than $600 below the Federal Poverty Threshold for a single person under the age of 65.[3] The crimes committed by fast food employers are robbing workers of their ability to provide for their families and worsening their quality of life.

FAST FOOD WAGE THEFT IN NYC

Fifty-seven percent of New York City fast food workers surveyed have not been paid for all the hours they work. This type of wage theft can take many forms, including off-the-clock work, not receiving time-and-a-half pay for overtime, working while on a break, or waiting to clock in after arriving for a scheduled shift.

OFF-THE-CLOCK WORK

One of the most common forms of unpaid work in the fast food industry is working off the clock. This includes unpaid tasks done before or after a shift such as counting the cash register, taking out the trash, cleaning the store, or organizing stock rooms. Thirty-six percent of workers surveyed report working off the clock, and more than one in five report working off the clock "often."

At a McDonald's in Midtown Manhattan, Elizabeth Rene, who earns $7.25 per hour as a cashier, often is forced to work off the clock. She says:

"Every day when I get to work, I count the register at the beginning of my shift before I clock in and at the end of my shift after I clock out. It can take up to 30 minutes to count the register and then wait for my manager to check it. It might seem like not a lot of time, but it adds up to 2-½ hours a week that I don't get paid for. The $75 my employer shorts me each month would help me pay my bills on time, buy food and transportation. For me, this amount is the difference between giving my mother money to pay the bills or buying a metrocard. It's aggrivating that McDonald's doesn't pay me for all the hours I work. I feel cheated and used and like I'm not appreciated for my hard work."

IT'S NOT JUST A GOOD IDEA—IT'S THE LAW

The practices fast food workers reported in the Anzalone survey are not just wrong, but illegal under New York State and/or federal law:

- Minimum wage is $7.25. Period. It's not legal for an employer to pay any employee less than that, once all tips are added in AND all permitted deductions are taken out.[1]
- Employers have to pay employees for every hour they work. No work before clocking in. No work after clocking out. And, working during a break means it's not a break.[2]
- Employers must pay employees one-and-a-half times their regular hourly rate for every hour worked over 40 in a week.[3]
- Employers can't make deductions from paychecks for money robbed from delivery drivers, broken equipment, missing cash from cash registers, meals that employees don't eat—or anything else except deductions authorized by law, such as Social Security or income taxes.[4]
- Employers have to pay workers on time and can't issue paychecks they know will bounce.[5]
- It's illegal for employers to require employees to spend money on work-related gas, cell phone charges or on a helmet and safety vest to wear when biking when those expenses cause the workers' wages to fall below the minimum wage.[6]

When employers pay workers at or near the minimum wage and then also commit the practices described above, it has the net effect of lowering workers' hourly rate to less than the minimum wage. Breaking some wage and hour laws is a crime in New York State, including paying less than minimum wage, not paying for all hours worked, failing to pay overtime, paying workers late, bouncing checks, and making improper deductions.[7]

Shaqenna Davis works at a Wendy's in downtown Brooklyn as a cashier while also studying criminal justice at LaGuardia Community College. She routinely cleans the store at the end of her shift after being clocked out by her manager.

"My manager clocks me out early at 1:15 am every day. I have to keep cleaning after I'm clocked out to close the store. Five of us work for about a half hour every night that we aren't paid for, which adds up to about $80 a month for me since I make $7.25 per hour. It would mean a whole lot to me to have that $80 that Wendy's doesn't pay me. I could use that money to pay for school, food, or my metrocard."

Working off the clock, even just a few minutes a day, can add up to a substantial amount of lost income over time. Given the low-wage and frequently part-time nature of fast food work, even a few hours a week can represent a substantial portion of take-home pay.

OVERTIME VIOLATIONS

Federal wage and hour law requires employers to pay one-and-a-half times the regular rate of pay for all hours worked over 40 hours each week. However, 30 percent of fast food workers in New York City who report working more than 40 hours a week say their employer does not pay them the proper overtime rate.

Fast food employers use many approaches to avoid paying the overtime premium. Examples workers report include:

- Paying workers' regular rate of pay—"straight time"—for all hours worked, and failing to pay time-and-a-half for hours over 40.
- Removing any hours worked over 40 from workers' paychecks in the week they were worked and adding those hours to the following week's paycheck at the lower, "straight time" rate of pay.
- Paying employees with multiple paychecks at "straight time" rates for workers who work more than 40 hours a week at multiple stores operated by the same entity.

Wilton Major has worked for 22 years at three KFC stores in Brooklyn and Queens run by the same franchise operator. He earns $8.45 per hour. Major never receives time-and-a-half overtime pay for the hours he works over 40 each week.

"I work almost 80 hours a week usually, but KFC doesn't pay me overtime. It's a lot of hard work, but it's what I have to do to make ends meet. I make $8.45 an hour, so this adds up to $170 a week in overtime pay that I don't get. I came to this country in 1990 and have been working at KFC since 1991. Every month I send money home to my family in Guyana to support my daughter. If I was paid overtime, I could afford to spend a day or two at home with my mom and my brothers and sisters, and send more money to my daughter."

Wilton's brother, Alvin Major, a father of four, also works at three different Brooklyn KFCs operated by a common franchisee. Major reports earning $7.25 per hour regardless of the actual number of hours he works. He says:

"I am never paid overtime, even though I work 68 hours on average every week. I receive three separate pay checks from the same company, but they told me I cannot get overtime because I work at different stores, but that's not true. I should be paid $100 per week more than I am. If I was paid fairly, I would be able to provide more for my family or spend more time with my kids. It is for them that I work so hard."

Several workers at the KFC stores where Alvin and Wilton Major work report experiencing similar overtime violations.

WAITING TO CLOCK IN

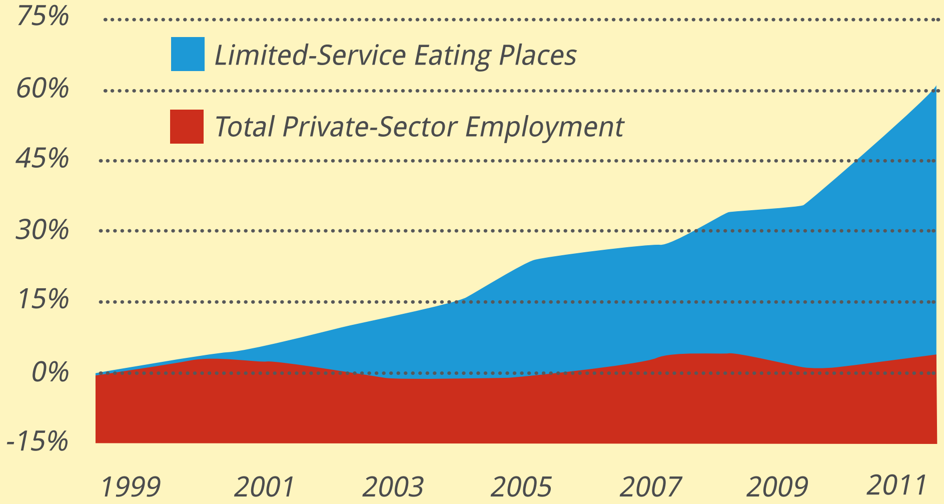
In addition to overtime violations, fast food workers report "waiting to clock in." Specifically, when workers arrive on time at the restaurant for a scheduled shift, they are required to wait to clock in until instructed by management, which can be a few minutes to an hour after their shift was supposed to start. Workers are not paid for the time spent waiting, and often they cannot leave the restaurant because they have to be nearby in case business picks up.

Alvin Major reports working for KFC over 68 hours a week with no overtime.

FAST FOOD IS ONE OF THE FASTEST GROWING INDUSTRIES IN NEW YORK

The prevalence of wage theft in fast food restaurants is especially concerning given the size and growth of the industry. More than 50,000 New Yorkers work in fast food restaurants, and employment in the fast food industry in New York City is growing much faster than the overall economy. Since 1999, employment in New York City's fast food restaurants[1] has grown by 55 percent,[2] adding over 25,000 jobs.[3] This growth rate is 19 times larger than that of the city's private sector overall, where job growth was only 3 percent in the same time period.[4]

FAST TRACK FOR FAST FOOD JOB GROWTH IN NEW YORK CITY, 1999 - 2011



Source: Fast Food Forward analysis of New York State Department of Labor historical employment data.

And this pace of fast food job growth is expected to continue. The New York State Labor Department forecasts 8.2 percent growth in employment in New York City's food-service industry by 2018, compared with a projected growth of 3.8 percent in overall employment.[5] Within the rapidly growing food-service industry, the primary fast food occupation—Combined Food Preparation and Serving Workers, including Fast Food—is projected to grow by almost 17.5 percent by 2020 in New York City. This occupation is one of the top six fastest growing of the top 100 occupations in New York City.[6]

Teresa Ramos, a mother of two who earns $7.40 per hour at a Burger King in Brooklyn, recently arrived to work on time for her 12pm shift, but she was told to wait until 1:30pm before she could clock in and start working. She was not paid for the 90 minutes waiting. Ramos explains:

"The manager did not let me clock in at noon because he said the store wasn't busy. I waited in the store for about an hour and a half. I was really frustrated because I have two kids at home and I wish I could have spent this time with my family. Instead, I was waiting at Burger King, and I wasn't being paid. I need those hours to be able to support my family."

WORKING THROUGH BREAKS

Under New York State law, employers must give workers an uncompensated meal break during shifts longer than six hours. However, 41 percent of fast food workers say their employer asks them to work while they are clocked out during their break.

Tabitha Verges, who makes $7.25 an hour after four years at a Burger King in Harlem, has to work through her break on a regular basis. She reports, "At the end of the day, the manager changes the clock in the system to show that I took a break, so I end up working for free for that half hour." This is in addition to the off-the-clock work Tabitha does taking out the trash and putting away boxes in the supply room. "It's hard enough for me to pay my rent and bills. I can't afford to work for Burger King for free. Between working through my breaks and doing work after my shift, I'm not getting paid for several hours every week."

EARNING LESS THAN MINIMUM WAGE

Some fast food workers in New York City report earning less than minimum wage. The minimum wage in New York is $7.25 per hour, though delivery workers can be paid the New York State tipped minimum wage of $5.65 per hour as long as they earn at least $7.25 per hour when tips are added in.[4] Some workers, however, report earning an hourly wage as low as $5.00 per hour.

> *"I risk life and limb delivering pizza. I've been robbed at gunpoint doing this job. I risk everything, and Domino's doesn't even pay me the minimum. That's outrageous."*
>
> ***Noel Scott, Domino's delivery worker***

Noel Scott, a father of one, earns $5.50 per hour at a Domino's in Manhattan. In addition to making less than the tipped minimum wage of $5.65, Scott spends about half his time doing work such as making pizza boxes, preparing sauce and cleaning the store, which makes it impossible to earn a full day's tips. Some days he does not earn enough in tips to make the legally mandated minimum wage. Noel says, "I risk life and limb delivering pizza. I've been robbed at gunpoint doing this job. I risk everything, and Domino's doesn't even pay me the minimum. That's outrageous."

Vicente de Jesus Garcia, a father of seven, also earns subminimum pay at a Harlem Papa John's where he has worked for four years. Garcia, who typically works 49 hours a week, earns $5.00 per hour for all hours before 40, and $7.50 for hours over 40. Garcia reports that this is how delivery workers at his store are paid. He says:

"It's crazy that Papa John's pays us less than minimum wage. If my employer paid me properly I would be able to buy better clothes, pay for school for my kids, take better care of my household and still be able to pay my rent. But no, I definitely do not make enough for all of those things."

Garcia is underpaid by about $35 a week, or nearly $105 per month.

Four-year Papa John's driver Vicente de Jesus Garcia earns less than minimum wage and says he needs more to take better care of his family.

LATE OR BOUNCED CHECKS

A staggering 30 percent of workers report that they have received their paychecks late, were asked by management to wait a day or longer to deposit their checks or had their paychecks bounce. Fast food workers often live paycheck to paycheck and can seldom make ends meet if they are not paid on time, or worse, are forced to incur bank fees or other penalties when deposited checks fail to clear.

For example, Tru-von Shim, who worked at a Wendy's in Downtown Brooklyn for about a year and a half, had his paycheck bounce about five or six times. Tru-von explains:

"Once when my check bounced, my bank charged me about a $12 fee for the bounced check plus an overdraft fee of about $30. Since I was making $7.25 per hour, $42 was almost 6 hours of my pay. I went back to the store the next day to find out how to get my paycheck, and after giving me the run-around, eventually the district manager paid me in cash out of the register. I almost got kicked out of the room I was renting because my check bounced. I had to show all my bank statements to my landlord proving the check bounced and borrow money from a family member to get by that week."

Jessica Cogle, who earns $7.30 per hour at a McDonald's in Harlem, is not consistently paid on time. She reports, "Several times, my paycheck was not at the store when I went to get it. Once, I spent my last bit of money getting to the store to get paid. The manager told me, 'That's not my problem.'"

At the time, Jessica lived in the Bronx. "I had to ask my mom and my friend for money just so I could get home that night, and then back to the store the next day to get paid." She finally got paid a day or two later. "Eventually, I was kicked out of my apartment because I couldn't pay my rent on time. It's really hard to pay the rent on time when I never know when my check is going to show up. Now, I'm living in a shelter, and I have to start all over. I'm really worried about my living situation because I have a baby on the way."

IMPROPER DEDUCTIONS

Nearly half of surveyed fast food workers in New York said their employer routinely makes improper deductions from their paychecks—money taken from employees' paychecks without employee consent or to pay for things that cannot lawfully be deducted from employee wages. Forty-six percent of fast food workers in New York City report receiving paychecks with improper deductions to cover the costs of at least one of the following: meals they did not eat, required uniforms, missing or stolen items, or alleged cash register shortages.

McDonald's worker Jessica Cogle lost her apartment because her paycheck—which has been repeatedly late—is not enough to cover rent.

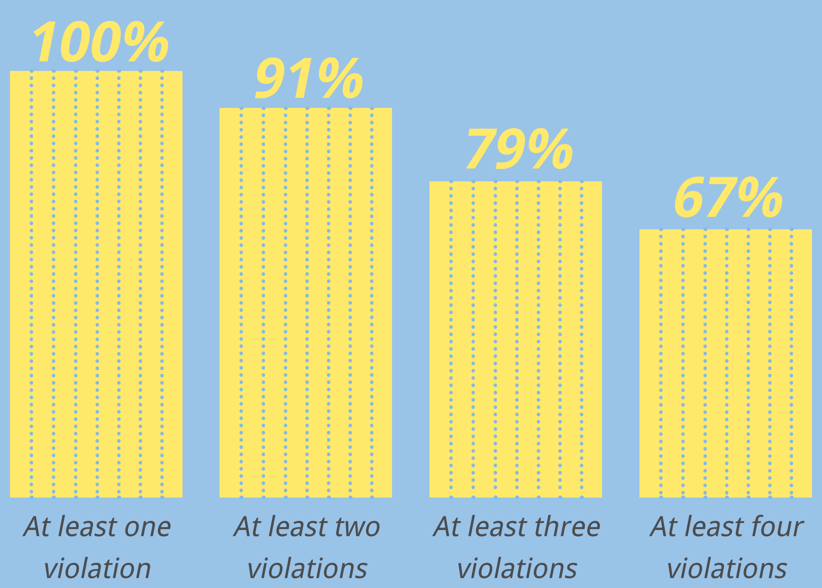
In addition, almost one-third of cashiers in New York City at fast food restaurants such as Taco Bell, McDonald's, Wendy's and Burger King report either paying their employer cash out of their own pocket for alleged cash register shortages or having the amount of the shortage deducted from their paychecks, sometimes even if other employees or even managers were using the register.

Hector Henningham, who earns $8 per hour after working for nine years at a McDonald's in Midtown Manhattan, reports that he has to pay his employer for alleged cash-register shortages.

"When the shifts change, we have to count out the store's safe and registers. If they are short, we have to pay out of our pockets. One time the safe was short, and I had to pay $100 out of my pocket. Another time, more recently, I had to pay $20 for a short register. I don't think it's right, but it's the rules of the company. We need the money that we earn."

DELIVERY-SPECIFIC WAGE AND HOUR VIOLATIONS

Of all the fast food workers surveyed, delivery workers experience wage theft at a higher rate than non-delivery workers. Every single delivery worker surveyed who uses a bike or car for deliveries reported experiencing at least one form of wage theft, and over two-thirds of these delivery workers said their employer has engaged in four or more forms of wage theft. In addition to the violations discussed above, delivery workers—who face dangers of robbery and assault—are often not properly reimbursed for car and bicycle expenses, causing their wages to fall below the minimum.



ALL FAST FOOD DELIVERY WORKERS SURVEYED REPORT EXPERIENCING SOME FORM OF WAGE THEFT

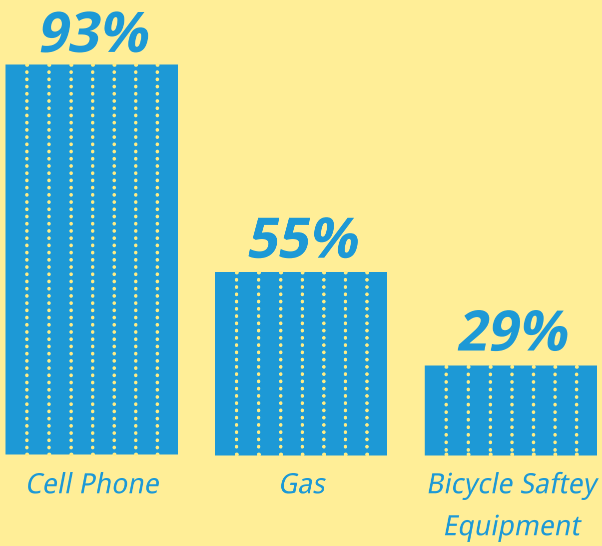
Note: Fast food delivery workers include employees who deliver using a bicycle or car.

Source: Anzalone Liszt Grove Research survey of NYC fast food restaurant workers conducted in April 2013.

UNREIMBURSED EXPENSES

Fast food employers often require delivery workers to incur expenses while making deliveries that are not properly reimbursed. Examples of these expenses include:

- **Unreimbursed Calls**: Ninety-three percent of workers who make deliveries by car or bicycle are not reimbursed for cell phone charges for calls to customers and the restaurant.
- **Unreimbursed Gas Charges**: Fifty-five percent of workers who use cars to make deliveries are not sufficiently reimbursed for gas.
- **Helmets and Safety Equipment**: Three out of ten bicycle delivery workers report that their fast food employer has not provided safety equipment including a helmet, reflectors and bicycle lights or contributed to the cost of these legally required items.



NEARLY ALL FAST FOOD DELIVERY WORKERS REPORT UNREIMBURSED EXPENSES

Note: The proportions with unreimbursed bicycle safety equipment and gas expenses were calculated from responses of survey participants who reported using bicycles or cars, respectively, for delivery work. The proportion with unreimbursed cell phone expenses was calculated from responses for all delivery workers who use either cars or bicycles.

Source: Anzalone Liszt Grove Research survey of NYC fast food restaurant workers conducted in April 2013.

Ramon Rodriguez, who has worked as a delivery driver for Domino's Pizza in Brooklyn for the past six years and is paid $7.25 per hour, spends $80 per month for the cell phone he uses to make deliveries and hundreds more on car repairs. Domino's has not reimbursed him for any of these work-related expenses. Ramon explains:

"Right now, I can't use the money I earn on the things I need because I always have to make sure I am saving money to fix my car. When my car's not running, I can't work and get even further behind on bills. If Domino's gave me the money I have to spend on my car so I can keep delivering pizza for them, I could afford to get my own apartment and have a better quality of life."

Even though delivery workers usually earn tips, drivers often use the entirety of their tips to pay for the work expenses described above to be able to keep delivering fast food to customers. The unreimbursed delivery expenses can have the net effect of bringing workers' hourly wages to below the minimum.

ROBBERY

Three of every ten workers who make deliveries using a car or bicycle have been robbed or assaulted while delivering food to customers. Two-thirds of the workers who were robbed or assaulted report that their employer clocked them out and did not pay them for the time they took to seek medical care or report the robbery or assault to the police. One-third of robbed or assaulted delivery workers were required to pay their fast food employer for the money and/or food stolen from them.

Lucien Jean, who has worked for 12 years at Papa John's in Brooklyn and earns $7.25 per hour, reports, "Last year, I was robbed at gunpoint while I was making a delivery in Brooklyn. The robber took all the money that I had received from customers that night to pay for their pizza. I was robbed of over $200. My employer took this money out of my paycheck."

Vicente de Jesus Garcia, the Harlem Papa John's driver who earns less than minimum wage, was robbed on the job in May 2010. He arrived at a large Manhattan apartment building to deliver a pizza when three men hiding in the entrance way pulled him inside. They beat him up and took $400 he had collected from customers that afternoon. He called the police, but by the time they arrived 15 minutes later, the attackers were gone. He then called his manager and returned to the Papa John's. The manager on duty said that Garcia would have to pay back all the money that was stolen from him. Instead of seeking medical treatment, Garcia went back to work. "I was all black and blue because they kicked and punched me, but I went right back to work because I knew I was going to have to use my rent money to pay back my employer." He paid the $400 back the next day.

WAGE THEFT IS RAMPANT AMONG LOW-WAGE WORKERS

Unfortunately, these survey results are not an anomaly. Various studies show that low-wage employers, fast food chains included, systematically steal workers' wages. A 2010 report by the National Employment Law Project (NELP) found that 22 percent of low-wage workers in New York City were paid less than the minimum wage, and 77 percent did not receive overtime pay. In addition, almost one-third of workers surveyed reported working "off the clock." These results mirror findings of NELP's 2009 national study of low-wage workers, which found that more than two-thirds of workers interviewed experienced at least one pay-related violation in the previous work week. According to the study, 26 percent of low-wage workers interviewed were paid less than the legally required minimum wage, and 76 percent of those who worked more than 40 hours were not paid the legally required overtime rate.[5]

In a 2010 study of U.S. Department of Labor enforcement actions in the fast food industry, researchers found violations of the Federal Labor Standards Act in about 40 percent of the agency's investigations of the country's top-20 fast food chains from 2001 to 2005.[6]

Given the widespread findings of wage theft by studies and surveys such as these, it is not surprising that there is an extensive history of state and federal law enforcement findings and settlements from fast food chains in wage theft cases. Fast food workers have also won settlements in recent years in a number of lawsuits where they have charged their employers with the kinds of practices detailed above. While some suits making similar wage-theft charges are still pending, examples of cases that parallel the findings in this report include:

FAILURE TO PAY OVERTIME WAGES

- Two McDonald's restaurants in the Bronx paid $106,500 in 2012 to settle a lawsuit charging that when employees worked over 40 hours in a week the owners cut two checks: one for hours worked under 40, and the other (issued by a related corporation) for hours worked over 40. Neither check paid the legally required time-and-a-half rate.[7]
- A Long Island KFC paid $80,000 in back wages and liquidated damages and $7,700 in civil penalties in 2009 after the U.S. Secretary of Labor brought an enforcement action charging the restaurant with willfully failing to pay overtime.[8]
- The Solicitor of Labor recovered over $28,000 in unpaid overtime wages and obtained over $14,000 in liquidated damages in a suit against a group of Domino's franchisees on Long Island in 2012.[9]

OFF-THE-CLOCK WORK

- In a 2009-2010 investigation, the U.S. Department of Labor found that a McDonald's franchisee in New York City required cashiers to count monies from the cash register before punching in and after punching out each day. The McDonald's franchisee paid over $61,000 in back wages to 390 workers.[10]

- In 2010, Domino's pizza delivery drivers in New York State filed suits charging their employers with requiring them to do work without pay and off the clock.[11]

FAILURE TO PROVIDE MEAL BREAKS

- California Papa John's workers charged in 2005 that their employer did not provide required rest and meal breaks. The company agreed to pay compensation to class members.[12]

- At the Bronx McDonald's restaurants cited above for overtime violations, the plaintiffs also reported having meal breaks automatically deducted from their pay checks, regardless of whether they had been permitted to take an uninterrupted meal break.[13]

ABUSE OF DELIVERY DRIVERS

- A Papa John's franchisee who operated 82 stores in Minnesota and Colorado settled for $300,000 a 2009 lawsuit alleging that the franchisee reimbursed delivery drivers so little for automobile expenses and other work-related expenses that drivers earned less than the minimum wage.[14] Delivery drivers with similar allegations entered a confidential settlement in 2012 against the world's largest Pizza Hut franchisee, with 1,153 Pizza Hut restaurants in 28 states.[15]

- In a 2009 case against the operator of 48 Pizza Huts in Colorado, Kansas, Missouri and New Mexico, plaintiffs confidentially settled charges related to inadequate reimbursements and withholding money that customers believed were tips to the drivers.[16]

- In another suit filed in 2009, Domino's drivers across the U.S. have charged that Domino's kept money from a service fee that customers believed was a tip to drivers.[17]

- New York City Domino's delivery drivers charged in a case filed in 2010 that managers often required them to perform cleaning duties—sometimes for as long as two hours—after the manager had clocked them out. The plaintiffs also alleged that they would return from deliveries to find that the manager had clocked them out in their absence.[18]

These cases, a sample of those that have been litigated or investigated by enforcement agencies, indicate the seriousness, breadth, and depth of the problem of wage theft among fast food workers. And the problem is likely much worse than the sampling suggests, since workers in low-wage industries under-report violations of wage and hour laws because of language barriers, literacy and immigration status.[19] Thus, any sample of litigated or investigated cases likely does not capture the full impact or prevalence of wage theft in this industry.

FAST FOOD INDUSTRY FIGHTS TO KEEP WAGES AND STANDARDS LOW

While the fast food industry has a record of stealing wages from workers, it has also fiercely lobbied against anti-wage theft legislation and opposed increases in the minimum wage. The New York State Restaurant Association, the primary trade association that represents the fast food industry in the state, spent over $148,000 in 2010 lobbying against the passage of the New York Wage Theft Prevention Act, the very law that criminalizes many of the practices outlined in this report.[20]

This type of lobbying is standard for the New York State Restaurant Association and the fast food industry. In addition to fighting the Wage Theft Prevention Act, the New York State Restaurant Association spent $783,000 lobbying against wage and work-related benefit improvements in the past five years, including over $200,000 opposing increases in the state minimum wage and another $222,000 opposing paid sick leave.[21]

Beyond their representation by the New York State Restaurant Association, many fast food companies also directly lobby against wage and other workplace improvements in New York State. For example, over the past five years, McDonald's, Wendy's and YUM! Brands, which owns KFC, Pizza Hut and Taco Bell, directed 69 percent of the over $1.2 million they spent on lobbying in New York State to fight increases to the state minimum wage and oppose initiatives to improve working conditions such as paid sick leave, health care and living wage provisions.[22]

The industry's lobbying activity in New York State mirrors its broader agenda of opposition to minimum wage increases across the country. The National Restaurant Association, whose board members include representatives from McDonald's, Wendy's, and Starbucks,[23] has often directly contributed to industry coalitions opposing state ballot initiatives to increase the minimum wage. For example, in 2006 the National Restaurant Association and state and local restaurant associations spent a combined $2.6 million[24] to combat ballot initiatives to increase minimum wages in just seven states.[25]

"It's hard enough for me to pay my rent and bills. I can't afford to work for Burger King for free. Between working through my breaks and doing work after my shift, I'm not getting paid for several hours every week."

Tabitha Verges, Burger King cook

DRIVING DOWN DELIVERY WAGES

One way the fast food industry has lowered wages is through the tip credit. Under the "tip credit" provision of the federal minimum wage law and the laws of many states, including New York, employers can pay tip-eligible employees a wage below the regular minimum wage, getting "credit" for tips that are supposed to bring total pay up to the minimum.

Pizza chain executives are quite clear that the move to the tip credit was a money-saving measure: "Papa John's saved on delivery drivers' wages by implementing a 'tip credit' pay system in company-owned stores," Papa John's CFO J. David Flanery said in an investor conference call.[1] And Domino's CFO Mike Lawton told investors, "we did implement tip credit throughout the system, and that... reduced the compensation of the drivers in some states."[2]

However, as this report demonstrates, delivery workers report they often end up receiving less than minimum wage.

1. Jere Downs, "Papa John's drops $10 deal," *The Courier-Journal* (Louisville, Kentucky), August 5, 2010.

2. Domino's Pizza Investor Day, *Fair Disclosure Wire,* January 12, 2012.

THE BRANDS CONTROL THE SYSTEM

Addressing fast food wage theft is complicated by the structure of the industry, which is built largely on franchising. McDonald's, Burger King, Domino's and their peers have created a detailed and controlled system of food delivery, which they license to franchisees, yet they largely avoid responsibility for wage theft. The franchisor chains dictate the details of a fast food restaurant's operations and finances. They specify everything—restaurant hours, sandwich assembly methods, required equipment and software, customer wait times and employee appearance and behavior. Franchisors typically provide franchisees with the tools and policies that directly impact employees' work lives and working conditions, including sophisticated staff scheduling software, staff and manager training materials and personnel policies.

Yet, when regulators or workers seek to hold franchisor corporations liable for wage theft in their franchised stores, the corporations typically assert that their franchisees are independent businesses and the franchisors are not the employer. However, these corporations have the power to end wage theft in fast food. To cite one recent example, when foreign guest workers charged the franchisee of a Harrisburg, Pennsylvania-area McDonald's with paying below minimum wage, requiring 25-hour work shifts and taking payment for crowded, employer-owned housing out of workers' paychecks,[26] McDonald's ended its relationship with the franchisee. McDonald's said it "immediately addressed the allegations in Harrisburg upon learning of the situation,"[27] and it is working with its franchisees to make sure they understand "the letter and spirit" of the law.[28]

CONCLUSION

From the stunning statistic that 84 percent of fast food workers surveyed say their employers steal their wages to the voices of individual workers who tell us exactly how their employers steal and how it affects their lives, this report demonstrates that a crime wave is sweeping over fast food workers. Fast food restaurants are paying below the minimum wage. They are failing to pay employees for all the hours they work. They are failing to pay overtime and docking workers for breaks they sorely need but often do not take. And all of this is occurring in a profitable industry where workers are at or near the poverty line and part-time hours are the norm.

Given the scope of the problem as demonstrated by this report and others cited above, it will require systemic action by regulators and political leaders to eradicate fast food wage theft. Fast food corporations have a responsibility to ensure that workers wearing their uniforms and serving their food are paid according to the law. Regulators and law enforcement must cut through franchisors' attempts to evade responsibility and hold corporations accountable for wage theft. And political leaders must strengthen the law to ensure that franchisors bear the consequences of wage theft and do not shift responsibility to their franchisees. Because these corporations design, maintain, monitor and profit from the fast food delivery system, they should be the focus of regulatory and political action to eradicate wage theft up and down the fast food chain.

ENDNOTES

1. Bureau of Labor Statistics Job title "Combined Food Preparation and Serving Workers, Including Fast Food" (Occupation Code 35-3021) 2012. http://bls.gov/oes/current/oes_35644.htm#35-0000

2. Bureau of Labor Statistics, Hours of production/nonsupervisory workers, nationally, in limited-service restaurants (2012 NAICS 722513). http://www.bls.gov/web/empsit/ceseeb7b.htm

3. U.S. Census Bureau, Poverty Thresholds 2012. http://www.census.gov/hhes/www/poverty/data/threshld/index.html

4. N.Y. Comp. Codes R. & Regs. tit. 12, § 146-(subsection) (2011). http://www.labor.state.ny.us/formsdocs/wp/CR146.pdf

5. See Annette Bernhardt et al., Working Without Laws: A Survey of Employment and Labor Law Violations in New York City, National Employment Law Project, New York, N.Y., 2010. http://nelp.3cdn.net/990687e422dcf919d3_h6m6bf6ki.pdf and Annette Bernhardt, et al. *Broken Laws, Unprotected Workers*, National Employment Law Project, New York, N.Y., 2009. http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1

6. David Weil, *Improving Workplace Conditions through Strategic Enforcement, A Report to the Wage and Hour Division*, May 2010, Table 4.5, p. 51. http://www.dol.gov/whd/resources/strategicEnforcement.pdf

7. *Perez v. Jupada Enterprises, Inc.,* 10cv3118 (S.D.N.Y. 2012).

8. *Solis v. KFC U.S. Properties, Inc.,* 09cv1970 (E.D.N.Y. 2009).

9. *Solis v. Team Roslyn, Inc. et al.,* 12cv3118 (E.D.N.Y. 2012).

10. Compliance Report issued by the U.S. Dept of Labor, Case No. 1554769.

11. *Cano v. DPNY d/b/a Domino's Pizza,* 10cv07100 (S.D.N.Y 2010); *Laroque v. Domino's Pizza LLC,* 06cv6387 (E.D.N.Y. 2006).

12. *Alba et al. v Papa John's et al.,* 05cv7487 (C.D. Cal. 2005).

13. *Perez v. Jupada Enterprises, Inc.,* 10cv3118 (S.D.N.Y. 2010).

14. *Bass v. PJCOMN,* 09cv01614 (D.Colo. 2009).

15. *Wass v. NPC International, Inc.,* 09cv02254 (D. Kan. 2009).

16. *Darrow v. WKRP Mgmt., LLC,* 09cv01613 (D. Colo. 2010).

17. *Luiken v. Domino's Pizza, LLC,* 09cv516 (D. Minn. 2009).

18. *Cano v. DPNY d/b/a Domino's Pizza,* 10cv07100 (S.D.N.Y 2010).

19. Annette Bernhardt, et al. *Broken Laws, Unprotected Workers,* National Employment Law Project, New York, N.Y., 2009. http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1

20. Fast Food Forward analysis of data from the New York State Joint Committee on Public Ethics. http://www.jcope.ny.gov/view_filing.html

21. Fast Food Forward analysis of data from the New York State Joint Committee on Public Ethics. http://www.jcope.ny.gov/view_filing.html

22. Fast Food Forward analysis of data from New York State Joint Committee on Public Ethics. http://www.jcope.ny.gov/view_filing.html

23. National Restaurant Association, "About Us." Last viewed May 9, 2013. http://www.restaurant.org/About-Us/NRA-Leaders/Board

24. All numbers from Fast Food Forward analysis of data from www.FollowtheMoney.org

25. The seven states are: Florida, Ohio, Arizona, Nevada, Colorado, Montana, and Missouri. See: Balletopedia: Arizona Minimum Wage, Proposition 202 (2006); Colorado Amendment 42, Minimum Wage Increase (2006); Michigan Minimum Wage Increase (2006); Missouri Minimum Wage Act, Proposition B (2006); Montana Minimum Wage, Initiative 151 (2006); Nevada Minimum Wage Act, Question 6 (2006); Ohio Ballot Measure 2, Minimum Wage Initiative (2006). http://ballotpedia.org/wiki/index.php/Minimum_wage_on_the_ballot#tab=By_year

26. Miriam Jordan, Kris Maher and Julie Jargon, "Guest Worker Visa Troubles Visit McDonald's," *Wall Street Journal,* March 8, 2013. http://online.wsj.com/article/SB10001424127887323628804578348620014963766.html

27. Eric Veronikis, "McDonald's plays expulsion of midstate franchisee Andy Cheung close to vest," *PennLive,* April 1, 2013. http://www.pennlive.com/midstate/index.ssf/2013/04/mcdonalds_plays_departure_of_m.html

28. Emily Jane Fox, "Foreign worker hoopla forces McDonald's franchisee out," *CNN Money,* March 14, 2013. http://money.cnn.com/2013/03/14/news/companies/mcdonalds-temporary-workers/index.html

IT'S NOT JUST A GOOD IDEA—IT'S THE LAW

1. N.Y. Lab. Law § 662(1).2. N.Y. Lab. Law § 652; N.Y. Comp. Codes R. & Regs. tit. 12, § 146-1.

2. This is a violation of the Minimum Wage Act if it brings workers' wages below the minimum wage. It is also a violation of Hospitality Industry Wage Order Subpart 146-1.2, which states that the hourly minimum wage for non-tipped workers in the restaurant industry is $7.25 per hour, and Hospitality Industry Wage Order Subpart 146-1.3, which states that the minimum wage for a service employee (which includes delivery workers) is $5.65 per hour, if it brings the workers' wages below the minimum wage. It is also a violation of Hospitality Industry Wage Order Subpart 146-2.5, which states that restaurant workers "shall be paid hourly rates of pay. Employers may not pay employees on a daily, weekly, salary, piece rate or other non-hourly rate basis."

3. 29 U.S.C. § 201.

4. N.Y. Lab. Law § 193. According to New York State labor law, employers may not make deductions from employee wages for work expenses unless such deduction is "in accordance with the provisions of any law or any rule or regulation issued by any governmental agency." The New York State Department of Labor Hospitality Wage Order, which contains regulations about the wages of workers in the restaurant and hotel industries, provides additional guidance on wage deductions. It states: "Employers may not make any deductions from wages, except for credits authorized in this Part and deductions authorized or required by law, such as for social security and incomes taxes. Some examples of prohibited deductions are:

   (1) deductions for spoilage or breakage;
   (2) deductions because of non-payment by a customer;
   (3) deductions for cash shortages or losses;
   (4) and fines or penalties for lateness, misconduct, or quitting by an employee without notice."

   According to the NYSDoL, the hospitality industry wage order is considered a provision of the minimum wage law. http://www.labor.state.ny.us/workerprotection/laborstandards/workprot/minwage.shtm. Thus the hospitality wage law carries the same penalties as the minimum wage law.

5. N.Y. Lab. Law § 191.

6. 29 U.S.C. § 206(a)(1); 29 U.S.C. § 203(m); 29 C.F.R. §531.3(d); A summary of the regulations for commercial bicycle operators are available at: http://www.nyc.gov/html/dot/downloads/pdf/bicyclerules_english.pdfhttp://www.nyc.gov/html/dot/downloads/pdf/bicyclerules_english.pdf. NYC Administrative Code §10-157 codifies these regulations.

7. See notes 1-6 *supra.*

FAST FOOD IS ONE OF THE FASTEST GROWING INDUSTRIES IN NEW YORK

1. "Limited-Service Eating Places," as categorized by the New York State Department of Labor.

2. Calculations on data from New York State Department of Labor, Current Employment Statistics, Historical Employment by Industry, Data for New York City. http://labor.ny.gov/stats/cesemp.asp

3. Calculations on data from New York State Department of Labor, Current Employment Statistics, Historical Employment by Industry, Data for New York City. http://labor.ny.gov/stats/cesemp.asp

4. Calculations on data from New York State Department of Labor, Current Employment Statistics, Historical Employment by Industry, Data for New York City. http://labor.ny.gov/stats/cesemp.asp

5. New York State Department of Labor, Long-Term Industry Employment Projections, 2008-2018, New York City. http://labor.ny.gov/stats/lsproj.shtm Note that the Labor Department does not break out fast-food restaurants from overall food-service industry.

6. New York State Department of Labor, Long-Term Occupational Projections, New York City. http://labor.ny.gov/stats/lsproj.shtm

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