

What We Owe the Working Poor

By Annette Bernhardt

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The Supreme Court handed down an astonishing [decision](#) June 11, ruling that under federal law, home-care workers are not entitled to overtime pay or the minimum wage. Upholding outdated distinctions between those who labor inside and outside the home, the Court excluded more than one million workers from the right to earn a fair wage.

For the plaintiff, seventy-three-year old Evelyn Coke, the decision means that the many overtime hours she put in during decades as a home care worker will remain unacknowledged and underpaid. For our nation, the decision is a stark reversal of our goal to have all workers be treated equally under the law. Home care workers spend their days emptying bedpans, dressing wounds, and bathing and feeding those who are too old or too sick to care for themselves. But their median income is only \$19,000 a year, and we apparently lack the will to at least guarantee overtime pay.

Unfortunately, Evelyn Coke and her fellow home-care workers aren't alone. The Court's ruling is only the latest symptom of an emerging trend in low-wage industries, where the fundamental legal protections that were hard-fought and hard-won in the last century are breaking down.

Some workers--like home health aides, domestic workers and agricultural workers--have for many years been excluded from one or more laws governing the workplace. Other workers are covered by those laws, but weak enforcement has left them unprotected. And growing numbers are falling through the cracks altogether, as employers push them outside the reach of legal protection by misclassifying them as independent contractors.

For the past three years, researchers at the Brennan Center for Justice at New York University School of Law have been documenting this problem in New York City. Industry by industry, we've conducted hundreds of interviews with workers, employers, government officials, community groups and legal services providers. Our report, [Unregulated Work in the Global City](#), was released June 19.

What we found is a world that lies outside the experience and imagination of many Americans. It is a world in which workers are paid less than the minimum wage, and sometimes nothing at all; in which employers don't pay overtime for sixty-hour weeks or provide legally required meal breaks; in which health and safety regulations are

routinely ignored; and in which workers are often punished for speaking up or trying to organize.

The traces of this invisible economy are everywhere in our daily lives. We shop at a gourmet grocery store, which may be paying as little as \$5 an hour to the worker washing and sorting produce. We pick up clothes from the local dry cleaner, which has likely sent its work to an industrial plant rife with violations of health and safety regulations. We go to a restaurant--a small diner or one rated with four stars--and chances are that the dishwashers and cooks are not receiving overtime for the sixty to seventy hours that they have worked. We pay weekly visits to the neighborhood nail salon, which might well be part of a chain currently under investigation for underpaying its workers. We bring in a small contractor to paint or remodel our homes, and in all probability at least one of the workers has been cheated out of wages during the past six months.

These are not isolated, short-lived cases of exploitation at the fringe of the city's economy. Instead, the systematic evasion and violation of employment and labor laws is threatening to become a way of doing business for unscrupulous employers--concentrated for now in low-wage industries, but increasingly putting pressure on firms higher up the wage ladder to follow suit.

New York City is not unique in this regard. Community groups, legal advocates and regulatory officials have documented the spread of workplace violations--in tomato farms in Florida, poultry processing plants in the Midwest, hotels in Los Angeles, nursing homes in Dallas, restaurants in Chicago, child daycare in Kansas City, gas stations in Minneapolis, and construction in almost every town and city where day laborers work. Not to mention the fifty-seven class-action suits in forty-one states that are pending against Wal-Mart, charging the company with failing to pay its workers overtime and forcing them to work off the clock.

Everyone has a stake in this issue. When workers earn less than the minimum wage, their families struggle from one crisis to the next and the resiliency of local communities suffers. When unscrupulous employers evade or violate laws, responsible employers are forced into a race to the bottom that threatens to bring down standards throughout the labor market. And when significant numbers of workers are underpaid, vital tax revenues are lost.

There is no shortage of needed reforms. We need to substantially boost our enforcement of employment and labor laws. We need to update those laws for the 21st century workplace. And we need to make sure they cover all workers, whether immigrant or born in the United States.

If that sounds daunting, here's a good and humane first step: Give home-care workers the right to overtime pay and the minimum wage.