

F. UNREGULATED WORK IN THE SUBSIDIZED CHILD CARE INDUSTRY IN NEW YORK CITY

As a result of federal welfare reform in 1996, there has been dramatic growth in the number of children in publicly-subsidized child care in New York City. Parents receiving public assistance are now expected to work outside of the home and therefore need to find child care for significant numbers of hours. They are legally guaranteed child care, paid by city agencies. In addition, low-wage workers not receiving public assistance are eligible to apply for child care vouchers and apply for slots in contracted child care centers and family child care homes (but are not guaranteed them). The demand for subsidized programs is therefore great, but lack of adequate funding is a chronic problem. Workers who provide subsidized child care are underpaid – in some parts of the industry, they are systematically paid less than the minimum wage – and experience other substandard working conditions. Moreover, the growing use of independent contractors has meant a significant increase in what are effectively unregulated jobs.

HOW THE INDUSTRY WORKS

Subsidized child care in New York City is funded by the Administration for Children's Services (and during the years of our study, also the Human Resources Administration). Some of this care is provided in *day care centers* which are largely unionized, and where most of the workers are classified as employees and covered by workplace laws. It is in *home-based care* where we found evidence of unregulated work. There are two different types of home-based care; in both cases, city agencies pay the child care providers directly, rather than indirectly via parents:

1. **Registered Family Child Care:** Child care is provided in workers' homes, with 3-6 children (one provider) or 7-12 children (one provider and one assistant). The workers are classified as independent contractors, not employees. Workers must pass a series of tests in order to be registered with the state government.

2. **Legally-Exempt Providers.** Child care is provided in workers' homes, for fewer than 3 children. The workers are classified as independent contractors, and make up by far the largest number of providers, with over 19,000 in the city. Reimbursement rates are the lowest in this segment: City agencies pay Legally-Exempt providers significantly less per child than they pay Registered Family providers or center-based care.

The recent growth in subsidized child care has been concentrated in the home-based segment, where labor costs are considerably lower, in large part because of the workers' independent contractor status. The total number of children in center-based care declined from 1999-2005, while those in Registered Family care increased by 7,000, and those in Legally-Exempt care grew by 13,500. As one industry expert observed, "Informal care is encouraged because it's faster and cheaper."

JOB QUALITY & WORKPLACE VIOLATIONS

Home-based child care workers face the most difficult working conditions, and in particular, Legally-Exempt workers are likely to experience workplace violations.

Home-based child care is physically and emotionally demanding for the providers. Young children require almost constant attention, and often there is only one worker present – the complete isolation of the work is a constant problem. Workers have to do a lot of lifting and bending, which can be difficult for the older providers (who disproportionately make up this workforce). Child care providers also have little control over their work week, with clients who are themselves low-income and working constantly-changing schedules. And lack of access to health insurance and pensions is pervasive.

In the end, though, it is the chronically low wages that dominate. Home-based providers are classified as independent contractors, and so are not formally covered by

the majority of employment and labor laws. However, their conditions of work are strongly shaped by reimbursement rates and regulations set by the state government's Office of Children and Family Services (and administered locally by city agencies). For many, the result is pay levels and other work conditions that do not meet the standards set by core workplace laws. (See Section III for a fuller treatment of how we define unregulated work).

As shown in Table F, Legally-Exempt workers are often paid less than the minimum wage – depending on how many hours per week they work, how many children they are caring for, and the age of those children. An industry analyst acknowledged the structural problem: “These folks have an excruciatingly long workday, so if you figure out what they’re paid per hour, they would never meet the minimum wage standards.”

Long work weeks are common and overtime is not paid, because the worker is reimbursed the same amount regardless of whether the work week is 40 or 50 hours long. Providers are sometimes able to supplement their wages by asking parents to pay for additional hours, but this strategy is inherently limited, because most parents using subsidized child care are themselves low-wage workers. A community group working with providers frequently sees this dynamic: “If a provider charges too much, the parent

might find another provider. It’s an informal agreement. Some pay more, some don’t pay at all.” In the end, child care providers will often work extra hours without any extra pay, waiting for the parents to come home.

Another common problem is very long (multi-month) delays in payments to the workers, due to processing bureaucracy on the part of city agencies. Such delays would be illegal if the subsidized child care workers were covered by standard employment laws. But in the absence of legal recourse, workers often have a difficult time recouping their full wages. According to one of the service providers we interviewed: “Getting the parent to be an advocate gets you a much better chance at resolving problems, but the parent might not feel like it. ... HRA has a childcare payment helpline, but they almost never answer it.”

Given the very low pay and difficult working conditions, turnover is high in the industry, especially in home-based care: many workers last only three or four years. Industry experts estimate that only 20-30% of Legally-Exempt providers go on to become Registered Family providers. This may be a function of the cost of becoming a Registered Family provider (about \$200 to \$250) as well as the certification hurdle itself, which includes a long criminal background check.

TABLE F.
CHARACTERISTICS OF UNREGULATED WORK IN THE SUBSIDIZED CHILD CARE INDUSTRY
IN NEW YORK CITY

Note: Subsidized home-based child care workers are exempt from one or more employment or labor laws. In this table, we evaluate working conditions as if workers were covered by all employment and labor laws; see our definition of unregulated work in Section III.

INDUSTRY SEGMENTS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Industry segments	Home-based child care that is publicly subsidized, provided by workers under contract with city agencies (formally known as “Legally-Exempt” and “Registered Family” child care providers).
Union density	No union representation in home-based segment (independent contractors do not have the legal right to organize).
THE JOBS WHERE WORKPLACE VIOLATIONS ARE COMMON	
Occupations	Home-based child care workers, consisting of (1) Legally-Exempt providers who care for at most two children in their home, and (2) Registered Family providers and their assistants who take care of three or more children in their home. Both work as independent contractors.
Typical wages	Legally-Exempt providers: Maximum weekly wage of \$210; at most \$105 per week per child, with a maximum of two children. Registered Family providers: Considerable variation in wages depending on numbers and ages of children being care for. In general, wages are more than what Legally-Exempt providers earn.
Typical hours	Hours per week vary, with a mix of both full-time and part-time workers. Long work days driven by unpredictable parent schedules are common.
Payment method	Workers are paid on the books directly by city agencies. But parents may pay out of pocket for work beyond regular hours.
Benefits	None.
THE WORKERS MOST AFFECTED BY WORKPLACE VIOLATIONS	
Demographics	Legally-Exempt workers are almost all women and largely African American; 65% are related to the child being cared for. While ages vary, workers are disproportionately older. Registered Family workers have similar demographics, but are usually not related to the children they care for.
Immigration status	Workers are largely native-born, because (a) Legally-Exempt providers are often kin to the mother who is receiving subsidized child care, and (b) both Legally-Exempt and Registered Family providers need to submit social security numbers (although immigration status is not checked beyond that point).
INTERMEDIARIES PLACING WORKERS IN UNREGULATED JOBS	
Child Care Resource and Referral Agencies (CRRAs) connect parents with Registered Family providers. Legally-Exempt providers are not allowed to use the agencies; parents find these workers through family or social networks.	
INDUSTRY-SPECIFIC LAWS AND REGULATIONS	
All home-based child care providers contracting with the city are independent contractors. That means the workers are not covered by most employment and labor laws. However, as described in the industry narrative above, the providers’ conditions of work are significantly shaped by the city agencies that set reimbursement rates. In our substantive (not legal) analysis, these workers are effectively in an employment relationship with the city agencies, and we evaluate their working conditions accordingly.	

COMMON WORKPLACE VIOLATIONS

Minimum wage & overtime	<p>Minimum wage: Legally-Exempt providers are often working for less than the minimum wage. For example, a full-time worker taking care of two children would earn a maximum of \$210 per week for 40 hours of work, or \$5.25 an hour. A part-time worker taking care of two children for three days would earn a maximum of \$150, or \$6.25 an hour. Rates can be lower, depending on the age of the children.</p> <p>Overtime: Lack of overtime pay is routine for both Legally-Exempt and Registered-Family providers, because neither is covered by overtime laws.</p>
Non-payment of wages	Common delay in payments (often as long as 6-8 months) due to administrative problems within city agencies (delay in payment is illegal under state and federal law).
Illegal costs	Workers often spend their own money for materials such as diapers, toys and snacks, but are not reimbursed even when such costs reduce wages below the required minimum and overtime rates (as would be required if they were covered by federal and state employment laws).
Meal breaks	Lack of meal breaks is common, especially when the provider is the only adult caring for the children.
OSHA	Registered Family providers receive the “Approved Medication Administration Personnel” (AMAP) health assessment training as part of their certification (and as required by OSHA). Legally-Exempt providers fill out a health & safety checklist when first contracted, but are not required to get the AMAP training unless they are providing care for children who take medications routinely.
Workers’ Compensation	When injured, home-based providers are not covered by workers’ compensation and must pay for hospital bills themselves and absorb the lost wages.
Retaliation & the right to organize	Independent contractors do not have a legal right to organize.

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

Sources: Original data gathered by authors during fieldwork from 2003 through 2006 in New York City, as well as the following secondary sources: Adams and Snyder (2003), Baran and Wasserman (2003), Burton et al. (2002), Child Care Inc. (2007), Colangelo and Wasserman (2003), Hakim (2006), Kaufman (2004), Mahoney (2005), National Center for Children and Poverty (1998), New York City Independent Budget Office (2005), New York State Department of Labor (2007b), New York State Department of Labor (2007c), Nyary (2004), Porter (1998), Robbins (2004), Stohr (2003), Wasserman (2003a), Wasserman (2003b), Wasserman (2003c).