

IX. THE GROWTH OF UNREGULATED WORK IN MAJOR U.S. CITIES

Unregulated Work and New Business Strategies in American Cities

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In America's urban labor markets, an entire set of jobs can be observed in which workers routinely endure violations of labor and employment laws. These include both jobs that *are* legally covered by employment and labor laws, but in which the laws are routinely violated, and jobs that *are not* legally covered by employment and labor laws, although there is effectively an employment relationship. In this paper, we report initial findings from an ongoing study analyzing the growth in jobs and work practices that are effectively beyond the reach of regulation—what we call “unregulated work”—in New York City and Chicago. We find that (1) unregulated work exists in a wide variety of industries; (2) unregulated work is the

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result of the interaction of supply-side and demand-side factors within a regulatory and institutional framework; and (3) workplace violations are fast becoming a fixture of the U.S. labor market.

Introduction

America's urban labor markets have undergone substantial changes in the last several decades. New forms of industrial organization, employment relationships, and institutions of labor market governance have combined to generate jobs and work practices that are effectively beyond the reach of regulation and public policy. In these jobs, workers routinely endure minimum wage and overtime violations, unsafe working conditions, discrimination, and retaliation for speaking up. They work in a variety of industries, ranging from construction, textiles and food manufacturing to grocery stores, restaurants, and janitorial services.

In this paper, we report initial findings from an ongoing study analyzing the growth of routine violations of workplace laws, resulting in what we call "unregulated work" in New York City and Chicago. Our definition of unregulated work comprises (1) jobs that *are* legally covered by employment and labor laws, but in which the employers routinely violate one or more of those laws, to the degree that violations become common practice in a given industry segment or for a particular occupation, and (2) jobs that *are not* legally covered by employment and labor laws, even though there is effectively an employment relationship and in which conditions of work consistently fail to meet one or more of the minimum standards of workplace regulation.

The data for this project include an extensive series of semistructured interviews in New York City and Chicago. Over a sixteen-month period, approximately 392 key informants were interviewed; informants included workers, employers, community-based organizations, union researchers, legal aid groups, policy advocates, governmental regulatory bodies, industry trade groups, and social service providers. Data are also being collected from industry publications, business associations, newspapers, and academic journals, as well as data on the industry composition and working population in each city.

Violations, Industries, and Workers

In our fieldwork we have identified violations of almost all employment and labor laws that govern the U.S. workplace: for example, paying workers less than the minimum wage; failing to pay overtime; failing to pay at all; requiring off-the-clock work; violating health and safety standards; failing to carry workers compensation; failing to pay unemployment and Social Security taxes; taking illegal deductions; not allowing mandated rest breaks; retaliating against workers trying to organize; and discrimination in hiring and firing.

We have also identified fourteen industry clusters in which unregulated work is common in one or both of the cities studied in this project, as well as the occupations most affected (Table 1). There is considerable variety in the types of employers engaged in workplace violations—the list is not limited to small firms or those competing on low costs, nor is it limited to certain sectors of the economy or particular product markets. It includes businesses that are very much above ground, part of the formal economy and sometimes part of large national corporations. Moreover, unregulated and regulated jobs often exist in the same workplace, with some occupations subject to violations and others insulated from them.

Immigrants constitute the largest workforce found in unregulated jobs, but there is considerable complexity here. Although undocumented immigrants and new arrivals are clearly the most vulnerable to workplace violations, we have also found legal immigrants and even second-generation immigrants in unregulated jobs. We have also seen two other groups of workers in unregulated jobs, though in much smaller numbers: ex-offenders and people coming off of welfare.

Our use of the term “unregulated work” should not imply that chaos reigns in this part of the labor market. In fact, we are finding a considerable amount of structure in how workers move between unregulated jobs. There is distinct industry- and occupation-based patterning to both horizontal and vertical worker mobility, as well as a range of labor market intermediaries helping to channel the flows of workers into and between unregulated jobs.

Methods of Regulatory Avoidance

A useful way of categorizing unregulated work is through the lens of employers’ growing search for lower wage and benefit costs and increased flexibility in when and how labor is deployed. Such strategies to “externalize” the costs and risks of front-line jobs in particular have been well documented in the firm restructuring literature (Osterman 1999; Appelbaum, Bernhardt, and Murnane 2003). In many ways, the workplace violations that we document in this research project are simply a logical extension of these restructuring trends—taken to the point of crossing the line into violation of core laws governing the workplace.

We have identified a spectrum of employer strategies that result in unregulated jobs, characterized by progressively greater legal and physical distance between the worker and the employer. At the beginning of the spectrum lie *in-house externalization strategies*, whereby employers effectively segment off a set of front-line jobs while keeping them inside the firm, subjecting them to workplace violations, and isolating them from better jobs higher up the ladder.

TABLE 1
Industries and Occupations with Workplace Violations in Chicago and New York City

Industry Cluster	Segments with Chronic Violations	Occupations Most Affected
Construction and landscaping	Private residential, private commercial, smaller public projects	Unskilled and skilled building trades; construction and maintenance landscapers
Food retail	Supermarkets, ethnic grocery, convenience grocery, “green” grocers, gourmet grocers	Cashiers, sales, stockers, bagging, deli/butchers, bakers, food preparation, cleaners, washing and sorting produce, catering, delivery
Retail (other than food)	Clothing, electronics, ethnic retail, general merchandise, street vendors	Sales, cashiers, stockers, security guards, drivers
Restaurants and food services	Family style (both independent and franchise), white tablecloth, street vendors	Wait staff, cooks, food preparation, bussing, dishwashing, cashiers, barbacks, bathroom valets, delivery
Domestic work	Families, agencies	Nannies (live-in and live-out), babysitters, elder care, housekeeping (full-time and per home)
Childcare	Publicly subsidized in-home	Childcare
Health care	Home health care, nursing homes	Home health aides, personal attendants, certified nursing assistants
Manufacturing	Food, apparel, plastics, personal care products	Machine operators, assembly, packing, sewing
Warehousing and logistics	Warehouses, storage	Loading/unloading, light assembly, packaging, moving
Laundry	Industrial laundries (linens, uniforms, hospitals), retail dry cleaners, dry cleaning plants, coin-op laundries	Machine operators, coin-op attendants, clerks, equipment cleaners, sewing
Building maintenance & security	Commercial (by building class), residential, industrial	Janitors, security guards, supers, custodians, maintenance
For-hire urban transportation	Yellow and livery cabs, black cars, dollar vans, patient transport vans	Drivers

TABLE 1 CONT.

Industries and Occupations with Workplace Violations in Chicago and New York City

Industry Cluster	Segments with Chronic Violations	Occupations Most Affected
Auto services	Parking lots, car repair, gas stations, car wash	Attendants, mechanics, cashiers, car wash workers
Personal services	Beauty salons, nail salons	Hair braiders, manicurists, masseuses

Further along the spectrum lie *subcontracting and contingent work strategies*, whereby the legal responsibility for front-line work is shifted to subcontractors or temporary agencies. These contractors are able to provide cut-rate services and products by violating employment and labor laws, with the original employer at least partly insulated from legal liability. Near the end of the spectrum is the practice of *misclassifying workers as independent contractors*. This strategy moves workers outside the reach of almost all workplace protections and therefore frees employers of most legal constraints. Finally, at the extreme pole of the spectrum lies a set of practices, *human trafficking and forced labor*, which clearly violate much more than employment and labor laws.

Demand-Side Explanations

Unregulated work in urban labor markets has to be understood in the context of the larger-scale forces that have constituted the global, and local, political economy in the past three decades. These forces are globalization, domestic economic restructuring, state retrenchment, and growing local demand for unregulated goods and services.

Globalization

In many trade-sensitive sectors of the economy, the need to compete with growing productive capacity in Asia and Latin America has meant significant downward pressure on the U.S. wage floor. For example, the garment industry is a classic commodity chain, in which price pressures emerge from the clothing retailers and consumers and get passed on to the manufacturers. Contractors and subcontractors in turn squeeze workers to produce at a cost that will allow them to earn a profit. Such squeezing yields the archetypal “sweatshops,” run by subcontractors at the bottom of the chain who have little negotiating power relative to the large retailers and manufacturers (Ross 2002). Workers are paid by the piece rather than by the hour

(thus, no overtime), and in the non-union factories wages average out to about \$2–3 per hour. Contractors have been defined as the employers, meaning that manufacturers are generally not held responsible for labor and employment law violations.

Domestic Economic Restructuring

Most of the industries in which we have identified unregulated work produce for domestic and often local consumption (Table 1). Nevertheless, even in these industries, which are somewhat sheltered from extralocal competition, there has been a clear shift over the past three decades toward the externalization of work and production as the outsourcing of work functions and various forms of subcontracting have become commonplace. For example, industrial laundries have grown dramatically in the past twenty-five years, a function of the contracting out of laundry services from institutions (e.g., hotels and hospitals) that previously did their own laundry. But the industrial laundries lack pricing power and control over the terms of contracting. Thus, despite growing capitalization in the industrial laundries (and the increased productivity that it has brought), such productivity increases have not kept up with declining prices paid by the hotels, hospitals, and restaurants. As a result, even though industrial laundries in Chicago and New York have relatively high union density, employment and labor laws are consistently violated in the industry (though less in union shops). Violations come in the form of the failure to pay overtime and exposure to harsh chemicals and extreme temperatures that violate the Occupational Safety and Health Act.

State Retrenchment

In several industries, the government has played a central role in unregulated work. In home health care and publicly subsidized childcare in particular, government policies are creating labor markets in which unregulated work is the norm. There is a gendered component to this process, because the work has historically been performed—usually unwaged—by women as care givers and providers for their households and communities. With the restructuring of the welfare state, these roles have become commodified at rates that often amount to less than minimum wage and in workplaces that are often outside of the legal regulatory framework. In both these sectors, there are severely inadequate and shrinking government funding streams—although that is clearly only part of the story. In addition, the government is engaging in precisely the same kinds of practices that private firms do to reduce labor costs and shift the burden of risk and uncertainty onto the workers. The public sector is subcontracting out its functions and (mis)classifying workers as

“independent contractors,” therefore both actively encouraging unregulated work (in home health care) and actually paying for unregulated work (in subsidized childcare).

Local Demand for Unregulated Goods and Services

The last set of drivers of unregulated work stems from the changing socioeconomic and demographic makeup of U.S. cities in the past quarter century. These “dual cities” are increasingly divided into professional class workers, who earn substantial wages but work long hours, and growing numbers of immigrants who provide many of the services on which the professional class depends (Mollenkopf and Castells 1991; Sassen 2001). A clear example is domestic workers: housekeepers and nannies are often paid by the week or month, overtime is unheard of, and minimum wage violations are frequent. In addition, the work is physically and emotionally exhausting, and the danger of sexual exploitation is real.

The flip side of the coin is that large numbers of immigrants working long hours for substandard wages creates a demand for super cheap goods and services, which in turn are often provided through unregulated work. An entire subeconomy emerges—ethnic foods and retail, dollar vans, informal child care, home-based hair salons—but the providers have limited pricing power, because of the systematically low earnings of much of their customer base. It is a reinforcing cycle: unregulated work creates more unregulated work, with immigrant entrepreneurs sometimes playing a key role as the employers who commit workplace violations.

The Role of Supply, Government Regulation, and Labor Market Institutions

Most analysts, when faced with evidence of growing workplace violations, invariably place primary emphasis on the role of immigration. Our preceding discussion tracing the demand-side correlates of unregulated work was therefore meant as something of a corrective. Yet it is undeniable that the influx of both documented and undocumented immigrant workers into the United States is a central supply-side factor contributing to unregulated work.

The sheer scale of numbers here is impressive. During the 1980s, 8.7 million immigrants entered the United States; during the 1990s, that number had risen to 13.2 million (U.S. Census Bureau 2004). An estimated 3.5 million undocumented workers worked in the United States in January 1990; by January 2000, that number had jumped to 7 million (U.S. Immigration and Naturalization Service 2004). Such a steady and growing supply of vulnerable workers clearly creates incentives for employers to cross the line into violating employment and labor laws. In our interviews, the lack of legal doc-

uments was a constant factor rendering immigrant workers effectively powerless to dictate any terms of employment. We also found, however, that because entry-level and less-skilled jobs in urban economies are the mainstay of employment for new arrivals, even documented workers can end up having to take unregulated jobs.

From the standpoint of this project, the important insight is that the labor market power of immigrants is profoundly shaped by U.S. immigration laws—which at this point are widely recognized as incoherent, on the one hand allowing workers into the country while on the other denying many of them legal status. In particular, the Immigration Reform and Control Act (IRCA) of 1986 marked a turning point, with the arrival of employer-based document verification, employer sanctions, and the heightened threat of Immigration and Naturalization Service raids and deportations (Massey, Durand, and Malone 2002). IRCA created incentives for employers to use cash payment, subcontractors, employee status misclassification, and other strategies to escape liability for hiring undocumented workers; it also greatly increased the power of employers over their undocumented workers. From the standpoint of workers, lack of legal status has increasingly meant lack of access to public services. Combined with the growing threat of deportation, the incentives to work on the books and pay taxes have been reduced. The bottom line is that governmental policy has been critical in shaping both the size and legal status (and therefore vulnerability) of immigrant workers in the domestic labor market.

But laws and labor market institutions have also played a role in other ways. Most directly, the United States is currently characterized by very weak enforcement of workplace regulations, both in terms of resources and in terms of will to enforce. In 2004, the federal Wage and Hour Division closed only 37,842 violation cases nationally—a caseload that could easily characterize New York City alone (U.S. Department of Labor 2004). And, just as the need for enforcement is rising, the resources are declining. Ross (2002) estimates that, between 1957 and 2000, the number of employees per wage-and-hour inspector rose from 46,121 to 139,872.

Conclusion

In sum, our research suggests that unregulated work is the result of the interaction of supply-side and demand-side factors within a regulatory and institutional framework that is conducive to workplace violations. But we have only begun to explore what is an enormously complex problem. Much more work is needed—on the causes of unregulated work, its prevalence and trends, and especially the legal and institutional forces shaping it. Still, everything we are seeing in our fieldwork, combined with what we know about

economic restructuring and declining regulatory capacity, indicates that workplace violations are fast becoming a fixture of the U.S. labor market.

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