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Make the Road New York

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Restaurant Workers in Crisis: A Report on the Unsafe, Discriminatory and Unfair Labor Practices that New York City's Workers Face Every Day

Abstract

[Excerpt] This report highlights the illegal and unfair practices of New York City's restaurant industry by reviewing recently published reports and sharing examples of the frequently illegal employment practices that New York's restaurant workers face every day.

This report concludes that the Responsible Restaurant Act (Intro 569), currently under consideration by the City Council, would help to improve restaurant practices by encouraging the city to license only responsible employers when issuing or renewing operating licenses. The Act is an important step for the City Council to take to ensure that our restaurants act responsibly and better protect workers.

Keywords

unfair labor practices, New York, illegal, employment, wages, restaurant workers, employers, workers

Comments

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RESTAURANT WORKERS IN CRISIS

A Report on the Unsafe, Discriminatory and Unfair Labor Practices that New York City's Workers Face Every Day



A report by:

Make the Road New York

February 2009

About Make the Road and This Report:

Make the Road New York is an organization comprised of more than 4,000 low-income and largely Latino/a members who catalyze broad city, state and national public policy reform from the ground up. Make the Road New York promotes economic justice, equity and opportunity for all New Yorkers through community and electoral organizing, strategic policy advocacy, leadership development, youth and adult education, and high quality legal and support services. Our Workplace Justice Project organizes immigrant workers to ensure respect for workers' legal rights and dignity, enforcement of labor laws, access to living wages, access to health insurance, and support for workers' right to organize in the workplace. In addition, our Legal Department has won over three million dollars in back wages for immigrant workers over the past ten years. This report details a few of the most egregious examples of abuse that we have seen in the restaurant industry through our organizing and legal work.

Executive Summary:

This report highlights the illegal and unfair practices of New York City's restaurant industry by reviewing recently published reports and sharing examples of the frequently illegal employment practices that New York's restaurant workers face every day.

This report concludes that the *Responsible Restaurant Act (Intro 569)*, currently under consideration by the City Council, would help to improve restaurant practices by encouraging the city to license only responsible employers when issuing or renewing operating licenses. The Act is an important step for the City Council to take to ensure that our restaurants act responsibly and better protect workers.

The Restaurant Industry and Its Practices:

New York City's restaurants form a significant part of the city's economy. The Restaurant Opportunities Center of New York (ROC-NY) estimates that the city is home to nearly 15,000 food and drink establishments, which employ more than 165,000 workers. As New York City has lost many of its manufacturing jobs and service industries, restaurants in particular have provided a greater share of the region's employment opportunities. Today restaurants provide more jobs in New York than construction, manufacturing, securities, real estate and hospitals.¹ This means that it is more important than ever that we ensure that the hundreds of thousands of New Yorkers working in restaurants receive adequate pay and healthy and safe working conditions.

Given the nature of the industry, it is apparent that this need will not be met without some action on the part of city government. Though restaurants remain profitable for many owners, over the past decade economic tightening as a result of 9/11 has forced restaurants to compete by cutting costs in any way possible. This trend will only become more apparent as restaurants cope with the increasing pressure of the economic crisis in New York City. In the face of these pressures, restaurants often cut costs by paying their workers less or making them work longer hours. Fifty years ago many restaurant workers were unionized, but now there is very little union presence to place an upward pressure on wages.² The result is that labor practices in many restaurants have gradually worsened and will continue to do so unless the city does something to protect restaurant workers.

¹ Restaurant Opportunities Center for New York and the New York City Restaurant Industry Coalition, *Behind the Kitchen Door: Pervasive inequality in New York City's thriving restaurant industry*, (June 25, 2005), (i).

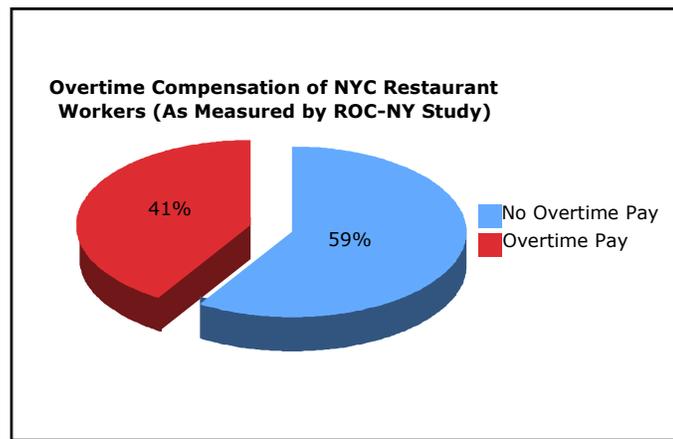
(<http://www.urbanjustice.org/pdf/publications/BKDFinalReport.pdf>).

² A. Bernhardt, S. McGrath and J. DeFilippis, "Unregulated Work in the Global City: Employment and Labor Law Violations in New York City," (*New York: Brennan Center for Justice, New York University School of Law*, 2007). (http://www.brennancenter.org/page/-/d/download_file_49369.pdf).

Many restaurant jobs provide very little pay and no benefits for grueling hours of strenuous work. Because most restaurants are understaffed, they require their employees to work longer shifts whether or not they are willing or able to do so. ROC-NY surveyed over 537 restaurant workers and found that only 13% of workers reported earning a living wage, defined as an hourly wage of more than one and a half times the federal minimum wage. 73% percent of workers reported not receiving any sort of health insurance from their employers.³

Treatment of these workers is similarly brutal. Over a third of workers responding to the ROC-NY survey indicated that they had experienced verbal abuse in the form of constant insults. And, in a disheartening indication of the sorts of abuses currently occurring within the industry, forty-four percent of those who reported experiencing this abuse said that they felt that their race had been a factor influencing how their bosses had treated them.⁴

But restaurant practices are not only unfair; they are often illegal. ROC-NY's survey found that around 13% of the City's restaurant workers are paid below the State's minimum hourly wage and as many as 59% of restaurant workers are not compensated for overtime work as mandated by law.⁵



Evidence gathered by the Economic Justice Project of the Brennan Center confirms that both restaurant owners and restaurant workers recognize the ubiquity of illegal practices. Some restaurateurs interviewed by Brennan admitted that in many restaurants "there is no such thing as overtime," and interviews with employees revealed similarly dire situations. Many

³ ROC-NY, 11-12.

⁴ ROC-NY, 37.

⁵ ROC-NY, 15.

employees reported not just low wages and a lack of overtime but also that they had often gone weeks at a time without receiving any wage whatsoever.⁶

Furthermore, there is evidence that restaurants are frequent violators of federal and state worker safety regulations. Forty-five percent of workers participating in the ROC-NY survey reported that the kitchens in which they worked were unsafely hot, and 29% indicated that they had done something at work that put their own safety at risk.⁷

These unsafe, unfair and illegal practices disproportionately affect immigrant workers who, according to the 2000 census, make up about two-thirds of the industry's workforce.⁸ These workers are more likely than native-born workers to work in dangerous and low paying jobs like dishwashing or bussing and often find it difficult to move into better jobs (e.g. waiter and bartender) where working conditions are safer and pay is higher. Both the ROC-NY and the Brennan Center reports highlighted widespread and often illegal racial and ethnic discrimination as barriers facing immigrant and minority workers in seeking these better jobs.⁹

⁶ Brennan Center (The Economic Justice Project of the Brennan Center is now part of the National Employment Law Project), 54.

⁷ ROC-NY, 15.

⁸ ROC-NY, 33.

⁹ Brennan Center, 56; ROC-NY, 33.

Restaurant Workers in Crisis: Recent Cases in New York City

Make the Road New York members frequently suffer from these unfair and illegal practices. The following are a sampling of cases the organization has encountered over the course of the past few years.

Most cases involve restaurants underpaying their workers or not paying overtime. In New York State, food service workers receiving tips must be paid \$4.60 an hour, but if total pay, including tips, does not equal at least the state minimum wage of \$7.15 an hour, employers must make up the difference. Whether employees are tipped or not, all employers must pay time and a half for hours worked beyond forty hours a week.¹⁰

What is most striking about many of these stories is the contrast between a restaurant's image and the abuses that it commits against its workers. Many of these restaurants are upscale and reviewed highly. They sell expensive wines and serve fancy appetizers. And yet, simultaneously and unbeknownst to the New Yorkers that frequent them, many restaurants pay less than the minimum wage or refuse to pay overtime as mandated by state labor laws.

To bring this juxtaposition to life, this report provides examples of how these restaurants represent themselves to potential customers alongside stories about their labor abuses. The intent is to highlight the fact that the world-renowned New York City restaurant scene thrives on the backs of workers who are overworked but underpaid and underappreciated. What's important about these stories is that they illustrate that these abuses exist in all kinds of restaurants: trendy music spots, traditional Italian, organic restaurants, and everything else in between.

¹⁰ Brennan Center, 56.

Not Music to His Ears

Sounds of Brazil, or S.O.B.'s, was created in the early '80s in order to "expose the musical wealth and heritage of the Afro-Latino diaspora."

S.O.B.'s is still a popular venue for up-and-coming and mainstream artists,



and it gives itself credit for helping to create the SOHO music scene.¹¹ S.O.B.'s never paid one of its employees overtime even though he worked 50 to 60 hour weeks. When the employee and his co-workers complained about the lack of overtime, their boss told them that there was no overtime pay in the

restaurant industry and then lowered their pay to \$380 per week in retaliation. S.O.B.'s then fired the employee for filing a workers' compensation claim for an on-the-job injury.

Delivering Injustice

A famous casual Manhattan restaurant paid its delivery workers between \$2.50 and \$3.33 per hour to make deliveries on their bikes at a frantic pace throughout downtown Manhattan. Although employees routinely put in over 60 hours of physically exhausting work per week, they never received overtime compensation. Make the Road New York and MFY Legal Services helped these workers sue the restaurant to win close to half a million dollars in back wages and damages.

Stuy-Town Pizzeria Pays Less than 1/3 Minimum Wage

Adriatic Italian Restaurant paid Antonio and other workers \$30 or less a day to work as many as 13 hours a day delivering pizza, stocking inventory, and cleaning the restaurant. Though his hourly wage of \$2.30 was well below the legal minimum and he never received compensation for overtime, Antonio had no idea that he was being treated illegally until he spoke with organizers and attorneys at Make the Road New York. Make the Road New York and MFY Legal Services are helping four workers sue Adriatic for nearly a million dollars in back wages and damages.

¹¹ "Fast-forward 25 years to New York City, 2008 and the SoHo scene that S.O.B.'S helped to create." SOB's Homepage, <http://www.sobs.com>.

Organic Food Restaurant Mistreats Workers

A popular East Village vegetarian restaurant paid one worker barely minimum wage to work weeks as long as 90 hours, and never compensated him for overtime work. Another employee worked in the restaurant's kitchen every Saturday and Thursday but never received any pay at all. With the help of Make the Road New York, the two recently settled their lawsuit for tens of thousands of dollars in back wages owed.

Home of Reuben Sandwiches and Worker Mistreatment

A well known deli in Manhattan paid Jose only \$250 per 78-hour work week, a total of about \$3.20 an hour without any overtime compensation. Jose took the job because he thought he would receive more money in delivery tips, but his supervisor made him spend the majority of his time cleaning the restaurant.

Ground Round Grinds Down Its Workers:

Ground Round in Flushing, Queens never paid one of its employees overtime even though he worked up to 53 hours per week. The restaurant paid him more than \$5000 in back overtime wages and damages only after Make the Road NY threatened to sue.

Overtime with That Pizza?

A pizzeria in Brooklyn never paid Luis and other workers overtime, despite the fact that the workers often worked ten to twelve hour shifts on their feet without breaks. When Luis finally stood up for his rights and approached Make the Road New York for help, his employer fought back. He approached a local priest whose congregation had benefitted from the employer's donations and pushed the priest to talk Luis out of a lawsuit. With the support of Make the Road New York, Luis finally remedied this wage theft, collecting over \$30,000 in unpaid wages and damages.

Below Minimum-Wage Pay in Times Square

Trattoria Pesce Pasta, an upscale Italian restaurant serving the pre-theatre crowd around Times Square, paid Rodrigo a flat rate of \$500 per week to work 55 hour weeks. Though Trattoria sells entrees for over \$20 a plate, the restaurant never compensated Rodrigo for his overtime work and never paid him at all for the last two weeks of his employment. Recently, the

State Department of Labor helped Rodrigo and some of his coworkers secure a settlement from Trattoria for over \$130,000.

Michelin-Starred Chef but Little Pay for Workers

According to a Daily News review, the Athens Tavern is owned by a former waitress who hired a Michelin-starred chef from Greece to run the restaurant's kitchen. Athens Tavern, a Greek Restaurant in Astoria, paid Maria and Fidel \$350 to work 48 hour workweeks without ever compensating them for their overtime work. Athens also refused to pay them for the last two weeks of their employment.

Long Weeks without Much Pay at Popular Diner Chain

A chain of Manhattan diners never paid their kitchen workers for their overtime work even though they both regularly worked between 55 and 60 hours per week. Make the Road New York represented two workers in federal litigation that settled for \$70,000 in unpaid wages and damages.

Recommendations:

These stories illustrate the dire conditions that restaurant workers face across the city. Though some restaurant employees may find justice, countless others will continue to toil under illegal conditions.

The city, state and federal government plays an important role in shaping the work environment for restaurant workers. The city can issue or deny permits and licenses. The state and federal government can regulate wages and benefits. Ideally, the resources of public agencies at all levels of government should be directed towards supporting reputable establishments that provide good, family-supporting jobs and raising the bar for treatment of restaurant employees throughout industry. Our recommendations to begin to improve the situation are as follows:

1. Pass the Responsible Restaurant Act in the New York City Council

The *Responsible Restaurant Act* would stop unscrupulous employers from making a practice of violating the law, hurting restaurant workers and law-abiding restaurant employers alike. The Act would give New York City more tools to ensure that all of the restaurants doing business in the city are in compliance with labor laws.

2. Enforce “good character” clauses when granting permits and licenses to restaurants

The New York City Department of Health and Department of Consumer Affairs -- which grant operating permits and cabaret licenses to businesses, respectively -- must certify that business owners seeking permits and licenses have “good character,” i.e. meet baseline ethical standards for doing business. The New York State Liquor Authority also has the discretion to deny liquor licenses on this basis. However, these agencies, rarely, if ever deny licenses for this reason. Flagrant and repeated disregard for state and federal labor law should constitute a violation of the “good character” provisions of licensing agreements between agencies and businesses. These agencies should use their discretionary power to ensure that law-abiding restaurant owners are not undercut by unprincipled competitors.

3. Increase resources for enforcement of state and federal labor laws

To its credit, the New York State Department of Labor has devoted significant resources to improving enforcement of wage and hour laws over the past several years. Low-wage and immigrant workers have benefitted enormously as a result. But much more is still to be done. Hiring more investigators and other staff would relieve an overburdened system and shorten the time that it takes for workers to resolve their cases. Help from the Federal Department of Labor would also support these efforts and elevate the profile of these cases.

4. Pass the Employee Free Choice Act

Currently, unionization in the United States is at a historic low. Supported by a bipartisan coalition in Congress and millions of workers around the country, the *Employee Free Choice Act* would level the playing field and put the power to choose a union back where it belongs—in the hands of workers. It will restore workers' power to bargain for a better life, rebuilding the middle class and strengthening the economy for the long term.

5. Protect the right to organize of undocumented immigrants

U.S. Immigration and Customs Enforcement (ICE) should refrain from conducting raids in workplaces where there are on-going union organizing efforts. These raids create a climate of fear and intimidation in which immigrant workers are afraid speak out about violations of the law by their employers.

Improving Conditions:

While many restaurants of every type in every neighborhood in the City mistreat their workers, there are many other restaurant owners who do play by the rules and treat their workers well. "Behind the Kitchen Door" found that restaurants can maintain profitability while taking the "high road" of paying their employees well and keeping good working conditions. The problem is that other restaurants' decision to take "the low road" has made it more difficult for socially responsible restaurateurs to compete.¹²

In the face of rising restaurant costs, this race to the bottom will likely intensify. Though some laws are currently in place to protect workers, increasing financial pressures on restaurants and insufficient employment law enforcement mean that a significant percentage of restaurants will continue to break labor laws, thereby putting pressure on other restaurants to do the same. By passing the Responsible Restaurant Act, the city would send a powerful message to restaurant owners that they cannot treat their workers in a way that breaks the law.

¹² ROC-NY, (i).