

EQUALITY WORKS:

PROTECTING LOW-WAGE WORKERS

IN THE STATE OF MARYLAND



A Study Conducted by the Maryland Latino Coalition for Justice

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About the Author:

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DEDICATION



Equality Works is dedicated to the memory of Michael Barrios. Michael was a 15-year old worker who died on May 18, 2004, after falling into a mulching machine while performing landscaping work in Potomac, Maryland. His employment in landscaping at that age violated child labor protections and revealed fault lines in a school registration system that leaves children locked out of school with few alternatives other than abusive employment. Investigations continue into employer and manufacturer liability for Michael's death. Prior to Michael's accident, CASA of Maryland represented other workers in recovering unpaid wages against the same company, Maryland Landscape and Design, Inc., and its owner, Paul Saiz.

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Executive Summary

Maryland's high rate of economic growth presents a great opportunity to develop policies to ensure that all Maryland workers benefit. The high number of people working at low-wage jobs and the rate of growth among those jobs underscores the need for strong and strategic workforce development and a suitable economic system that will lift low-wage workers out of poverty. ***Equality Works*** is designed to inform policymakers about the working and living conditions of low-wage workers through the eyes of Maryland workers and to present the policy changes recommended by Maryland's low-wage community.

Low-wage workers are vulnerable in many industries across the state—including farming and food processing plants, where the work is notoriously difficult and ill-paid. During the Maryland Latino Coalition for Justice's annual meeting in the summer of 2003, domestic workers, day laborers, office cleaners, restaurant, construction, and landscaping workers, as well as others, committed to creating a better life for themselves and their families by launching the Maryland Equality Works Campaign.

This campaign seeks to fundamentally address the stagnant wage growth and exploitative practices faced by low-wage workers in Maryland. The first phase of this campaign (fall 2003 - winter 2004) focused on gathering input from low-wage worker communities from across the state to determine the workers' priorities. The second phase of this campaign will focus on legislative reforms based on the workers' recommendations.

During this study, participants described and collected testimony regarding unfair or illegal treatment of low-wage workers by employers. The testimony collected from low-wage workers across the state reveals that, despite the value of their work, low-wage workers suffer from repeated and sometimes extreme exploitation at the hands of employers. Reported cases of nonpayment of wages, as well as minimum wage and overtime compensation violations, were common. Workers also reported not being paid for all the hours they worked or being paid less than the agreed-upon wage. Furthermore, workers reported regular injury from dangerous conditions and discriminatory practices on the part of employers in Maryland. Perhaps most importantly, workers described the impossibility of surviving in today's economy on the wage levels considered legally adequate under federal law.

Key Recommendations by Maryland Low-Wage Workers:

- A. Set Maryland's Minimum Wage to \$6.15 an hour in October 2005, to \$7.15 in October 2006, and then annually increase the wage rate by the rise in the Cost of Living Index. Maryland currently tracks the Federal minimum wage law of \$5.15. Fifteen states, including Delaware, and the District of Columbia have set higher minimum wages to address poverty among workers.

- B. Establish daily overtime rates in addition to weekly overtime. The current federal and Maryland overtime rates are based upon a 40-hour workweek. On the other hand, the overtime law in the state of California is more favorable for workers. For example, California mandates 1.5 times the regular pay rate for hours worked over 8 and double time for 12 or more hours worked in any one day.
- C. Improve workers' protections through stronger civil and criminal penalties, increased government enforcement, and suspension of business or occupational licenses of employers who are found to have failed to pay their workers, take their working hours away, discriminate in any manner or take adverse action against any person in retaliation for exercising rights.
- D. Require licensure of day labor agencies and employers who hire day laborers.
- E. Require employers to pay day laborers at the end of each workday if the job lasts less than one week, and at the end of each week if the job lasts between 7 and 14 days.
- F. Hold property owners and general contractors legally responsible for paying the wages of subcontractors' workers.
- G. Improve enforcement mechanisms to create healthier and safer jobs by making the employer responsible of maintaining a safe workplace.
- H. Improve employer-provided instruction and information about safety hazards and create a private cause of action for MOSH violations.
- I. End verbal, physical, and sexual abuse and harassment on the job through increased penalties.
- J. Increase state funding for adult education to provide economic advancement opportunities to low-wage workers.
- K. Create rest breaks requirements of 10 minutes for every two hours of work and a 30-minute meal period for those who work at least 5 hours in one day.
- L. Prohibit employers from charging employees for uniforms.
- M. Increase bilingual enforcement personnel at state agencies in compliance with the Equal Access to Public Services for Individuals with Limited English Proficiency Act, MD CODE ANN., State Gov. §§ 10-1101 - 10-1104.
- N. Create better transportation options for low-wage workers through greater investment in public transit and by allowing those who are not able to adjust their immigration status yet to obtain driver's licenses.

- O. Obligate employers who hire workers at labor centers to return the worker to that hiring place at the end of the workday so the worker is not abandoned far from public transportation.
- P. Require employers to provide to workers the location of work sites, disclosure about the type of job to be performed, job conditions, and employer identity.
- Q. Hold employers that engage in retaliatory actions liable for \$1000.00 for each violation and empower the attorney general or other official designated by the state legislature to bring a civil action to enforce anti-retaliation law.
- R. Make non-payment of wages a felony rather than a misdemeanor; employers who do not pay wages should go to prison and be held liable for a penalty of up to 30 days' wages and fringe benefits for dishonored wage checks.
- S. Amend Maryland's wage payment statute to say "any individual," instead of "an employee," so that bad actors cannot artificially avoid liability for wages owed to day laborers.
- T. Increase funding and personnel for state investigations of wage violations.
- U. Utilize the unemployment fund to compensate leave available through the Family and Medical Leave Act, which allows eligible women and men who work for employers with 50 or more employees to take up to 12 weeks of leave each year for certain family and medical purposes.

I. INTRODUCTION

Equality Works illustrates the genuine working conditions of low-wage workers in the State of Maryland. They are women and men for whom the American Dream remains out of reach. They are citizens, legal residents or undocumented workers who struggle to pull themselves and their families out of poverty through work. They are often perceived as ignorant about their workplace rights and fearful of reporting abuses. Their labor maintains our local economies and permeates each sector of our society. Most important, they are hard working people who are eager to collaborate to create policies and practices that can make a real difference in their ability to support their families, choose their futures, and contribute more fully to society and the economy.

Maryland now ranks tenth among states of intended residence by immigrants admitted to the country and is also considered one of the most diverse states in the entire nation. Ten percent of Maryland's 5.5 million residents are immigrants and, according to the 2000 U.S. Census, 34 percent of these immigrants are from Latin America; the majority are from El Salvador, Mexico and Guatemala. Immigrant workers are especially highly represented in the fields of private household services, farming, and construction. However, this hiring surge has not translated into wage growth. Weekly earnings for most workers, especially immigrants, remain stagnant, or have actually decreased as the cost of living has increased.

At the 2003 Annual Meeting of the Maryland Latino Coalition for Justice (MLCFJ), a nonpartisan organization that promotes and advocates the human rights, civic participation, and the wellbeing of the Latino community in the State of Maryland, hundreds of Latino community members voted to begin work on a multi-year campaign to fundamentally address the stagnant wage growth and other exploitative practices faced by low-wage employees in Maryland. To begin efforts to pass such reforms, the MLCFJ embarked on a grassroots research project to gather information from various low-wage industries, ethnic communities, unions, and faith organizations and to create a reform package tightly tailored to redress those harmful working conditions and poor wages that most acutely affect low-wage earning Marylanders.

According to the Urban Institute,¹ low-wage work now affects greater proportions of the population than ever before. For example:

1. One in three low-wage workers lives in a low-income family—that is, a family whose annual income is at or below 150 percent of the federal poverty level.
2. Nearly one in five low-wage workers lives in a low-income family with children.
3. Almost one in six low-wage workers is an unmarried mother.
4. Nearly one in four low-wage workers is foreign-born, and one in five is a non-citizen.

5. One in three low-wage workers in low-income families earns all or most (over 50 percent) of the family income.

The Job Opportunities Task Force² reported in October of 2004 that more than 384,000 Marylanders hold jobs that pay less than the federal poverty wage for a full-time worker in a family of four. Nationwide, in 2003 low-wage jobs grew. Of the 1.5 million jobs added since August 2003, 203,000 were in the economy's temporary help service sector, according to the U.S. Bureau of Labor Statistics.³ Temporary help services, such as nursing assistants and security services, grew by 9 percent while the number of overall jobs grew by just 1.2 percent. During that period, durable goods manufacturing gained 63,000 jobs while nondurable goods lost 89,000 jobs. By comparison, the manufacturing sector, which generally pays higher wages, has lost 2.7 million jobs since January 2001.

During this study, participants described unfair or illegal treatment of Latinos and immigrants by employers. For example, low-wage workers in rural Maryland stated that they are consistently exposed to toxic pesticides in the fields and endure unhealthy and squalid labor camp housing.⁴ Low wage workers that hold jobs in poultry processing plants throughout the Eastern Shore experience poor working conditions and are routinely targets of discriminatory treatment, including verbal abuse, harassment, and lack of promotions.

Job growth has occurred in areas requiring higher education levels and technological skills as well as in low-skill areas at the lower end of the wage scale. These trends have led to an increasing gap between the highest and lowest wages for all workers, as well as to a precarious increasing distance between rungs in the job development ladder. The Economic Policy Institute states, "recent technological change has favored the more skilled over the less skilled. Bureau of Labor Statistics projections show that the fast-growing occupations within most industries are those requiring high levels of education and skill. Economists have also found evidence of a positive association between simple measures of technological progress and the rate of change within industries in the pay premium received by skilled workers."⁵ In essence, faster technological change is associated with increasing pay differentials between highly educated and skilled workers and those who lack professional skills. Nearly three in ten low-wage workers are high school dropouts, in contrast to less than one and a half in ten of the workforce as a whole, according to the Urban Institute.

Equality Works is based on the results of townhall meetings across the State of Maryland from the fall of 2003 through the winter of 2004. The testimony collected from low-wage workers across the state reveals that, despite the value of their work, low-wage workers suffer from sometimes extreme exploitation at the hands of employers. The testimony also reveals the inadequacy of current labor protections and enforcement – in short, worker after worker reported that current wage and benefit conditions constrict workers to a life of unending poverty.

Immigration status, language skills, and membership in a class historically discriminated against (such as on the basis of race and gender) all inflate the already troubling conditions facing low-wage workers. In 2002, 34.6 million working Americans and family members were living below the poverty line, according to the U.S. Census Bureau.⁶ Today, 40 million workers are managing to stay just above the poverty line but have serious trouble paying their rent, buying health insurance or providing food for their families.⁷ Broad consensus exists among studies that low-wage workers are disproportionately female, minority, and lack a high school education.⁸ Consistent with these findings, low-wage workers are also much more likely to live in households with children, that are headed by single females, that contain fewer adults, and that have fewer secondary workers.⁹ Despite widely accepted perceptions to the contrary, barely a quarter of minimum wage earners are teenagers and only twelve percent are teens from families with above average incomes.¹⁰ Moreover, due to sexual orientation discrimination, lesbians earn up to 14% less than their heterosexual female peers with similar jobs, education, age and residence.¹¹

Inadequate access for workers to file complaints with government agencies such as the Workers' Compensation Commission; the Department of Labor, Licensing, and Regulation; and the Maryland Department of Agriculture in the multiple languages spoken by the state's low-wage workforce creates a free pass for bad-acting employers. The undocumented immigrant population in Maryland, estimated at approximately 150,000, face high risk for poor employment.¹² Many employers rely upon undocumented immigrants' labor and view such workers as dependable and hard working. Indeed many immigrants accept jobs that require lots of physical work with long hours involved¹³. For example, many industries, such as farming, that require 12-15 hours a day in hot, dry fields and many pay below minimum wage, are dominated by immigrants.

According to The State of Working America,¹⁴ a comprehensive analysis of the increasing impoverishment of low-wage workers, published by the Economic Policy Institute, the low-wage service sector now accounts for 83.8% of all new jobs in the U.S. Among unskilled workers, real wages have decreased 17% over the last 20 years. In Maryland, an estimated 275,000 workers earn at or near the minimum wage, and thus are working and poor. Nationwide statistics indicate that a majority of these workers are women and immigrants. Women comprise 62% of the low-wage jobs, while only 44.5% of Latino men, and 53.5% of Latina women earn above poverty-level wages. Most recent OSHA statistics reveal that Latino workers nationwide are the most likely to be injured and die on worksites.

While worker exploitation exists across the state, the crisis is particularly acute on the Eastern Shore, where the density of Latino and Haitian workers in the poultry industry results in extraordinary levels of repetitive motion injuries and stagnant wages. State resources dedicated to stamping out workplace abuses are under-funded and scant at best. A coordinated effort among state agencies, including law enforcement; the Department of Labor, Licensing and Regulation; the Maryland Human Relations; the Workers' Compensation Commission; and

the Pesticide Enforcement Board of the Maryland Department of Agriculture, among others, is required to reduce workplace injury and other abuses.

Immigrant workers who are undocumented (or perceived to be undocumented) reported that employers regularly threaten to call the immigration enforcement authorities. The workers also reported that they typically avoid wage enforcement agencies because they are unsure whether their information will be provided to the United States Citizenship and Immigration Services (formerly the Immigration and Naturalization Service or INS).

Unions have been an important way for low-wage workers to gain a voice at work.¹⁵ Union members have a say about pay, benefits, working conditions and how their jobs get done. They join together to achieve better wages, better benefits, respect on the job, and a stronger voice in workplace decisions.¹⁶ A union's major goal is to give workers a collective voice on the job for respect, safety, security, better pay and benefits, and other improvements to working conditions. Unfortunately, according to the U.S. Bureau of Labor Statistics (BLS),¹⁷ in 2004, 12.5 percent of wage and salary workers were union members, down from 12.9 percent in 2003. The union membership rate has steadily declined from a high of 20.1 percent in 1983, the first year for which comparable union data are available. Workers' rights to organize are routinely violated by employers throughout the country through both legal and illegal means. Employers commonly threaten to close plants and threaten to call immigration agents on undocumented workers. A small, but sizable minority of workers, moreover, are not covered by the National Labor Relations Act and thus do not even enjoy the formal legal right to organize and bargain collectively.¹⁸ In this context, state government policy has to take a greater responsibility for upholding and enhancing labor standards and protecting workers' rights.

II. METHODOLOGY

The information in this report was gathered at townhall meetings conducted in the Fall of 2003 to collect data on problems facing low-wage workers and to determine, together with workers, what should be done to address these problems. The meetings lasted for three hours each and were conducted in Baltimore, the Eastern Shore, and in Langley Park on the border of Prince George's and Montgomery Counties. Participants included members of the African, African-American, Haitian, and Latino communities. The meetings were held in English, Spanish, and Haitian Creole and at least forty workers participated in each session (see Appendix A for minutes).

The interactive agenda of the meetings was divided into four sections:

1. Identification the problems facing workers

Participants were divided into six subgroups. Each subgroup put together an analytical puzzle that required writing down their thoughts about the image on the puzzle as it relates to their working and living conditions.

Each subgroup answered three questions:

- What problems do they see in the puzzle?
- Have they experienced these problems?
- What other problems do they see at work?

2. Presentations of the subgroups on their findings in section one and group discussion.

3. Explanation of the legislative process in Maryland and the Equality Works Campaign:

Subgroups came together again to learn about the legislative process and how they, as an organized community, can impact the political process to achieve a safe and just working environment through the Equality Works Campaign.

4. Brainstorm analyses: What would the group do to win the Equality Works Campaign in Maryland?

At the end of the townhall meetings, all the information was compiled into a preliminary draft of this report, which was then presented once again to participating worker organizations and approved by their participants. The author kept on file the minutes of each townhall meeting; they could be provided if requested.

III. FINDINGS & RECOMMENDATIONS

1. Low Wages, Increase the Minimum Wage to \$6.15 in October 2005, to \$7.15 in October 2006, and then annually increase the minimum wage by the rise in the Cost of Living Index.

Stagnant or declining wages was the main concern for the participants of this report. All participants felt that work should be a bridge out of poverty. Most participants described working long hours each week yet having insufficient funds to pay for their housing and food needs. Others reported an inability to find consistent fulltime employment. Everyone felt that wage rates should reflect both the level of skill and the degree of difficulty or danger involved in the job as well as the economic reality in our society. Workers reported that they had little hopes of advancing to higher paid job occupations due to lack of training opportunities. All workers agreed that it was vital to improve the wages at their current jobs.

Highlights from Participants:

- We work hard and we are underpaid
- Need to increase pay
- The pay that we get is not enough to meet basic human needs or buy all the things that we need.
- Undocumented immigrants get paid less than minimum wage
- If you are undocumented, employers pay you in cash and they decide to give you whatever they want. Because you are not able to obtain other work

Analysis:

One reason for the poverty among workers is the eroded value of the minimum wage in Maryland. The current minimum wage of \$5.15, by itself, is insufficient to move families to an income level that brings economic self-sufficiency. For instance, a full-time job at the state's minimum wage of \$5.15 an hour pays less than \$10,000 a year.¹⁹ The inflation-adjusted value of the minimum wage is 24 percent lower today than it was in 1979. If the wage had just kept pace with inflation since 1968 when it was a \$1.60 an hour, minimum wage would be \$8.46 an hour in 2003.²⁰ Today, the minimum wage is only 65 percent of its 1968 value; the average real value of the minimum wage from 1960 to 1980 was \$6.83.²¹

By law, states are allowed to establish their own minimum wages and regulations and if that rate and those protections are higher than the federal minimum wage, the higher rate and level of protections prevails. In that spirit, several states have recognized that the value of the federal minimum wage has declined and have taken steps to ensure that the minimum wage in their state continues to be meaningful. Every year, state legislatures consider minimum wage increases. On November 2, 2004, voters in Florida passed an amendment to the Florida Constitution establishing a minimum wage of \$6.15 per hour, instead of the

current \$5.15 hourly minimum. Every Sept. 30th, the Florida minimum wage would be raised to account for the previous 12 months of inflation, meaning an automatic cost-of-living adjustment. Meanwhile, the minimum for waiters and other tipped employees, \$2.13 an hour, would rise to \$3.13 an hour, also with annual inflation adjustments.²²

In 2002, legislatures in Alaska and Connecticut voted to raise their states' minimum wage above the federal level, as did voters in Oregon who passed a ballot initiative boosting that state's minimum wage. Currently, fifteen states and the District of Columbia have minimum wage rates higher than the federal standard.

States with wages above the federal minimum wage:

- Alaska - \$7.15
- California - \$6.75 (\$8.50 in San Francisco for people who work more than 2 hours a week).
- Connecticut - \$7.10
- Delaware - \$6.15
- District of Columbia - \$6.60 *In January 1, 2006, the minimum wage will increase to \$7.00 per hour.*
- Florida - \$6.15 *effective May 2005.*
- Hawaii - \$6.25
- Illinois - \$6.50
- Maine - \$6.35
- Massachusetts - \$6.75
- Nevada - \$6.15 *if approved again in 2006, it will go into effect in 2007. Beginning in 2008, the minimum wage would go up each year with a cost of living increase. This increase will be based on the Consumer Price Index and could be no more than 3% per year.*
- New York - \$6.00 *Then \$6.75 effective on Jan. 1, 2006, and \$7.15 on Jan. 1, 2007.*
- Oregon - \$7.25
- Rhode Island - \$6.75
- Vermont - \$7.00
- Washington - \$7.35

As described by the Economic Policy Institute,²³

- Minimum wage increases are well targeted in the sense that 63% of the gains from a dollar increase in the minimum wage would be expected to accrue to working households in the bottom 40% of the income distribution.
- Of the 8.4 million workers (age 18 to 64) whose wages and incomes would increase with a \$1.00 raise in the minimum wage, 2.7 million (32%) are the parents of 4.7 million children. Of the 2.7 million parents who earned at or near the current minimum wage in 1999, 63% had family incomes below \$25,000.

- Most minimum wage workers are adults (71%), age 20 and up. Women and minority workers are over-represented among the minimum wage workforce. Slightly less than half (48%) of the minimum wage workforce are full-time workers.

The role of the minimum wage is important because low-wage workers have historically had the least bargaining power in the U.S. workforce. The testimony of the participants of this study shows that economic gains for low-wage families are the result of working more hours rather than from improvements in occupations and wages. Consequently, many low-wage families remain extremely vulnerable financially, have little savings, few assets, and work in jobs without healthcare and other benefits and long-term security.²⁴ For the welfare of low-wage workers and the economic sustainability of the state, we recommend an increase of the minimum wage rate in Maryland to \$6.15 in October 2005, to \$7.15 in October 2006, then annually increase the minimum wage by the rise in the Cost of Living Index.

2. Overtime Wages, Protections of Hours Worked

Participants described that current overtime laws provide insufficient protection. Workers described working fewer than forty hours per week, yet working two eighteen hour days in a row. Participants also reported a need to create a mechanism that will keep track of each working hour because their employers often cheat them by misrepresenting their hours of work. Participants in this study agreed that the illegal doctoring of hourly employees' time records is prevalent as is the phenomenon of paying straight time for all hours worked, including overtime hours, particularly among subcontractors at larger construction sites.

Highlights from Participants:

- There is no overtime pay, even when we work over 10 hours a day.
- We want to have more protection at work against our employers. Some times they cut the number of hours that we have worked.
- Employers don't always pay us for all of our work. We have problems getting paid by the contractors.

Analysis:

Federal law requires that overtime must be at least one and one-half times the regular rate of pay.²⁵ Maryland law in large part replicates federal protections.²⁶ Neither the Fair Labor Standards Act (FLSA) nor the Maryland Wage and Hour Act require that the overtime premium of 1.5 times the regular wage be paid for hours worked in excess of eight hours per day or on weekends or holidays.²⁷ Instead, both set a workweek standard for calculating overtime compensation. However, states are permitted to provide workers greater overtime protections than those offered by Congress, as the state of California has demonstrated.

California mandates 1.5 times the regular pay rate for hours worked over 8 each day and double time for 12 or more hours each day.²⁸ Alaska, Colorado, Nevada, Puerto Rico and the Virgin Islands,²⁹ have a daily overtime standard, which means that covered employees are entitled to overtime payment for every hour more than 8 worked in a day and every hour more than 40 worked in a week. The State of Maryland should pass legislation to mandate 1.5 times the regular pay rate for hours worked over 8 each day and double time for 12 or more, both in any one day.

The protection of all working hours is vital for low-wage workers. Overtime lawsuits are on the rise in the United States, partly because older laws need modernization to today's work environment, and partly because employers are forever trying to stretch productivity.³⁰ Some employers exploit loopholes in the overtime laws or are just plain naive about them; others knowingly violate the laws to their advantage by misclassifying employees, either in categories that are exempt from the overtime requirements or as independent contractors. Finally, the practice of misreporting actual hours worked is easily done and hard to detect and has spurred a growing number of lawsuits and settlements against a wide range of businesses.

An example of these practices are the lawsuits in New York and Washington that charge that Wal-Mart, the largest private employer in the United States, has systematically avoided paying employees their full, earned wages.³¹ The workers' allegations include that Wal-Mart provided perverse incentives for managers to lower overhead costs, the largest component of which is employee payroll, by offering financial compensation and bonuses. According to the workers, managers typically under-staffed projects and stores in general. They pressured employees to complete assignments, while refusing to permit employees to stay on-the-clock for the full amount of time it takes to accomplish their duties. Workers also allege being forced to work off-the-clock and through lunch and rest periods.

At the federal level, the overtime law is enforced by the Wage and Hour Division of the U.S. Department of Labor.³² Employers can be criminally prosecuted for violating the overtime provisions of the FLSA. It is also illegal for any employer to fire or discriminate against an employee for filing a complaint about an FLSA violation. There is a two-year statute of limitations on recovering back pay, unless the FLSA violation was deliberate and willful, in which case the statute of limitations is three years.

Unfortunately, Maryland agencies that should protect workers such as the Workers' Compensation Commission; the Department of Labor, Licensing, and Regulation; and the Maryland Department of Agriculture have significant linguistic barriers for the multiple languages spoken by the state's low-wage workforce. Moreover, there is scant proactive advertising to inform undocumented and immigrant workers that they are entitled to access these agencies. Despite an epidemic of nonpayment of overtime compensation to undocumented workers, the Maryland Employment Standards Services Division

refuses to investigate nonpayment of overtime claims or make payments to workers lacking a social security number.³³

3. Nonpayment of Wages

One of the most common complaints among the people participating in this research was employers' failure to pay workers their promised wages. This practice occurred most frequently with subcontractors in agricultural and construction companies but was seen throughout low-wage industries. The non-payment and delayed payment of wages has become a common practice in our state and is a matter of considerable concern for the low-wage community, which believes that a solution must be found given the very high level of wage arrears and its severe social consequences. Participants complained that many employers often delivered checks with insufficient funds, or that were written from accounts that were closed.

Participants reported that often employers deliberately pay workers who are undocumented by check in the expectation that without state identification the workers will not be able to cash the checks. For day laborers in particular, employers often simply fail to show up at the agreed pickup location to pay promised wages. Alternatively, they may tell workers that they cannot afford to pay them because they themselves haven't been paid the money owed to them for the job. The pervasiveness of these abuses means that even when their employers turn out to be honest, workers worry constantly about whether they will be paid as agreed.

The participants were skeptical of the authorities' ability or willingness to enforce the wage payment law. They called for stiffer legal penalties for wage and hour violations and more vigorous enforcement efforts by labor commissions and prosecutors. Some urged that the business or occupational licenses of employers should be suspended when employers are found to have failed to pay their employees. Another remedy proposed was to make property owners and general contractors legally responsible for paying the wages of subcontractors' workers with the thought that owners and general contractors are generally easier to locate.

Highlights from Participants:

- No authority to protect workers if they are not paid
- When the employer knows that the worker has no employment authorization documents, the workers is paid by check because the employer knows that the worker won't be able to cash it
- Many problems with delayed pay
- Many times the worker does not get paid at all

Participants' report of the crisis in non-payment of wage cases was reflected in the information received by organizations that represent low-wage workers. For instance, CASA of Maryland, which has a legal practice focused on non-payment of wage cases, recovered \$265,000.00 in unpaid wages in 2003. CASA's caseload also includes government contractors and the organization has represented, for example, workers who clean courthouses from Prince George's to Anne Arundel County who have not been paid their wages by the court's subcontractors. One case that was brought by CASA of Maryland against a cleaning company was particularly illustrative.³⁴ The workers were perplexed about the payment system, which included dramatically different wage rates ranging from less than \$6.00 per hour to over \$9.00 per hour. They came to CASA, however, when their employer started issuing checks that the employer's bank refused to cash. In reviewing the corporate records, it was discovered that there were different wage rates. When the workers would clean federal buildings, they would receive the wages required under the Government Services Contract Act. However, when they cleaned Maryland public schools and courthouses, they received several dollars per hour less. In another case handled by CASA of Maryland in 2000, three workers who cleaned the Francis Scott Key Elementary School in Prince George's County, Maryland, were paid with checks with insufficient funds (CASA of Maryland has a judgment against the subcontractor, Ali Perrin of Perrin Brothers Contractors, for over \$8,000.00).

The Maryland Legal Aid Bureau, a non-profit law firm that provides civil legal services to low-income families in Maryland, is the largest legal services provider in the state. In 2003 and 2004 combined, the Maryland Legal Aid Bureau collected over \$96,000 in unpaid wages and overtime for clients. Approximately \$15,000 of this amount were unpaid wages and overtime in migrant farmworker cases. They indicated that most of their cases on nonpayment of wages come from office assistants, truck drivers, home health aides, catering, security guards, landscaping companies and migrant farmworkers. They have also found that homeless clients, usually living in shelters, seem particularly vulnerable. In one case, a staff attorney negotiated a check for \$9,827.50 in wages and interest for her client, a home care nurse. The client had cared for a double amputee for about one month without being paid by the home health agency that hired her. In another case, the staff attorney helped obtain \$3,750 in wages for a client who worked for a catering company for many years without being paid any overtime wages or for her last week of work.

Analysis:

Problems reported with nonpayment of wages were particularly acute for day laborers. One protection would be to require employers to pay day laborers at the end of each workday if the job lasts less than one week, and at the end of each week if the job lasts between 7 and 14 days; currently, Maryland employers are only required to provide payment two times per month (Md. Ann. Code §3-504). Furthermore, licensure of day laborer agencies would further regulate a problematic industry.

Maryland has a crime of Theft of Services,³⁵ but application of the statute has limitations and has not been widely used to prosecute employers. To provide a real remedy, Maryland must commit to prosecuting theft of services for willful refusals to pay employee wages and also provide training on processing non-payment of wages to State Attorneys and Commissioners. It is a crime in Maryland to obtain the compensation services of another "by deception." The crime is defined as a felony for services worth \$300 or more, and carries a potential penalty of imprisonment up to 15 years or a fine not exceeding \$25,000 or both, and orders of restitution. Under Maryland's Wage Payment and Collection Law³⁶ and the Maryland Wage and Hour Law³⁷ a willful failure to pay required wages is a misdemeanor punishable by a fine up to \$1,000. By comparison, in Washington, D.C., employers can be fined up to \$10,000 and sentenced to six months imprisonment for willful failure to pay minimum wage and overtime.³⁸ D.C. prosecutors will consider whether there was an ability to pay at the time the wages became due. Under D.C.'s Wage Payment and Collection Law,³⁹ it is a misdemeanor for an employer to refuse to pay when it has the ability to do so. A first offense carries a fine up to \$300 and up to 30 days imprisonment; subsequent offenses carry fines up to \$1,000 and up to 90 days imprisonment.⁴⁰

CASA of Maryland has advocated successfully with prosecutors in Montgomery and Prince George's Counties that Maryland's Theft of Services statute can and should be used to prosecute employers for intentional non-payment of earned wages. Similar statutes exist around the country, though prosecutors often decline prosecution claiming that non-payment of wages is a "civil matter" or because it is a non-jailable offense. Since in many instances employers are intentionally depriving workers of promised and earned wages, these cases are worthy of criminal prosecution.

The State of California provides model labor code protections and remedies. In California, employers can no longer recover attorneys' fees and costs in direct civil actions brought for unpaid minimum wages or overtime; employers cannot receive any part of a gratuity belonging to *any* employee, regardless of the employee's base wage rate, and all gratuities paid by credit card must be paid to the employee by the following regular payday; all employers are liable for a penalty of up to 30 days' wages and fringe benefits for dishonored wage checks, unless the employer can show that the violation was unintentional; employers must reflect the hourly rate and hours worked for hourly workers in itemized pay statements, but need not do so for salaried employees who are exempt from overtime pay requirements; and employers are subject to enhanced penalties for violations of wage-hour, meal period and record keeping requirements.

We encourage making non-payment of wages a felony rather than a misdemeanor; employers who do not pay wages should go to prison and be held liable for a penalty of up to 30 days' wages and fringe benefits for dishonored wage checks. Maryland's wage payment statute⁴¹ should be amended to say "any individual," instead of "an employee," so that employees do not artificially avoid pay requirements through misclassification as an independent contractor. The

State of Maryland has to also increase the funds for wage enforcement and make state agencies accountable for the investigation of non payment of wage complaints.

4. Breaks, Safety and Training, Benefits, and Compensation

An almost universal theme in the responses received for this report was the arduousness of the types of work available to low-wage workers. Study participants reported that many employers work them to exhaustion by refusing to allow them breaks or docking their pay for the breaks they dared to take, while requiring them to work 8, 10, and even more than 12 hours a day. Often workers reported that they were afraid even to ask for breaks because the employer might retaliate by firing them without paying them for their hours already worked. Most participants felt that working at least eight hours in a day should entitle them to a 30-minute meal break as well as to 10-minute breaks for every two hours worked.

Another central concern was the dangerousness of the work performed in small-scale construction, poultry and landscaping. A high proportion of the participants reported experiencing cuts, burns, and falls, while some suffered from chronic conditions such as respiratory problems due to the chemicals used at the workplace. The participants also stated that employers often failed to give safety instructions, job trainings or advise workers of potential hazards and that employers rarely provided safety equipment such as gloves and helmets. Very often, employers expected the workers to perform their job with old or defective tools and equipment in hazardous situations. Landscaping and poultry workers were concerned about the risks of exposure to fertilizers and pesticides.

Highlights from Participants:

- Don't have insurance, health benefits
- Sometimes we think that we have insurance because we are told that we do, but it often turns out that we don't or we don't have as much as we thought
- Health insurance doesn't cover the entire family
- We are worried that at some point our health benefits will become non-existent, since they have been reduced over time
- Health benefits are very important. In 1985, the employer paid 20% of premium, now workers pay much more than them. By the time I pay for health, dental, and vision care, about \$180 of my check results in very little to bring home for my family
- Sometimes the company offers insurance, but only when we ask them for it. When we go to the doctor, the insurance doesn't cover all of the costs or follow-up
- Lack of safety in dangerous areas – many times when the women are cleaning there are hidden construction supplies
- The employer doesn't provide a safe workplace

- We work under dangerous conditions that affect our health; some people get intoxicated due to the chemicals that they work with in the poultry plants. There is a very acidic environment and sometimes the floor is wet and slippery.
- In poultry, carbon-monoxide is used in the plant and sometimes you can smell it in the whole plant. They'll make everyone step out for a little bit because of the carbon monoxide. OSHA is not inspecting the factories.
- We get no help when we get into an accident at work
- There aren't proper tools at the jobs
- No trainings offered by the employer
- When we're hurt at work, the employer sees the problem but doesn't do anything about it
- Bad conditions at work; for example, the ladder is in terrible condition

Analysis:

Breaks: Both Federal and State law provide scant protection regarding breaks for workers 18 and over. Under federal law,⁴² breaks of five to twenty minutes must be paid by the employer while, for a meal period to be unpaid, it has to be at least 30 minutes uninterrupted by work.⁴³ However, there is no federal law requiring that employees--salaried or hourly--receive breaks during work time, unless required by medical condition.

Some states have taken action to protect their workers by creating specific laws that mandate breaks.⁴⁴ For example, in Delaware, when an employee works for at least seven and one-half consecutive hours, the employee must be given an unpaid meal break of at least 30 consecutive minutes. This meal break must be scheduled for some time after the first two hours of work and before the last two hours. Moreover, Nevada provides that employees must be given a meal period of at least 30 minutes for each continuous eight-hour work period. Nevada law also provides that employees must be allowed to take a rest period, or periods, that must occur in the middle of each work period, when practicable. The rest period(s) must be at least 10 minutes for each four hours (or major fraction of four hours) of work. However, no rest period is required when an employee's total daily work time is less than three and one-half hours, and the law does provide some exemptions from the requirements for certain employees and in specific situations. States such as Colorado, Kentucky, Nevada, Oregon, and Washington require that employees receive a 10 minute break for every four hours of work; furthermore, California employees must get a 10-minute break for every four hours worked provided that the work day is at least five hours long.

Unfortunately, Maryland does not require breaks benefits for workers and should follow the model of the states mentioned above: rest breaks of 10 minutes every two hours of work and a 30 minutes meal period for those who work at least 5 hours in one day.

Benefits: In low-wage professions, paid leave is rarely available. For regular, fulltime employees required annually accumulated leave is one option. Forty-one percent of working parents with household incomes below twice the federal poverty level do not receive paid sick leave, vacation days, personal days, or other forms of compensated leave.⁴⁵ Only 16 percent of working parents with incomes above 200 percent of the poverty level do not receive paid leave⁴⁶. If low-wage workers without sick leave do seek health care, they lose pay for taking time off from work for a doctor visit. But if they are too sick to work, they also lose pay. More than half of employees in the lowest-compensated jobs do not have paid sick leave and 64 percent cannot take paid time off to see a doctor.⁴⁷ The lack of leave contributes to lower rates of health care access and poorer health status for low-wage workers.⁴⁸

One solution is to utilize the unemployment fund to compensate sick time taken under the Family and Medical Leave Act, which allows women and men who have worked for more than one year for employers with 50 or more employees to take up to 12 weeks of unpaid leave each year for certain family and medical purposes.⁴⁹ In 2002, 27 states introduced a range of proposals to provide partial paid leave for workers, allowing them to balance their work and family responsibilities.⁵⁰ In particular, California became the first state to pass a paid-leave bill into law. In September 2002, California signed into law legislation that would allow employees to take time off from work to care for a newborn, a newly adopted or newly placed foster child, or a seriously ill family member. Employees have access to up to six weeks of partially paid leave per year, during which time they would be able to earn up to 55 to 60 percent of their wages. This program expands the state fund that provides insurance for disabled workers and is funded by employee payroll deductions.

Health: Making sure low-wage workers have access to health care is a challenge. Employer-based health insurance provides the majority of U.S. workers with access to health care and protection against devastating financial losses. Millions of workers, however, do not receive health benefits from their employers, and few sources of affordable coverage exist outside the employer-based system.⁵¹ According to the Maryland Health Care Commission, 752,000 Marylanders have no health insurance and 800,000 Marylanders have inadequate health insurance.⁵² Moreover, 46% of non-citizens in the state are uninsured.⁵³ Higher-wage workers are more likely than their lower-paid counterparts to have health insurance and health-related benefits, such as paid sick leave, and to use preventive care services.⁵⁴ Low-wage workers, meanwhile, are much more likely to forgo needed health care because of cost and problems paying medical bills.⁵⁵

A substantial body of evidence shows that health insurance coverage is integral to peoples' health, their productivity level, and their educational and career achievement.⁵⁶ Most workers and their families who are not offered coverage through jobs are left with the consequences of being uninsured in the United States: poor access to the health care system, lack of preventive health care services, and the enormous stress of knowing that the lack of coverage could result in crushing financial debt. Consequently, it is vital to create incentives to

employers to provide health coverage for their employees. One solution would be to charge fair premiums to those newly insured, maximize matching funds from the federal government, reallocate funds from existing programs for the uninsured, increase the state tobacco tax, and collect employer healthcare contributions from non-participating businesses, as recommended by the Health Care for All proposal.⁵⁷

Safety & Training: Every year, millions of workers in America are injured, made sick or die from work-related hazards and accidents. The Maryland Occupational Safety and Health Act (MOSH Act) establishes health and safety protections and covers every Maryland employer in a business, trade, commercial or industrial activity, who has one or more employees, including State and local governments. MOSH is in charge of ensuring that Maryland workplaces are safe and healthy through the use of enforcement, training, and consultation strategies. Safety and health requirements designed to assure safe and healthy workplaces are set out in the law and in standards, which are legally enforceable regulations governing conditions, practices, or operations.⁵⁸ Unfortunately, even though worker safety and health laws have grown stronger and more effective over the years through the efforts of strong unions and mobilized members, more than 6 million U.S. workers are injured or become sick on the job, 50,000 U.S. workers die from occupational illness and nearly 6,000 are killed on the job, as reported by the AFL-CIO.⁵⁹

Funds to achieve workers' protection have to increase in order to insure that all workers are protected by MOSH. MOSH has been particularly slow in confronting new threats to workers' safety and health—repetitive strain injuries, workplace violence and stress and extended work hours—as changes in technology and work processes are introduced; update standards and issue new rules to limit exposures to toxic chemicals, silica, ergonomics hazard and other dangers; and secure fair and timely compensation for the hundreds of thousands of workers who have been exposed to chemicals in the poultry factories and asbestos and have or will develop serious disease. Current disclosure protections reporting hazardous chemicals or any other unsafe materials or working conditions that require the use of safety and protective equipment are often ignored. The lack of a private right of action leaves safety protection at the mercy of an inadequately funded agency currently incapable of meeting the needs of a multilingual workforce. Maryland should create a private cause of action for MOSH violations thereby expanding significantly the capacity to insure healthy and safe workplaces in the state.

Compensation: All employers are required to provide workers' compensation benefits to their low-wage workers, whether lawfully or unlawfully employed, for injuries arising out of and in the course of employment. However, to combat the misinformation regarding workers' compensation in the low-wage workforce, all employers should be required to provide all low wage workers written notice of the following information on the first day of employment: a statement of the workers' right to workers' compensation benefits and the employer's workers' compensation insurance carrier name and number. This notice should be

provided in English and any other languages that is generally used by the workforce employed by the employer.

5. Retaliation Protection & Legal Rights

In general, participants concluded that low-wage workers are often denied justice on the job for lack of access to the legal system, and the lack of an organized workforce, or a union, that can challenge an exploitative relationship with management. In the case of undocumented immigrant workers, too often they are subjected to gross exploitation and face the constant threat of retaliation by referral to immigration authorities.

Highlights from Participants:

- Discrimination against women; employers don't like to train women
- There is discrimination against immigrants; the employers let U.S.-born Americans take breaks to smoke
- There is racial discrimination
- Women aren't allowed to work in construction. Nowadays, women can do the same work
- Any stand you take for your rights, you are terminated
- I have seen pregnant women getting fired
- Workers without papers ask for their pay, the employer holds their immigration status against them
- We don't know the laws
- There's no one to defend our rights; need of unions
- Intimidation and fear to speak up
- Why don't we have a union? a lot of poultries don't have unions. Without unions, they can fire you; they can do anything to you

Analysis:

Employers frequently intimidate low-wage workers seeking to enforce the employment and labor laws. Intimidation can take many forms such as, threats to call immigration enforcement authorities, physical assault, and refusal to hire the worker for subsequent jobs. Such retaliatory acts discourage day labor and immigrant organizing and restrict enforcement of workplace laws. Consequently, Maryland must protect workers by strengthening anti-retaliation protections and mandating the Department of Labor, Licensing and Regulation, and the Workers' Compensation Commission to more strenuously enforce existing protections so that employers cannot retaliate against workers seeking to enforce their rights.

Any employer found liable for violating retaliation laws by performing an adverse action, including demotion, discipline, firing, salary reduction, negative evaluation, change in job assignment or change in shift assignment -- towards an employee who complains should be subject to a fine payable to the state in the amount of \$1000.00 for each violation. The attorney general or other official

designated by the state legislature should concentrate resources on bringing civil actions to enforce anti-retaliation laws.

6. Language Barrier

The participants in this study pointed out that today's immigrants are over-represented in high-risk jobs and that the problem is compounded by the language differences between supervisory and non-supervisory staff. Participants agreed that training manuals, MOSH regulations, and safety drills must be translated and offered in languages other than English to ensure the safety of all workers and reported that bilingual resources, despite being mandated by law, were unavailable in their worksites.

Highlights from Participants:

- There is discrimination against people who do not speak English
- When you don't speak English they think you are a fool and make you do the hard work and if you complain, they terminate your employment
- We at least need to have signs and the documents that we need to understand translated into our language
- When my supervisor gives me a paper in English, I have to take him at his word
- At many jobs, the bosses ignore us, say that they don't understand us, and say bad words to us
- By not speaking English we are not able does not allow us to tell our employers what the problems are

Analysis:

The U.S. Occupational Safety and Health Administration (OSHA) recognizes that non-English speaking workers -the largest group of which are Latinos- may require special efforts to protect them. "Hispanics or Latinos accounted for a disproportionate number of workplace fatalities in 2000, 13.8 percent, compared with their proportion of employment, which was 10.7 percent. This appears to be largely due to the fact that Hispanics or Latinos are disproportionately employed in the more dangerous industries. For example, the construction industry accounts for about 7 percent of all employment, but 20 percent of fatalities. Hispanics or Latinos comprise almost 15 percent of construction employment, well above their representation in the workforce overall."⁶⁰

According to the Urban Institute and data from Census 2000, "Nearly two-thirds of low-wage immigrant workers do not speak English proficiently, and most of these workers have had little formal education."⁶¹ While time in the United States and work experience reduce the share of workers who are Limited-English Proficient, the Urban Institute found that 29 percent of workers who have been in the country for 20 years or more can still be considered Limited-English Proficient.

Maryland should increase bilingual enforcement personnel at state agencies and ensure compliance with the Equal Access to Public Services for Individuals with Limited English Proficiency Act,⁶² which mandates that State departments, agencies, and programs take reasonable steps to provide equal access to public services for individuals with limited English proficiency. The law also requires certain “vital documents” to be translated into any language spoken by a Limited-English Proficient group that constitutes 3% of the overall population within a specified geographic area under specified circumstances.

In addition to providing linguistic access while workers are learning English, Maryland should invest in developing more English-speakers. Maryland ranks in the last quartile of state funding for adult education among East Coast states.⁶³ Per student state expenditures in Maryland is, at \$45, the smallest of any East Coast State.⁶⁴ Each year in Maryland, thousands sit on waiting lists to enroll in English classes; state contributions to adult education should be increased.

7. Transportation

For the high proportion of workers without access to their own vehicle, transportation difficulties are one of the most pressing issues. On the one hand, lack of transportation is one of the factors trapping people in low-wage work. For example, most low-wage workers find jobs at places located outside of their community; a worker without a vehicle has difficulty locating work and instead may depend on subcontractors, who have located and arranged work.

On the other hand, abuses related to transportation to work sites are some of the most commonly experienced problems many low-wage workers. Many of the day laborers who participated in this study reported that although employers picked them up for work, at the end of the job they were often abandoned at the job site with no means of getting home. Sometimes workers would not know even their approximate location. Many participants urged that employers be legally obliged to tell workers in advance where jobs are located and to return them, if so requested, to the place of hire. Many also called for the driver’s license law to be reformed so that all residents, regardless of immigration status, could obtain a driver’s license.

Highlights from Participants:

- We need a driver's license to drive to work
- A car is not a luxury; it’s a necessity
- The farm fields and chicken factories are too far away from home to walk and we don’t have convenient public transportation

Analysis:

In the case of day laborers, and unless the day laborer requests otherwise, the employer should provide transportation back to the point of hire at the end of

each work day. Any motor vehicle that is owned or operated by the employer, which is used for the transportation of day laborers shall have proof of financial responsibility as provided for in applicable Maryland insurance laws; be equipped with seats securely fastened to the vehicle; be equipped, if a motortruck, with a railing or other suitable enclosure on the sides and end of the vehicle not less than 46 inches above the floor of the vehicle; and be equipped with steps, stirrups, or other equivalent devices so placed and arranged that the vehicle may be safely mounted and dismounted.

Lack of access to transportation is a problem for both employers and employees. Some rural employers report providing transportation to their workers at the beginning and end of the day to ensure their presence at the worksite; others report altering their entire crew schedule at large nurseries because workers could not drive a farm vehicle from one field across the street to another field.⁶⁵ Significant investments in public transportation and permitting licensure of drivers regardless of immigration status will increase the number of low wage workers with mobility and lessen transportation burdens on employers.

IV. CONCLUSION

The low-wage workers who clean chickens and pick strawberries often cannot afford to purchase these very products they produce. Most low-wage workers in Maryland have no pension other than social security, no health insurance, and face a continuous struggle to make ends meet with a minimum wage of \$5.15. Many low-wage workers lack not only a decent wage, health care, and retirement benefits, but some live in wretched housing, contend with dangerous machinery, handle hazardous farm chemicals, and work long hours with no hope of getting paid overtime. Moreover, a significant number of low-wage workers who perform the jobs that no one in Maryland or elsewhere in this nation would dare to perform are especially vulnerable to exploitation because of the broken immigration system.

The testimonies provided by workers across the state were heartbreaking yet represent but a small percentage of the hundreds of thousands of workers that confront dreadful working conditions in Maryland. Workers who participated in this study demanded higher wages, benefits, and decent working conditions and they also committed to taking an active role in their community to move these recommendations forward. While study participants may be poorly compensated and badly treated, their resolve to improve conditions for the entire community is only strengthened by their experiences.

The Equality Works Campaign participants recognized the contributions of those employers whose initiative and investment create decent jobs at dignified wages, who treat their workers as partners and who help build the economic health and vitality of the community. Those conscientious employers demonstrate that it is possible to provide decent jobs for all Marylanders. The Equality Works Campaign will work to achieve the ongoing economic prosperity and quality of life that all workers in Maryland deserve.

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- ⁶⁵ Various testimony presented at Eastern Shore hearing of the Governor's Task Force to Study Driver Licensing Documentation. June 28, 2004. On file with author.