

STANDING UP FOR --- WORKING NEW YORKERS



A report from the Labor Bureau of

New York State Attorney General
Eric T. Schneiderman



September 2014

Dear New Yorker:

Every New Yorker deserves a fair day's pay for a fair day's work, a safe working environment and the right to organize without retaliation. These principles form the foundation of the American dream: the ability to enjoy the fruits of one's labor, achieve financial stability and build a better future.

As the state's top law enforcement officer, I believe in the principle of equal justice under law. There must be one set of rules for everyone – and it is my job to enforce those rules. When employers ignore the law by illegally underpaying their employees, it hurts workers, leaving them unable to pay their bills and feed their families. It also gives dishonest employers an unfair advantage over their competitors by undercutting responsible businesses that play by the rules.

That's why, since I took office in January 2011, I have pursued both civil and criminal cases against employers that cheated their workers.

To date, we have recovered more than \$17 million in restitution for almost 14,000 workers across New York State, and recovered more than \$2 million in penalties and other monies owed to the state.

As detailed in this report, my office has fought for fair pay for fast food and car wash workers who were cheated out of legally owed wages by their bosses; enforced prevailing wage rules in the construction industry, and defended workers against illegal retaliation by employers. We have also brought criminal charges against the very worst employers.

We have also found innovative ways to protect the growing number of workers who are easily victimized because they are not subject to traditional labor protections, and taken steps to ensure that technological conveniences, such as payroll cards and online methods of payment, don't become tools to exploit workers.

I am proud of my record in standing up for New York's working men and women, and I look forward to continuing to fight for workers' rights for a long time to come.

A handwritten signature in black ink, appearing to read "Eric T. Schneiderman". The signature is fluid and cursive, with a long horizontal stroke at the end.

ERIC T. SCHNEIDERMAN

STANDING UP FOR WORKING NEW YORKERS

A report from the Labor Bureau of Attorney General Eric T. Schneiderman

Attorney General Eric T. Schneiderman believes in justice for New York’s working people. This means that anyone who puts in a hard day’s work deserves a fair day’s pay – and it’s the reason he takes on unscrupulous employers who think they can ignore the law by illegally underpaying their workers.

That kind of law-breaking hurts workers who rely on their income to pay the rent and feed their families. It also undercuts responsible businesses that play by the rules, who struggle to compete with those who violate the law.

*Since taking office in January 2011, Attorney General Schneiderman has pursued both civil and criminal cases against employers that cheated their workers, recovering over **\$17 million** in restitution for almost **14,000 workers** and recovering more than **\$2 million** in restitution and penalties for the state.*

Attorney General Schneiderman has taken a strong stand to protect workers who live paycheck to paycheck, focusing his labor law enforcement particularly on vulnerable segments of the workforce – low-wage workers, immigrants, and others. In all these efforts, the Attorney General has a long history of collaborating with local elected officials, advocacy groups, unions, community-based organizations, employer trade associations, and other critical partners in ensuring that New York’s workers’ rights are enforced.

This Labor Day report provides a brief overview of several of Attorney General Schneiderman’s labor-related initiatives, as well as some representative cases that illustrate ways in which the Attorney General is protecting New York’s workers

FIGHTING FOR FAST-FOOD WORKERS

The rapid growth in economic inequality in recent years—the gap between the wealthy and everyone else—is a crisis that threatens the foundations of our economy and our democracy. Nowhere is the disparity starker than in the fast-food industry, which a recent Demos report called the most unequal sector in the U.S. economy. It has some of America’s lowest-paid workers -- but its top executives make 1,200 times more than their average employees, according to Demos. Nationally, the average hourly wage for a fast-food worker is about \$9 per hour, \$4,500 less than the federal government’s poverty level threshold of \$23,500 for a family of four. And wages in fast food have increased just 0.3 percent in real dollars since 2000.¹

Fast-food workers are organizing in New York and across the country for higher wages and the right to form unions without intimidation or retaliation by employers. Shamefully, even as workers are fighting to raise their pay above the legal minimum wage, some fast food employers do not even want to pay that much. Attorney General Schneiderman’s Labor Bureau has uncovered serious labor law violations among fast-food employers, with settlements covering over 30 fast-food locations statewide and numerous additional investigations ongoing. To date, Attorney General Schneiderman has secured \$958,000 for 2,376 fast-food workers. Cases in the fast-food industry include:

¹All fast food inequality statistics are from “Fast Food Failure: How CEO-to-Worker Pay Disparity Undermines the Industry and the Overall Economy,” April 22, 2014, Catherine Ruetschlin, Demos. <http://www.demos.org/publication/fast-food-failure-how-ceo-worker-pay-disparity-undermines-industry-and-overall-economy>

- A \$500,000 settlement with the owner of seven McDonald’s locations in Manhattan. That employer had been deducting money from cashiers’ pay when the cash drawer was short, an illegal deduction under New York law. He also failed to pay the legally required uniform maintenance allowance for laundering the workers’ uniforms. This settlement resulted in restitution for 1,600 McDonald’s workers.
- Settlements totaling nearly half a million dollars with seven Domino’s franchisees, who collectively own 26 locations throughout the state, including Erie, Schenectady, Dutchess, Rockland, Nassau, Suffolk, and Westchester counties, as well as New York City. Those franchisees committed a range of violations. Some paid only \$5 per hour, less than even the lower, “tipped” minimum wage required for delivery workers in New York. Some didn’t pay overtime, and most didn’t reimburse enough to cover drivers’ full cost of delivering pizzas in their cars.

STANDING UP FOR CAR WASH WORKERS

Low wages and grinding working conditions are not limited to the fast-food industry. Car wash workers, many of them immigrants, also take home meager pay for physically demanding work – and the car wash industry has a well-documented high incidence of legal violations. In New York, car wash workers who are fighting to organize unions, with the help of groups like Make the Road New York, New York Communities for Change, and the Retail, Wholesale And Department Store Union, have also been brave enough to report violations to the Attorney General’s office. Attorney General Schneiderman has pursued these complaints, securing \$2,425,000 in restitution for 1,018 car wash workers and \$1,782,493.84 in restitution and penalties for the state. In one egregious case, the car wash owner was sentenced to jail time. Cases in the car wash industry include:

- A settlement of almost \$4 million with the Lage and Magalhaes Car Wash chains. These chains, which share overlapping ownership, cheated an estimated 1,000 car wash workers out of their legally owed wages, underreported employees on state unemployment insurance returns and failed to carry required workers’ compensation insurance for all employees. Attorney General Schneiderman secured \$2.2 million in restitution for the workers, more than \$513,000 for the New York State Department of Labor’s Unemployment Insurance Division, and nearly \$1.2 million in penalties for the New York State Workers’ Compensation Board.
- Two criminal prosecutions of car wash owners, one in the Bronx and one in Suffolk County. The Bronx owner was sentenced to jail time and ordered to pay \$150,000 in restitution to workers, \$52,493.34 to the New York State Unemployment Insurance Fund, and \$30,000 to the New York State Workers’ Compensation Board. The Long Island car wash owner also pled guilty and was ordered to pay \$75,000 in restitution to his workers.

ENFORCING THE PREVAILING WAGE LAW

Federal and state prevailing wage laws ensure that laborers on public works projects, like schools, hospitals, and municipal buildings, are paid wages and benefits comparable to the local norms for a given trade. These laws make sure that construction companies do not win government contracts by underbidding their competitors through paying excessively low wages. Solid, middle-class jobs in industries like construction are vital to the health of our communities, and taxpayer dollars should not be used to replace good jobs with bad ones. Attorney General Schneiderman has made it a top priority to protect middle-class jobs and make sure taxpayers get what they pay for on prevailing wage projects. He has won \$4,692,026 in compensation in prevailing wage cases for 288 workers. Cases enforcing the prevailing wage law include:

- A civil settlement for \$980,000 with Procida Construction Corp., which illegally underpaid several of its own employees, and hired subcontractors who underpaid scores of workers on Brooklyn affordable housing projects developed by New York City's Department of Housing Preservation and Development (HPD). The Attorney General secured \$930,000 in back wages for 30 workers who were illegally denied prevailing wages and \$50,000 in penalties. With this case, Attorney General Schneiderman sent a strong message that subcontracting out work on a taxpayer-funded project does not free general contractors from the obligation to ensure that workers are paid their due.
- A felony guilty plea from the owner of Applied Construction in connection with failure to pay prevailing wage on HPD affordable housing projects in the Bronx. This contractor paid some workers in cash to avoid listing them on certified payroll reports that public work contractors must submit to the government, while other workers were paid the correct amount and then required to kick back a portion of the money to the employer. Attorney General Schneiderman secured nearly \$500,000 in restitution for 16 workers, and Applied and its owner are barred from government construction jobs for five years.
- A four-month jail sentence for the on-site superintendent of Decora Construction, a company that illegally failed to pay workers prevailing wage on public works projects at LaGuardia Airport and on an HPD project in the Bronx. The office also secured \$800,000 in restitution for the seven underpaid workers.
- Public-works contractor Signal Restoration Services paid over \$500,000 in restitution for underpayments made by subcontractors during the cleanup and reconstruction of three New York City Health And Hospitals Corp. hospitals following Hurricane Sandy. Signal's subcontractors paid well below the mandated prevailing wage rates, and some of them failed to pay overtime.

PROTECTING WORKERS FROM ILLEGAL RETALIATION

American workers today enjoy basic rights on the job, like minimum wage, overtime and safe working conditions, because workers who came before them had the courage to raise their voices and fight for these critical protections. Every day, workers who have the courage to come forward and report violations, whether to the Attorney General's office, the Department of Health, or the fire department, protect not only themselves and their co-workers, but often the public as well.

The right to report violations is critical. If employers retaliate against workers who speak out, that can leave other workers afraid to exercise their legal rights. Retaliation can take many forms, including termination, blacklisting, reduction of hours and even closure of a business location, if done with retaliatory intent. Attorney General Schneiderman has taken swift action to crack down on illegal retaliation by employers, securing reinstatement or compensation for workers. Cases enforcing the law against retaliation include:

- An agreement with Lage car wash ensuring the continued employment of 15 workers who were about to lose their jobs. During the course of a broader labor law investigation at Lage car washes, Lage workers at one location were informed that they would be terminated and their location would shortly close. Concerned that this closure was potentially retaliatory, Attorney General Schneiderman took firm action and obtained an agreement that the workers would be offered comparable positions at other Lage locations in New York City.
- An agreement with a Domino's Pizza in Washington Heights in upper Manhattan resulting in the reinstatement of 25 workers. The workers had been locked out after several of them complained about being paid a lower "tipped" wage while spending considerable time performing kitchen work, which did not afford them the opportunity to receive tips. Within days, Attorney General Schneiderman's office secured an agreement with the employer, and the workers were back on the job just a week after the lockout.
- A \$200,000 settlement with Veranda, a restaurant and lounge in Manhattan that underpaid approximately 25 workers and terminated two employees who complained about the company's illegal pay practices. The settlement included \$150,000 in restitution for employees who were paid below the minimum wage and did not receive overtime pay as required by law. As the fired workers did not want to be reinstated, Attorney General Schneiderman obtained \$50,000 based on the retaliation, including not only lost wages for the discharged workers, but also \$10,000 in liquidated damages for each worker and \$10,000 in penalties for each violation.
- An agreement with a McDonald's location in Lyons, N.Y., outside Rochester, where a worker was fired for reporting a gas leak to the fire department. The worker, a part-time minimum-wage employee, made multiple attempts to report a gas leak to his supervisors. When they did not address the situation, he reported the leak to the Lyons Fire Department. Responding firefighters and local law enforcement confirmed that there was a gas leak, and the store was temporarily closed. While the firefighters were at the restaurant investigating the leak, two supervisors informed the employee that he was fired. Attorney General Schneiderman secured \$10,000 in restitution for the worker, approximately one and a half years' worth of front pay, in lieu of reinstatement.
- Criminal guilty pleas and restitution for workers from the CEO of a Bronx wholesale recycling company that fired workers in retaliation for cooperating with a Department of Labor investigation. The owner pled guilty to two misdemeanors and agreed to pay nearly \$30,000 in back wages and penalties. His company, the DRC Group, pled guilty to a felony and a misdemeanor.

CRIMINALLY PROSECUTING WAGE THEFT, FRAUD, AND OTHER EGREGIOUS VIOLATIONS

Nothing sends a stronger message to the very worst employers than criminal enforcement. In cases of egregious labor law violations, where employers show extreme disregard for workers' basic rights or for the rule of law, Attorney General Schneiderman has not hesitated to bring criminal charges where appropriate. For example, Attorney General Schneiderman has criminally prosecuted employers who have failed to pay wages over a period of time, who have committed fraud or created false records, who are repeat violators, or who have otherwise committed extreme infractions. Criminal prosecution also powerfully conveys to workers the message that they matter, that their rights matter, and that no one is above the law.

Attorney General Schneiderman has obtained criminal convictions in cases involving 16 employers, some of whom have been sentenced to jail time. Some criminal cases are mentioned above, in relation to car washes and prevailing wage enforcement. Other criminal cases include:

- A criminal guilty plea by the owner of a home health agency, who also paid \$300,000 restitution with \$75,000 in damages to 109 home health aides who were not paid for two months. The owner continued to hire new employees while owing wage to current workers. The home health aides, who were committed to their patients, continued working because they relied on the owner's promises to pay.
- A guilty plea and a sentence including 90 days of intermittent jail time and \$60,000 in restitution for a movie theater cleaning contractor who paid employees less than the minimum wage and failed to pay overtime. This employer had previously been investigated by the United States Department of Labor for those same violations; after settling that investigation, the employer demanded the settlement money back from the workers and continued violating the law.
- A guilty plea and a sentence of 90 days of intermittent jail time and \$450,000 in restitution from the owner of a tortilla factory where a young employee died after falling into a tortilla mixer. The employer did not have workers' compensation insurance, and also had failed to pay overtime. The bulk of the restitution went to the deceased worker's survivor, a baby daughter, while the remainder was largely distributed.
- Numerous prevailing wage cases, including an electrical contractor who was sentenced to 4 months of intermittent jail time and ordered to pay \$750,000 in restitution for underpaying workers on New York City school construction projects, and another city school contractor who pled guilty and paid \$115,000 in restitution to workers for failing to pay prevailing wages to ironworkers on public schools construction contracts.
- Two Queens-based private construction contractors pled guilty and paid \$40,000 in restitution to construction workers whom they had failed to pay for several weeks of work.

INNOVATING TO PROTECT WORKERS NOT COVERED BY TRADITIONAL LABOR LAWS

In today's economy, more and more workers are not covered by traditional labor protections like minimum wage and overtime. The growth in labor outsourcing through temporary staffing firms has also eroded workplace protections. Attorney General Schneiderman has successfully found creative ways to put money back in the pockets of nontraditional workers who were victimized. Cases of innovative enforcement to protect nontraditional workers include:

- A partnership with the New York City Taxi and Limousine Commission (TLC) to enforce the rights of taxicab drivers. Although taxi drivers are generally not employees and are therefore usually not covered by labor laws, the TLC has passed “lease cap rules” that seek to ensure a basic income level for drivers by limiting how much they can be charged for leasing a yellow cab and medallion from the owner. Committed to protecting this vulnerable, largely immigrant workforce, even in the absence of traditional labor laws, the Attorney General teamed up with the TLC. So far, the two agencies have obtained landmark settlements with two of New York City's largest taxi operators: a \$1.2 million agreement (including \$750,000 in restitution, plus penalties) with four interrelated companies that overcharged 3,000 taxi drivers on lease caps, and a settlement for more than \$1.5 million (including \$1,387,500 in restitution, plus penalties) with a second company that illegally charged drivers bogus late fees.
- A national agreement with the temporary staffing firm Labor Ready, requiring the company to implement a nationwide program to train its job placement employees about laws that require payment of prevailing wage rates on public work projects. The agreement grew out of an investigation into Labor Ready's Hempstead branch office, where two workers were dispatched to a school construction public works project and not paid prevailing wage. The investigation revealed that the company's practices nationwide were insufficient to flag prevailing wage job placements and ensure proper payment. The agreement secured restitution for the underpaid workers as well as \$10,000 in penalties – and its training requirements are a major step toward ensuring that temporary staffing firms comply with prevailing wage laws.

PROTECTING WORKERS IN A DIGITAL WORLD

Technological innovations have altered many aspects of the workplace. Law enforcement must keep up with changing circumstances and technological innovations to ensure that technological conveniences do not reduce workers' hard-earned pay. Attorney General Schneiderman has taken important steps to protect New York workers in a digital world, including:

- Introducing legislation to regulate payroll cards. Many employers, particularly in the retail and service industries, are increasingly using this form of debit card as a way to pay employees. Payroll cards have certain advantages: they are good for the environment, helpful for delivering wages during a disaster, and usually less expensive than check cashing outlets. But they also present problems for many workers. Some payroll cards charge burdensome fees that are often not adequately disclosed to workers; these fees can significantly cut into take-home pay, particularly for minimum-wage workers. In addition, some employers have pressured employees into accepting payroll cards without obtaining necessary consent. Although New York laws indirectly regulate the payment of wages by payroll cards – such as a law requiring advance written consent prior to such payment – no law explicitly sets the rules for use of payroll cards. Attorney General Schneiderman sent a comprehensive payroll card bill to the Legislature to protect workers by, among other things, limiting fees and requiring employers to provide clear disclosure of fees, obtain employees' consent, and offer a paper check option.
- An agreement to ensure that tips intended for delivery workers are fully distributed to them. The Attorney General began investigating Seamless, an internet food delivery company that last year merged with GrubHub Inc. and Seamless North America LLC to form GrubHub Inc. The investigation revealed that Seamless' fee structure could create an incentive for restaurants to withhold a portion of tips from delivery employees. Attorney General Schneiderman secured an agreement requiring all future GrubHub Inc. contracts with restaurant partners to use a different fee calculation, and requiring GrubHub to take steps to transition current restaurant partners to the new fee structure. GrubHub Inc. also agreed to provide detailed information to its restaurant partners of about their labor law obligations, particularly with respect to tips for delivery workers.
- An nearly \$5 million agreement with National Grid after the company's new computer and payroll system caused widespread nonpayment and underpayment of wages to workers in New York and neighboring states. Despite forecasts of a hurricane headed for the East Coast, National Grid failed to delay the scheduled computer conversion and implemented it days after Hurricane Sandy. This caused a massive disruption to National Grid's pay and timekeeping system, including nonpayment of wages, nonpayment of overtime and inaccurate wage statements to employees, many of whom were working significant additional hours as part of the storm recovery.

CONCLUSION

New York has some of the strongest labor laws in the nation, and New York's workers deserve equally strong enforcement of those laws. Attorney General Schneiderman's record of aggressive labor law enforcement has improved the lives of thousands of workers throughout the state, both by gaining justice for New York's working men and women and by sending a clear message that employers who violate the law will be held accountable. The Attorney General and his team will continue to take forceful action to protect the rights of all workers in New York State.



Standing Up For Working New Yorkers



Western New York

1. \$40,000 Returned to Workers at Domino's Franchisee
2. \$65,000 Returned to 100 Workers Who Traveled From Rochester to NYC for Hurricane Sandy Cleanup Projects at Big Box Stores
3. \$10,000 Paid to Worker Who Was Fired for Reporting Dangerous Conditions

Southern Tier

4. \$20,000 Returned to Broome County Limo Drivers Whose Tips Were Skipped

Capital Region

5. \$40,000 Returned to Workers at Domino's Franchisee

Hudson Valley

6. \$100,000 Returned to Workers at 8 Domino's Franchisees in the Hudson Valley, Westchester & Manhattan

Bronx

7. \$500,000 Returned to 16 Workers on NYC HPD Affordable Housing Project
8. \$30,000 Returned to 4 Workers at Wholesale Recycling Center
9. \$150,000 Returned to 8 Car Wash Workers

Manhattan

10. \$375,000 Returned to 80 Home Health Agency Workers
11. Over \$500,000 Returned to 190 Workers Underpaid on Hurricane Sandy Cleanup Projects at NYC Hospitals Citywide
12. \$7,200 Returned to 5 Nail Salon Workers
13. \$40,000 Returned to 15 Employees at Central Park Boathouse Who Faced Retaliation
14. \$200,000 Returned to 25 Workers at Greenwich Village Lounge
15. \$500,000 Returned to 1,600 Workers At NYC McDonald's Franchisee
16. Reinstated 25 Workers Locked Out in Retaliation for Wage Complaints
17. Over \$42,000 Returned to 8 Dancers at Bar
18. Nearly \$750,000 Returned to 3,000 Overcharged Taxicab Drivers Citywide

Statewide Victories

- ★ \$450,000 Returned to 200 Movers & Sent Letter to Moving Companies Statewide on Labor Law Compliance
- ★ Required GrubHub to Change Formula that Potentially Led to Restaurants Retaining Delivery Workers' Tips
- ★ Ensured Statewide Implementation of Training Program at Staffing Company, Labor Ready After The Company Did Not Pay Prevailing Wage to 2 Workers On Public Work Jobs
- ★ \$4.8 Million Returned to 6,500 National Grid Workers Who Were Underpaid By New, Computerized Payroll System During Hurricane Sandy Recovery Efforts

Total Restitution For Workers
\$17,513,059.94 Returned to
13,755 Workers Statewide

19. Nearly \$1.4 Million Returned to 1,976 Overcharged Taxicab Drivers Citywide
20. \$81,000 Returned to Workers at 2 Domino's Franchisees
21. \$2.2 Million Returned to 1,000 Workers at 23 Car Washes in NYC & Westchester

Brooklyn

22. \$115,000 Returned to 6 Ironworkers on NYC Public School Project
23. \$930,000 Returned to 30 Workers on NYC HPD Affordable Housing Project
24. \$575,000 Returned to 13 Workers on NYC HPD Affordable Housing Project
25. \$138,000 Returned to 28 Workers at Tortilla Factory & \$300,000 Returned to Deceased Worker's Surviving Daughter
26. Arrested an Employer Who Tampered with a Witness Before Hearing on Wages Owed to Workers

Queens

27. \$800,000 Returned to 7 Workers on LaGuardia Airport Project
28. \$750,000 Returned to 12 Workers on School Construction Authority Projects
29. \$22,440 Returned to 5 Workers on Private Construction Projects
30. \$18,680 Returned to 7 Workers on Private Construction Projects
31. \$45,000 Returned to 9 Employees of a Hair Salon & a Nail Salon
32. \$450,000 Returned to 20 Employees of Banquet Hall
33. More Than \$40,000 Returned to 13 Bus Drivers

Long Island

34. \$265,000 Returned to 15 Immigrant Workers At Beverage Factory
35. \$500,000 Returned to 12 Workers on School Construction Authority & Parks Department Projects
36. \$65,000 Returned to Workers at 5 Domino's Franchisees in Nassau County
37. \$75,000 Returned to 10 Severely Underpaid Car Wash Workers
38. \$122,000 Returned to Workers at 6 Domino's Franchisees in Suffolk County
39. \$60,000 Returned to 33 Employees of Movie Theater Cleaner