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# OUT OF THE SHADOWS

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## Shedding Light on the Working Conditions of Immigrant Women in Tucson

A Report by the  
Bacon Immigration Law & Policy Program, James E. Rogers College of Law  
and the Southwest Institute for Research on Women  
September 2014



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James E. Rogers College of Law,  
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University of Arizona**

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# Executive Summary

Every day in Tucson, hotels and houses are cleaned, food is prepared, babies and the elderly are cared for, and countless other jobs are attended to by a little seen workforce: low-wage immigrant women workers. These women toil long hours for low pay only to return to family responsibilities of their own at the end of each workday. Most struggle to find sufficient employment to support their families, and many endeavor to support not just their loved ones at home, but also abroad.

Over the past seven years, the Bacon Immigration Law & Policy Program of the University of Arizona's James E. Rogers College of Law has worked closely with this population through a legal clinic, the Workers' Rights Clinic, specifically focused on low-wage immigrant workers. This report is an attempt to document, in broad strokes, the recurring hardships facing immigrant women workers that the Workers' Rights Clinic witnesses. We offer it to inform city and state stakeholders – workers, advocates, employers, government officials, and the general public – about the conditions of this vulnerable population. As detailed in the report's final section, we have identified concrete steps the city and state could take to address the recurring abuses and exploitation we document.

This report is based on one year of field research, between April 2012 and March 2013.<sup>1</sup> Researchers collected ninety surveys from low-wage immigrant women workers and conducted twenty-nine interviews of workers, government officials, and community leaders. The survey respondents capture a wide range of experiences and backgrounds. The majority of the survey participants, 82%, were born in Mexico, with 10% born in Somalia, and additional participants from seven other countries. The workers surveyed ranged in age from eighteen to eighty, with an average age of 42.7 years old. Over half of the survey participants (58%) had work authorization. The women labored in a range of workplaces, including private homes, residential care facilities, hotels, offices, restaurants, factories, and retail stores.

Despite this wide range of experience, the women had certain commonalities, especially when it came to family responsibilities:

- 91% had children, and about half had young children under the age of twelve.
- 92% were primarily responsible for all the cooking, cleaning, and care-taking duties in their own households.
- 94% contributed financially to pay bills in their homes, and 51% were the main income earners in their households.
- 47% reported sending money to relatives in their home countries.
- In the past twelve months, 17% of survey respondents reported that they were unable to buy enough food for their families; 27% were unable to pay all their bills; and 27% reported that they or their family members had to go without necessary medical care.

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The conditions the women described in their workplaces also reflected recurring types of hardships, despite the wide range of employment settings. This report identifies five concerns repeatedly described by the women surveyed and interviewed:

### Underpaid

- Many workers described conditions that typify the “underground economy,” which refers to workplaces not covered by employment laws. Specifically, 83% did not have a written contract, 47% were paid in cash or personal checks, and more than half (52%) were working for an employer with fifteen workers or less.
- Of seventy workers who had received an hourly wage in the past week, one in ten was not earning the minimum wage. Of the eight workers who worked more than forty hours in the last seven days, only three received overtime pay.
- Even those earning the minimum wage described struggling to earn sufficient money to cover their basic needs, particularly since most struggled to find full time work. The average weekly salary reported was \$278.25. Even if women earned this every week of the year, they would receive an annual salary of \$14,469, below the poverty line for a household of two.<sup>2</sup>

### Overworked

- Workers repeatedly described pressure to perform quickly. Hotel workers reported orders to clean each room in fifteen minutes. Tortilla factory workers described pressure to complete eighteen trays of tortillas per hour (this amounts to 1,134 dough balls).
- Domestic workers and elder-care providers described live-in arrangements in which they were on-call nearly around the clock and were paid only a fraction of the hours they worked.

### Unsafe

- Twenty-one percent of the survey respondents had been injured at work in the preceding twelve months. Two of these workers (a restaurant and tortilla factory worker) had been injured more than ten times in the past year. Injuries varied in severity but included strains, falls, burns, chemical exposure, and exposure to dangerous illnesses.
- Of the nineteen injured, only three filled out a workers’ compensation form, which could provide them with compensation for any lost wages or medical expenses.
- Only 16% of survey respondents had any form of health insurance.

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## Abused

- One in three survey respondents reported verbal or physical abuse by a supervisor over the past year.
- Twenty-one participants (23%) reported that they were singled out for discriminatory treatment at work in the preceding twelve months.
- Six survey participants reported sexual harassment on the job.

## Exploited

- Women without work authorization were particularly vulnerable. Undocumented immigrants reported significantly lower average weekly earnings (by \$50 per week), and were roughly twelve times less likely to have benefits.
- Workers' vulnerability was compounded by their lack of knowledge regarding their rights in the workplace. Seventy-eight percent of survey respondents did not know the current minimum wage and 60% did not know how or when overtime wages are calculated.
- Over half of the workers who responded either did not think they were covered by the worker protection laws or did not know whether or not they were covered.

Section I of the report describes why these findings are hardly surprising. They are consistent with far more extensive studies of low-income workers that have documented these concerns on a broad scale. We offer this local, up-close analysis to document that the poor conditions of work that typify low-wage industries in other parts of the country are the reality on the ground for Tucson's low-wage immigrant workforce.

After describing our methodology and findings in Sections II through IV, the final section of this report offers three types of reforms to address the concerns identified. First, the data reveal the need to *expand* the coverage of employment laws, so that the workers described in this report are no longer excluded from many of the existing legal protections from workplace abuse. Second, this research illustrates the need to *enforce* existing laws, as many of the incidents described in this report are currently illegal, yet the law on the books is not enforced on the ground. Finally, the surveys and interviews document the need to *improve* the laws on the books, so that the legal system itself does not perpetuate poverty and exploitation of low-income and immigrant workers.

Our policy recommendations are summarized below and described in more detail in Section V. We pitch our recommendations at three levels: state laws, local ordinances, and agency reforms. Although the data set is limited to Tucson, many of the concerns identified implicate state laws and therefore call for statewide reforms. At the same time, there are many local-level reforms that Tucson could implement in the absence of or as a precursor to statewide reform. With regard to "agency" level reform, we refer to the government agencies charged with the enforcement of employment laws in the state, which could implement several significant changes without the need for legislative action.

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## RECOMMENDATION #1: EXPAND THE LAWS

### Expand the Coverage of Wage & Hour Laws

- *At the state level:* Amend state minimum wage law to cover all employers, regardless of size. Currently, Arizona is one of only eight states that limits coverage of its wage and hour laws to the federal minimum. As a result, many of the small employers of the workers profiled in this report are not covered by any federal or state employment laws.
- *At the local level:* Extend coverage by local ordinance, requiring all employers within the City of Tucson to meet higher standards when it comes to wage and hour laws.

### Expand the Coverage of Anti-Discrimination Laws

- *At the state level:* Extend anti-discrimination laws to reach all employers, regardless of size. Again, Arizona is currently in the minority of states that have not extended coverage beyond the federal minimum, leaving women without any legal recourse if they experience discrimination in a workplace with under fifteen employees.
- *At the local level:* Improve implementation of Tucson's anti-discrimination ordinance, Chapter 17 of the City Code, which currently offers broad coverage but is rarely enforced.

### Expand the Legal Protections Available to Domestic Workers

- *At the state level:* Enact a Domestic Workers' Bill of Rights to address many of the current gaps in the law for this particularly vulnerable group of workers.
- *At the local level:* Enact these changes by local ordinance.

## RECOMMENDATION #2: ENFORCE THE LAWS

### Increase Outreach & Education to Immigrant Women Workers

- *At the state or local level:* Increase public and private funding to community groups and government agencies to undertake community education to immigrant women workers and their advocates about workplace rights.

### Provide Protection from Retaliation

- *At the state level:* Add comprehensive anti-retaliation provisions to state wage payment laws, so workers can enforce their rights without fear of retaliation. Currently, Arizona's anti-retaliation provisions are limited to its minimum wage law.
  - *At the local level:* Add anti-retaliation provisions to Tucson's city code.
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- *At the agency level:* Establish protocols and points of contact for certification of “U visas,” which provide immigrants who are victims of serious crimes, including in the workplace, legal status in order to assist in law enforcement investigations without fear of deportation.

### **Increase Resources for Government Agencies and Create Mechanisms for Community Input**

- *At the state level:* Increase the resources, training, and staffing of state labor enforcement agencies.
- *At the local level:* Improve enforcement of employment laws by providing increased remedies and a longer statute of limitations for violations of Chapter 17 of Tucson’s City Code, and create mechanisms to enforce judgments.
- *At the agency level:* Create task forces or other mechanisms to provide workers’ advocates and other stakeholders the opportunity to share information and help the agencies do their job better.

## **RECOMMENDATION #3: IMPROVE THE LAWS**

### **Increase the Minimum Wage**

- *At the state level:* Increase the state minimum wage.
- *At the local level:* Increase the minimum wage for all employees within the city limits.

### **Increase Worker Protections**

- *At the state level:* Provide paid sick days; mandate meal and rest breaks; create a right to overtime based on daily rather than weekly hours worked.

### **Pass Comprehensive Immigration Reform that Protects Immigrant Workers**

- *At the federal level:* Pass immigration reform that brings low-wage immigrant workers out of the shadows and protects them from further exploitation and abuse.-



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# I. Background

Over the past decade, a growing body of research has documented widespread workplace exploitation and abuse throughout low-wage industries in the United States. One ground-breaking survey of over four thousand low-wage workers in Los Angeles, Chicago, and New York found severe and widespread workplace violations, including rampant violations of minimum wage and overtime laws, failure of workers' compensation to cover workplace injuries and medical expenses, and widespread retaliation against workers who attempted to raise complaints about their treatment.<sup>3</sup>

This existing body of research has highlighted the particular vulnerabilities of immigrant women workers in low-wage industries. Both women and foreign-born workers are more likely to experience minimum-wage violations, and female foreign-born workers are particularly vulnerable.<sup>4</sup> In part, this is attributable to the job sectors in which immigrant women workers predominate, which tend to be particularly isolated and prone to workplace violations. These industries include:

- Domestic work: many immigrant women work cleaning and maintaining private homes. In 2012, a landmark study surveyed over two thousand domestic workers in fourteen cities across the United States, and documented rampant sub-standard working conditions.<sup>5</sup>
- Caregiving: immigrant women predominate in caring for children, people with disabilities, and the elderly, both in private homes and in residential facilities.<sup>6</sup>
- Hotel work: studies have documented particularly high rates of injury for Latina hotel workers, as well as high levels of pain across the board for a broad survey of hotel workers.<sup>7</sup>
- Restaurant work: a major survey of restaurant workers in eight regions of the country documented widespread minimum wage and overtime violations, health and safety concerns, no paid sick leave, and racially disparate wage levels.<sup>8</sup>

These large-scale studies have established the ubiquity of workplace violations for low-wage immigrant women workers. This study builds on this research and highlights the reality that immigrant women in Tucson experience the same unsafe and exploitative working conditions that typify the industries in which they labor nationally.

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## II. Methodology

A team of ten researchers, comprised of law students, a community volunteer, and Bacon Program staff collected ninety surveys between April 2012 and March 2013. Each survey was obtained through a one-on-one “interview” style in which the researcher would record oral responses from the interviewee; each survey took approximately twenty to thirty minutes to administer.

During this same period, the research team also conducted twenty-nine in-depth interviews with workers, government officials and community leaders.<sup>9</sup> Of the interviewees, sixteen were low-wage immigrant women workers, seven were community leaders, and six were staff of local, state, and federal government agencies. General profiles of the interviewees are provided in Appendix B.

In order to protect the privacy of all participants, surveys and interviews were conducted anonymously and researchers did not collect names, contact information, or any personally identifiable information from research participants.<sup>10</sup>

Survey and interview participants were recruited at ten sites in Tucson. Researchers selected survey sites that would tap into existing networks within the immigrant community. A full list of recruitment sites is provided in Appendix A. At each research site, a member of the research team would describe the research project and invite anyone with interest to take the anonymous survey.

In order to participate in the survey, participants were screened to ensure they were:

- Women;
- Eighteen years of age or older;
- Foreign born and currently residing in the United States, regardless of immigration or citizenship status;
- Low-wage workers, defined as below 80% of the median income for Pima County, Arizona, based on family size;
- Front-line workers (not managers or professionals); and
- Employed in Tucson, Arizona, within the twelve months immediately preceding the date of survey participation.

Researchers also recruited potential participants in conjunction with the Bacon Program’s on-going outreach and direct legal services activities.<sup>11</sup> Finally, some survey participants voluntarily connected researchers to additional survey participants who were friends, family, or co-workers.

Overall, this survey sampling methodology—best described as convenience sampling with occasional snowball sampling—was driven by the fact that the target population is

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notoriously hard to reach.<sup>12</sup> As a result of the Bacon Program's limited capacity and focused interest, the study does not endeavor to present a statistically representative sample of low-wage immigrant women workers in Tucson. Instead, the data simply captures what working conditions look like for ninety women workers in Tucson, Arizona. This snapshot provides an illuminating glimpse into workplaces that are otherwise all too often unseen.<sup>13</sup>

### III. Demographics

The majority of the survey participants, 82%, were born in Mexico, with an additional 10% born in Somalia. There was also one survey participant from each of the following countries: Ecuador, Philippines, Bhutan, Iraq, Mali, Ethiopia, and El Salvador.

Survey participants ranged in age from eighteen to eighty, with an average age of 42.7 years old. Before immigrating to the United States, 38% of the survey participants were children, 14% were housewives who did not work outside the home, and 44% worked outside the home as secretaries, factory workers, grocery and retail clerks, janitors, and farmworkers. Six survey participants held professional positions before coming to the United States. The participants have been in the United States for anywhere from one to sixty years; on average they had lived in the United States for 16.8 years.

With regard to immigration status, just over half of the survey participants had work authorization (58%). Within this group, 18% were naturalized U.S. citizens, 28% were lawful permanent residents, and 12% were refugees/asylees. Of those without work authorization, 27% reported no lawful immigration status, 8% had expired visas, and 3% had tourist visas. An additional 3% of survey participants either refused to provide information pertaining to their immigration status or did not know their immigration status. See Figure 1.

Survey participants worked in diverse industries around Tucson. Twenty-seven percent were domestic workers who cooked, cleaned and provided child- or elder-care in private homes. An additional 21% worked as caregivers and staff in institutional settings. Thirteen percent worked in hotels as housekeepers, 10% worked in offices (as secretaries, or "segundas"), 8% worked in restaurants as servers or kitchen staff, 7% worked in cleaning/custodial jobs, 9% worked in factories (tortilla, plastics and electrical), and 2% worked in retail or grocery stores. See Figure 2.

Most respondents (84%) worked within seven days of participating in the survey. Of these respondents, forty-seven percent had worked for their employer for more than two years, 24% had worked between one and two years, and 29% had worked for less than one year.

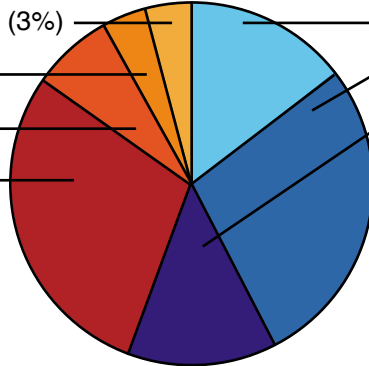
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## Figure 1: Immigration Status

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### Unauthorized Workers

Refused to answer/unsure (3%)  
Tourist visa (3%)  
Expired visa (8%)  
Undocumented (27%)



### Authorized Workers

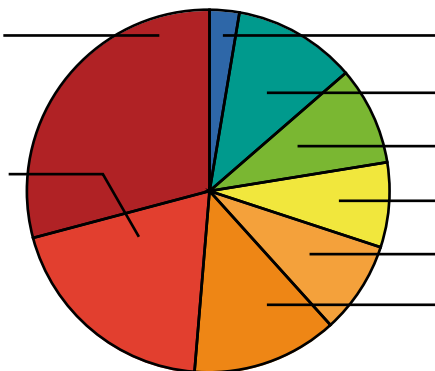
Naturalized Citizens (18%)  
Legal Permanent Residents (28%)  
Refugees/asylees (12%)

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## Figure 2: Industries

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Domestic work in private homes (27%)  
Caregivers in institutional settings (21%)

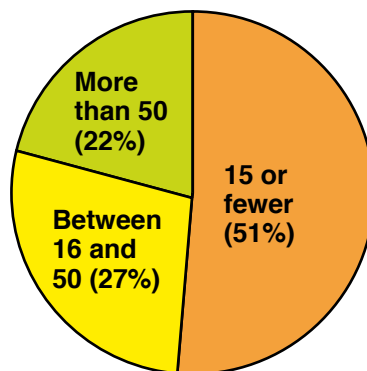


Other (2%)  
Office (10%)  
Factory (9%)  
Custodial (7%)  
Restaurants (8%)  
Hotels (13%)

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## Figure 3: Number of Employees

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Participants worked for employers ranging in size from those with fifteen or fewer workers (51%), to those with sixteen to fifty workers (27%), to those with fifty or more (22%). See Figure 3.

The vast majority of the women surveyed balanced their paid work with extensive responsibilities at home. On average, survey respondents lived with 2.8 other people. Ninety-one percent of the survey participants had children and about half of them had young children.<sup>14</sup> Ninety-two percent of the women surveyed were primarily responsible for all the cooking, cleaning, and care-taking duties in their household. A mere seven respondents (8%) reported that they had either shared or had no household responsibilities, and out of those women, only one had young children at home.

In addition to their cleaning and caretaking responsibilities at home, the women who participated were often also the “breadwinners” for their families. Ninety-four percent of the women surveyed contributed financially to pay bills in the home, and 51% were the main income earners in their households. Forty-seven percent reported sending money to relatives in their home countries as well providing for their own households. Those who sent remittances to family members abroad sent an average of \$1,597.89 per year.

Unsurprisingly, given their low salaries and extensive responsibilities, many of the women reported experiencing significant financial hardships over the past year. Seventeen percent were unable to buy enough food for their family, 27% were unable to pay all their bills, and 27% reported that they or a family member had to go without necessary medical care.

## IV. Findings

The following five sections highlight concerns about workplace conditions that were identified through the Bacon Program’s research. Each section opens with a profile of an immigrant woman interviewed by the researchers, and follows with a discussion of the survey data and additional interviews that are relevant to each of the identified concerns. In order to protect the privacy and identity of interviewees, pseudonyms are used throughout. Section V summarizes public policy reforms that would address the concerns identified.

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## A. Underpaid

*Patricia is a domestic worker who has lived in Tucson since 2010. She is a single mother working to cover the cost of her daughter's school in Mexico. After responding to a newspaper ad in Mexico, she accepted a job as a live-in domestic worker in Tucson. Her employer promised her \$350 per week over the phone and had a relative in Mexico transport her from the interior to the border. She was then told to use her tourist visa to cross on foot, and she was picked up by her employer at the Burger King on the U.S. side of Nogales.*

*Patricia arrived without a car, a written contract, or any contacts in Tucson. She had never been to the United States before and spoke no English. For the next eighteen months, she lived in the home of the family that had hired her. She was responsible for cleaning, caring for pets, ironing, cooking some meals, and attending to other odd jobs as they arose. She worked six days a week from 8:00 a.m. until 8:30 p.m.. Initially, Patricia received \$250 rather than the \$350 per week. Based on her weekly hours, this amounts to \$3.33 per hour, plus room and board. On her day "off," her employer told her she had to make the beds, clear the table, and feed the pets before she could have time off. This would take until around midday, at which point her employer drove her to the mall and returned to pick her up at 7:00 pm.*

*Patricia was completely isolated in her employer's house. She did not even know how far the house was from the nearest convenience store until the family went to Europe and left her alone in the house. After days in isolation, she set out to explore. She walked for miles, hoping to find a gas station or store, and eventually hitched a ride. When the family returned from Europe, twenty-five days later, they refused to pay her for any of the time they were gone.*

*While the schedule and workload were grueling, the hardest part about her job was the abuse she endured from her employer's adult daughter, who also lived in the house. Patricia cried when she remembered how the daughter used to talk to her disrespectfully, order her around, and throw utensils into the sink while Patricia was washing the dishes.*

*Ultimately, Patricia was fired when she accidentally ate one of the family's organic eggs instead of the eggs that had been set aside for Patricia's consumption. The argument over the egg escalated and her employer told her to leave. When Patricia asked for a severance payment and help with arrangements to travel back to Mexico, her employer called the police to remove Patricia from their home. Upon investigating the situation, the police told Patricia she had the right to stay until her employer got a court order saying otherwise.*

*Patricia has heard that after she left, the family hired another person from the same town in Mexico. She muses, "How come they don't hire a person from here? Because people know the minimum...and these people don't want to pay."*

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## 1. The Underground Economy

Patricia's experience is emblematic of the underground economy in which many of the low-wage immigrant workers who participated in our survey and interviews worked. In layperson's terms, the underground economy is frequently described as "off the books." In legal terms, the underground economy refers to workers who would not be recognized as "employees" by the law, and are therefore unable to access nearly all of the legal protections designed to protect workers from abuse and exploitation, including minimum wage and overtime laws.

Of the seventy-six survey participants who had worked in the preceding seven days, the sizable majority worked in Tucson's informal and unprotected economy. Specifically,

- 83% did not have a written contract.
- 49% were not asked to fill out a Form W4 for purposes of withholding payroll taxes from their paychecks.
- 62% were not asked to provide documents to verify their work authorization when they began their jobs.
- 35% were paid in cash and an additional 12% were paid with personal checks.
- 28% of the workers reported that their employers did not maintain records of the hours they worked or the wages they received and an additional 5% were uncertain about their employer's maintenance of payroll records.
- More than half (52%) were working for an employer with fifteen workers or less.

As Section V discusses in more detail, the result of these qualities of employment is that many immigrant women workers cannot bring claims for minimum wage violations, or many other employment-related complaints, because legally they do not qualify as "employees."

## 2. Low Pay, Low Hours

The women surveyed reported pervasive low wages and frequent violations of wage and hour law. Of the seventy workers who responded to the question about their hourly wage in the last seven days, one in ten was not earning the minimum wage. Of the eight workers who worked more than forty hours in the last seven days, only three received overtime pay.

As Patricia's story suggests, these figures do not capture the full extent of wage-related problems faced by low-wage immigrant women workers. This is true for several reasons. First, most of the women surveyed struggled to find full-time work. Earning the minimum wage at these low hours would not come close to providing a sustainable financial existence, particularly given the numerous dependents many of the women support.

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On average, survey respondents only worked for twenty-eight hours in their primary job during the preceding week. Many workers were piecing together work with multiple jobs; in fact, 20% of the workers who worked in the seven days prior to their survey participation held multiple jobs. The majority of workers (74%) would prefer more hours of work if given the opportunity.

Domestic workers are especially likely to work less than full time, given their reliance on individual house cleaning jobs. On average, the domestic workers surveyed worked a total of twenty hours in the preceding seven days, including all houses cleaned. They had an average hourly wage of \$14.05. Even assuming they worked twenty hours every week of the year, these women would earn an annual salary of \$14,560, well below the federal poverty line if they have even one dependent.<sup>15</sup>

Women in other lines of work reported equally low earnings. While the non-domestic workers surveyed were likely to work somewhat greater hours per week (32.2 in the last seven days), their average hourly wage was far lower, \$8.67. This results in roughly the same annual salary: \$14,517.

The lack of full-time work has repercussions beyond the low weekly salary. It also means the workers are unable to receive overtime compensation, since the federal overtime statute only applies after forty hours of work in a week. Thus, a worker who works three twelve-hour shifts would not receive overtime pay despite the very lengthy workday.

In addition, without full-time work, workers are highly unlikely to receive benefits. One home healthcare worker explained in an interview that even when agencies offer benefits, they are only available to full-time employees, and since no one gets forty hours per week, they never get benefits.<sup>16</sup>

## B. Overworked

*In Mexico, Barbara<sup>17</sup> was used to an economically stable life. But when an unforeseen circumstance caused her to lose everything, she decided to jump the fence into the United States with her five young children. When Barbara started working in Tucson-area hotels, she told herself, "If you are going to clean bathrooms, you are going to be the best," and ever since, she has taken great pride in her work and has worked hard to support her five children.*

*Barbara's biggest concern about her work conditions is the demanding workload that is required for a meager amount of wages. Barbara is usually paid per hotel room and is expected to clean at least two rooms per hour to earn the minimum wage. Often, the rooms take longer than thirty minutes, so she winds up earning less than minimum wage. Other times, she is expected to clean more than two rooms per hour. In one hotel, for example, Barbara was expected to clean thirty-seven rooms in eight hours. That is about fifteen minutes per room.*



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*This method of calculating wages discourages resting: “I needed to complete my hours, my rooms, in the time they gave me and leave at the time they say.” She will not get paid more for staying late. Similarly, overtime wages are just beyond her reach, because “it is very rare to get overtime in a hotel. If they see you getting close to the overtime, they’ll give you more days off.”*

*Furthermore, Barbara explained that the workload is worse if you complain. Housekeeping supervisors have complete control over the schedules and workloads of the employees, and they use this control to adjust the workloads of particular employees in order to punish them. They can assign the dirtiest rooms, the worst shifts (Sundays, when rooms are dirtier due to weekend parties), the rooms farthest from the linen closet, or take certain workers off the schedule altogether.*

*Barbara explained that it is particularly important for housekeeping employees not to ruffle any feathers as the summer months draw near because Arizona’s hotel industry slows down and “the hotels give preference to certain workers.”*

Barbara was one of many women who described grueling workloads and intense pressure at work. Workers described being asked to complete large workloads at extremely fast paces. For example, one tortilla factory worker described that typically in Tucson’s tortilla factories, workers are expected to complete eighteen trays of tortillas per hour. With sixty-three dough balls per tray, this amounts to placing 1,134 dough balls through the tortilla press every hour.<sup>18</sup> She said the fast pace resulted in frequent burns and occasional broken fingers.<sup>19</sup>

Hotel workers such as Barbara described constant pressure to clean their assigned areas at a fast pace. One pair of workers described a hotel with such an extreme workload that twenty out of the twenty-seven workers in the overnight crew eventually quit. To keep their jobs, the remaining seven workers had to clean the entire resort in the same amount of hours for the same amount of wages.<sup>20</sup>

Workers described expanding their workloads beyond their designated job duties in order to hold onto their jobs. One home healthcare worker described that she was frequently asked to perform additional tasks, such as cooking and cleaning, by patients and their relatives. She knew she would not be compensated for these tasks by the agency, but she wanted to avoid any chance of complaints from the patients to ensure the agency would continue to assign her to future clients.<sup>21</sup>

Patricia, the live-in domestic worker profiled above, described having been promised \$350 per week when she made the arrangements in Mexico, but only receiving \$250 per week once she arrived in the United States. After four months on the job, the employer told her she would start paying her \$350 if she would cook all of their meals in addition to her other work. Although this had not been a part of their original agreement, she agreed to this arrangement because she needed the job.<sup>22</sup>

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Another hotel worker described that her employer routinely ordered her to do the laundry, clean the lobby, and clean up various spills, none of which was compensated work since she was paid per room cleaned.<sup>23</sup> Despite the constant demands, she worked in the hotel for over fourteen years, fearful that if she lost the job she would not find another.

Of survey respondents, 11% (eight out of seventy-five) reported having worked off the clock without being paid in the past week. Furthermore, our interviews with workers and worker advocates revealed that workers across various industries frequently perform work for which they are not paid. According to the home healthcare workers and advocate interviews, home healthcare agencies set the reimbursement rates in pre-set time increments per task. Often the time allotments are far shorter than the actual time required to carry out the work. For example, one agency allots fifteen minutes of work to bathe a patient, and the worker receives this amount of pay, even if the bath in fact took two hours to complete due to the needs of the patient.<sup>24</sup> Similarly, hotel workers reported that many hotels pay housekeeping employees per room, with each room worth half an hour in wages (typically half the minimum wage). This results in long periods of uncompensated waiting time, with workers waiting for hours until they can enter rooms to get started on their cleaning.<sup>25</sup>

## C. Unsafe

*Natalia<sup>26</sup> is an undocumented single mother who works to support her four U.S. citizen children, ages twelve, sixteen, nineteen, and twenty-two. Over the past three years, Natalia has worked in several small-scale residential adult care homes in Tucson. She typically works twenty-four hour shifts, anywhere from three to seven days a week. For each twenty-four hour period, she is paid between \$70 and \$80. At night, Natalia is provided with sleeping accommodations, but she is up multiple times a night, as the only employee on duty. Throughout the night she dispenses medicine for residents, changes residents' diapers, and returns residents with dementia to their beds when they wander outside their rooms.*

*Through her caregiving work, Natalia has been exposed to at least two highly contagious medical conditions. In one home, she was exposed to and contracted tuberculosis. Her employer told her after the fact that she should be tested, whereupon she tested positive and continues to receive treatment to this day. In another home, she was exposed to MRSA (a highly contagious flesh-eating bacteria), again without receiving any prior knowledge of the risk of such exposure before she entered the workplace.*

*In addition, Natalia has faced additional safety concerns when patients refuse to take their anti-psychotic medications. On one occasion, a patient who refused his medication slammed Natalia up against some metal bars and hit her. Although she was injured by the incident, Natalia did not seek medical attention because*

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*she could not afford treatment and her employer would not pay for it. A criminal case ensued, and the resident was relocated to a mental health facility. Natalia frequently raised complaints to one of her employers about her work conditions, lack of time off, and low pay. Her employer told her he would never increase her wages because she was “illegal” and that she should “thank God he was giving her a job.” He paid her under the table and told her never to tell anyone she worked for him because he didn’t want problems with the IRS.*

## 1. Working in Fear

Over one in five of the workers who participated in the survey (22%) reported feeling unsafe or in danger at work in the previous twelve months. Workers in surveys and interviews described the following particular fears:

- Hotel workers reported fear of encountering poisonous spiders, snakes, and scorpions while working, and being nervous about attack, rape, or murder while they worked in isolated hotel rooms.
- Hotel workers, domestic workers, and janitorial workers raised concerns about the potential toxic effects of the cleaning chemicals they use.
- Two tortilla factory workers reported frequent burns and witnessed co-workers smash fingers in the tortilla presses.
- Home healthcare workers were fearful of attack by their clients or their clients’ family members. They also feared exposure to their clients’ illnesses. In addition to Natalia’s experience, another home healthcare worker reported that she was sent to care for a patient who had tuberculosis in his home, and was not told that the patient had tuberculosis until after she had made the visit.
- Several survey participants described fights and aggression amongst co-workers in the workplace.
- One retail worker reported having been robbed at work in the past and feeling nervous about working alone.
- An office worker at a car shop reported getting severe headaches from the paint fumes. She was not provided any safety equipment such as a mask or ventilation.
- A nail salon employee commented on a similar lack of ventilation, which caused extreme headaches and eventually led her to quit.

A common concern raised by workers throughout the survey and interviews was the lack of training they received at work. For example, one tortilla factory worker explained how nervous she was to use the tortilla press machine when she started her job because she did not receive adequate training on how to use it.<sup>27</sup>

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## 2. Injuries without Accountability

The women's fears are not unfounded. Numerous workers reported injury on the job. Nineteen of the ninety survey respondents (21%) had been injured at work in the preceding twelve months. Two of these workers (a restaurant and tortilla factory worker) had been injured more than ten times in the past year. Injuries varied in severity but included strains, falls, burns, and chemical exposure. Specific injuries reported included:

- One janitor reported having been poked by a discarded needle while cleaning an office building. She periodically has blood tests to make sure she did not contract HIV or another blood borne illness.
- One caregiver in a home for elderly residents fell on her back while cleaning a fan. Her employer required her to work despite her injuries and refused to cover the costs of medical treatment.
- One cook in a hospital fell at work and was incapacitated for a week. While her employer covered her medical costs, she never received wages for the week she had to stay home from work. The injury was so bad she had to work light-duty for a few months afterward.
- One live-in domestic worker described being bitten by a poisonous spider while working in the garden. When she told her employer, he refused to take her to the doctor until it was very infected. She was still required to fulfill all her domestic worker duties despite the infected spider bite.

Once injured, the women described little to nothing in the way of safety nets. Only twelve of the seventy-five workers who were employed in the past seven days (16%) had health insurance. The sizable majority (80% or sixty of seventy-five) did not receive paid sick days. Thirteen workers (18%) reported they would not be able to receive permission to take time off to see the doctor. Of the remainder, fifty workers (68%) believed they could take unpaid time off, and only eleven (15%) reported they would receive paid time off if they had to see the doctor. Some workers did not know if their employer would allow them to take time away from work to go to the doctor because they were too scared to ask: "I would feel very bad to bother them [to ask for time off]," explained one tortilla factory worker.<sup>28</sup>

Of the eighteen workers injured on the job in the last year, thirteen of them (72%) were never compensated for medical expenses or missed wages related to workplace injuries. Only three of those injured filled out a workers' compensation form. Only five received compensation for any lost wages or medical expenses from their employer.

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## D. Abused

*Laura left Mexico in 1994, leaving her four children, ages six, eleven, fourteen, and fifteen, in the care of her mother. She came to the United States to try to earn money so the family could move out of their house, which was made out of a sort of cardboard that was unbearably hot in the summer and cold in the winter.*

*Soon, she found a job as a housekeeper in a small hotel in Tucson. She worked there for the next fourteen years. The hotel paid her \$2.65 per room, which gradually went up to \$3.50 over fourteen years. Each room took her thirty minutes to clean, so this amounted to well less than the minimum wage. Her supervisor would take the tips from the rooms before she arrived, so she was unable to add any tips to her daily income. Still, the wages were far better than anything she could earn in Mexico. She managed to send a sizable amount to her mother and daughters each week, and was determined to continue to work to keep the money coming.*

*Far worse than the pay was the relentless disparaging treatment she encountered from her employer. The hotel was owned by a married couple, and the wife in particular would constantly yell at her and berate her. Anytime she would complain about anything, the employer would say, "You are illegal, you can't go anywhere else." Often, her employer would grab her by the arm, shake her, tell her to hurry up, and physically push her around. On a daily basis, she would tell her she was worthless, no good, not a good worker.*

*About five years into the job, Laura fell down the stairs and seriously injured her ankle. She didn't go to the hospital. She took just one day off because her employer threatened that more time off would risk her job. The ankle never fully healed; Laura walks with a severe limp and the ankle is visibly misshapen to this day. Her employer repeatedly said, with regard to the injury, "This is your problem; this is not my problem. I pay you to work." Laura also suffers from chronic knee pain from constantly kneeling to scrub bathroom floors.*

*After ten years, Laura became eligible for a visa as a result of being the victim of a serious crime. For the first time, she asked for a few days off for meetings with her immigration attorney. Each time, her employer threatened that if she took time off she would lose her job.*

*Last year, Laura's visa allowed her to legally travel back and forth to Mexico for the first time since her arrival. She traveled back to her home town and saw her children and mother for the first time in fourteen years. After a week of vacation over Christmas, which she had requested in advance, she returned to work. Upon her return, her employer tried not to pay her for fourteen rooms. When she insisted that she cleaned them, the employer then told her to leave, yelling that there was no more work for her. Laura was forced to leave, and soon found out that they had hired another undocumented woman to replace her.*

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## 1. Physical and Verbal Abuse

Many workers described feeling uncomfortable, disrespected, and abused at work. One in three of the survey participants (thirty of ninety) reported verbal or physical abuse by a supervisor or employer over the past year. Workers reported that their supervisors or employers yelled,<sup>29</sup> threatened,<sup>30</sup> and insulted them,<sup>31</sup> made them feel uncomfortable,<sup>32</sup> commented about their perceived immigration status,<sup>33</sup> and commented about their physical appearance.<sup>34</sup> Six workers suffered physical abuse and reported that their supervisors or employers pushed, hit, and touched them in an inappropriate manner. The frequency of the abusive comments and violence varied from multiple times per day to a couple times per year.

As the following examples illustrate, abusive work environments were described across all low-wage industries.

- One restaurant employee described a supervisor who grunted each time he saw her, purposefully bumped into her violently when he walked by, gave her more work than her co-workers, and deliberately left her name off the shift sign-in sheet every time she was scheduled to work.
- A woman who cleaned and cooked in a nursing home reported being threatened, yelled at, and insulted on a daily basis.
- One retail employee explained how her employer created a tense and uncomfortable atmosphere at work. He “makes us feel low, he makes us feel weird. So we end up not complaining. . . . Because we think, what for, he is just going to ignore us...he knows that we are not going to complain anywhere.”<sup>35</sup>
- Hotel workers described supervisors harassing staff that complained about anything by inspecting each room after it has been cleaned and demanding further cleaning, disparaging these workers in front of co-workers at staff meetings, and assigning the dirtiest rooms or the most difficult shifts to those who spoke out or ever complained.<sup>36</sup>

## 2. Discrimination

In the survey, twenty-one of the ninety survey participants (23%) reported that they were singled out for differential treatment at work in the preceding twelve months. Workers reported experiencing discrimination on account of their race or ethnicity,<sup>37</sup> language,<sup>38</sup> national origin,<sup>39</sup> immigration status,<sup>40</sup> religion,<sup>41</sup> and gender.<sup>42</sup>

The majority of workers who experienced discrimination at work (fourteen of the twenty-one) described verbal harassment and abuse. One woman described a employer who spoke badly of Mexicans; another described a supervisor commenting so repeatedly on her immigration status that eventually she quit. In interviews, both home healthcare workers and hotel workers described clients refusing to allow them to enter the premises because of their perceived race or country of origin.<sup>43</sup>



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Barbara, the hotel housekeeping employee profiled above, described that clients frequently call her “Maria” just because she is Latina, even though it is not her name. On one occasion a hotel guest told her, “What I need is for you to bathe yourself before knocking on my door,” and another said, “You like to clean up sh\*# because you’re Mexican.” Sometimes she would report such comments to management; other times, she would just cry in the bathroom.

A care-provider described repeated accusations of stealing by her elderly patients. One of the patients for whom she provided in-home care told her, “Mexicans come here to rob,” and eventually kicked her out of the house after falsely accusing her of robbing a necklace. Another patient regularly checked her bag before she left the home to be sure she wasn’t taking anything. When she complained about this, she described that the woman replied, “Why are you complaining? You wouldn’t earn anything like this if you were in Mexico.”<sup>44</sup>

In addition to verbal abuse, sixteen workers in the survey described discrimination in their work assignments. Eight workers believed they were singled out from their co-workers based on one of the protected grounds and given more work. Others described being moved to a different shift, being given different work assignments, being given less work, and receiving less pay because of one of the protected grounds.

### 3. Sexual Harassment

Six survey participants said they had experienced sexual harassment in the past year. Of these women, three experienced isolated incidents and three experienced repeated harassment. The women experienced harassment by co-workers, supervisors, customers, and patients.

One domestic worker described a homeowner who followed her around while she was working and watched her in a way that made her feel uncomfortable. One time he took a shower while she was cleaning and came over to talk to her completely naked. He asked if it made her feel embarrassed as he stood in the doorway while she finished up.

One retail employee described sexual harassment at work that left her feeling trapped. A higher-ranking employee regularly visited her store to check for compliance with company policies. He repeatedly harassed her and made her feel uncomfortable. She described, “[H]e is really bad ... not just to me, he does it to my other coworker ... she doesn’t have [a] social security [number]. He knows our situation. He doesn’t do it to that girl that has social security....” She described how he hugged her too tight, asked her out, and on at least one occasion, bit her. “I told him this is getting too much. Then he started complaining about my store. So when he comes in I have to have a smile and be nice ... just fake it.”<sup>45</sup>

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## E. Exploited

Ana<sup>46</sup> is an undocumented thirty-nine year old mother of three young U.S. citizen children. She responded to an ad on craigslist seeking laborers in a used clothing factory. Ana worked in one of the two crews sorting and packing the used clothing into shipping containers, which were then stored in a warehouse awaiting shipment.

When she started, Ana told her employer that she did not have work authorization, and she was assured that it did not matter. Ana worked for the company for several months, often working over nine hours a day. Pay was extremely low and highly irregular. Ana and her coworkers would sometimes receive \$100 or \$200 for a week's work, and other weeks receive nothing at all. When work was slow, Ana and her coworkers were told not to come to work and they were called back again when the work picked up.

Ana kept coming back, hoping the following day might be a pay day. When she complained about the low and unpaid wages to her employer, she was told she could quit if she wanted. In the end, she was owed over \$3,000 in unpaid minimum wages and overtime.

The company had two crews. Ana's crew was primarily undocumented Spanish speakers and the other crew was comprised of South Asian refugees. When one crew complained about their wages, the other crew was held up as an example of drama-free, hard workers. Both crews were scared of getting fired and felt as if they were in competition.

Eventually, Ana obtained legal assistance through the Bacon Program's Workers' Rights Clinic. Over the course of a year, the Clinic attempted to help Ana recover her unpaid wages. The employer failed to respond to repeated phone calls and demand letters. The U.S. Department of Labor rejected Ana's wage claim, determining that they lacked jurisdiction over this company because of its small size. Ana then filed a claim in small claims court. At the hearing, Ana represented herself, and her employer argued he should not have to pay her because she was "illegal." The hearing officer found her immigration status irrelevant, and ordered the employer to pay \$2,500, the maximum possible judgment permitted in the small claims court at that time.

But the employer refused to comply with the court order. With the Clinic's assistance, Ana continued to attempt to recover her unpaid wages through various legal channels. Finally, after two years, on the eve of a hearing to enforce the debt in state court, the employer agreed to pay her \$1,500. Tired of waiting and anxious about her own finances, Ana accepted the settlement, though it was less than half of her original claim.



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## 1. The Particular Vulnerability of Undocumented Workers

The data collected capture the ways in which undocumented workers are singled out for particular exploitation. Thirty-seven of the ninety survey respondents were not legally authorized to work.<sup>47</sup> As detailed in the following chart, these workers reported lower weekly earnings, less benefits, and far greater likelihood of being part of the underground economy.

Unauthorized workers also experienced higher instances of verbal and physical abuse. Nearly half of the undocumented workers surveyed (49%) reported some kind of verbal or physical abuse in the last twelve months, while only 23% of workers with work authorization did so. Of particular note, unauthorized workers made up five of the six cases of sexual harassment captured by our survey data.

While this information demonstrates the difference that work authorization can make, it is important to note that workplace abuse does not end with work authorization, and neither does workplace harassment or fear. One hotel worker who obtained lawful permanent residence after a period of being undocumented explained, “I now have papers, and I continue to feel discriminated.”<sup>48</sup> Particularly telling is the fact that nearly half of the thirteen naturalized U.S. citizens surveyed reported that they were unsure or did not believe they were covered by worker protection laws in the United States.

	<b>Authorized Workers (53 respondents)</b>	<b>Unauthorized Workers (37 respondents)</b>
Average weekly salary (including wages earned in multiple jobs)	\$302.58	\$253.92
Benefits (at least one of the following: paid sick days, paid vacation days, health insurance)	50%	4%
Paid in cash or with personal checks	15%	97%
Payroll records	87%	27%
Filled out W-4	78%	7%

## 2. Lack of Knowledge

The data collected demonstrate a general lack of awareness about legal rights and remedies and the extent to which they pertain to immigrant or low-wage workers. Of the seventy-six survey respondents who worked in the last seven days, fifty-nine (78%) did not know the current minimum wage. Forty-four workers (60%) did not know how

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or when overtime wages are calculated.<sup>49</sup> Perhaps most striking of all, over half of the seventy-five workers who responded either did not think they are covered by the worker protection laws in the United States or did not know whether or not they were covered.

	<b>Authorized Workers</b>	<b>Unauthorized Workers</b>
Unaware of agencies	17%	44%
Unaware of rights/remedies	19%	28%

When asked to explain why they did not think they were protected by employment laws, responses varied from those who described an absence of concern for workers in general (“nobody cares about workers in the U.S.” and “the government never does anything for workers”) to those who described unequal treatment based on immigration status or national origin (“because of my immigration status,” “I am undocumented,” or “I am always harassed and [was] even fired from work because I’m Mexican”).

Again, sorting survey responses by immigration status reveals striking trends. On the survey, respondents who had never approached a government agency for help were asked why not. In response, undocumented workers were particularly likely to select that they were unaware of these government agencies and/or unaware of the fact that they have legal rights.

### 3. Too Fearful to Act

One might assume our recruitment methods would increase the likelihood of surveying workers who are inclined to report concerns about working conditions. However, even the population surveyed reported low rates of reporting their concerns to their employers, government agencies, or community organizations. Of the workers surveyed, only one in three had complained to their employer or supervisor about their working conditions within the past year. Seventy-seven of eighty-eight respondents (88%) had never approached a government agency for help regarding a problem at work. Sixty-seven (75%) had never approached a community based organization, church, or attorney for help.

Many workers explained that they never felt as though they could complain to supervisors or employers because they needed to keep their jobs. For example, hotel workers explained “the manager of housekeeping is also human resources most of the time so where can you complain?”<sup>50</sup> One community organizer in Tucson explained that workers “can’t report these abuses because it would have consequences. The consequences are: they give you more work, they harass you or pressure you, [or] they reduce your hours until you decide to quit.”<sup>51</sup> A leader in the refugee community explained that refugee workers face additional linguistic barriers since they rarely speak English or Spanish, the two predominant languages of supervisors in the Tucson area.<sup>52</sup> One community organizer in Tucson explained “people don’t learn to report because the

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processes are long, tedious, maybe they don't work and it takes a lot of time that you have to use for other things."<sup>53</sup>

Undocumented workers voiced particularly strong concerns about seeking out legal recourse because of their fear of deportation. Direct threats and pressure related to workers' immigration status were described by several survey participants.

- Eight workers (9% of workers surveyed) reported their employer had commented on their immigration status in the past twelve months.
- Six workers (7% of workers surveyed) reported that they were treated differently because of their immigration status within the past twelve months.
- Two workers had experienced direct threats by their employer of reporting to immigration authorities within the past twelve months.

It was common for workers to refer to SB1070 and as well as the news coverage of Sheriff Joe Arpaio's workplace raids to explain why they feel scared to approach government agencies for help. As one hotel worker put it, "How are we going to file a complaint with the Arizona Attorney General's Office if we are watching the news and hearing about the racism in the laws here?"<sup>54</sup> Other workers had negative experiences with the police that caused them to prefer to keep to themselves. For example, one worker recalled contacting the police regarding her spouse's domestic violence, only to have her daughter arrested instead of her husband. The domestic violence continued, and the worker asked, "With all these things that happen to us, do you think we will trust the government?"<sup>55</sup> In addition, one refugee advocate noted that refugee women are frequently hesitant to seek assistance from government agencies because "they were traumatized by police back in their countries so when they come here they are so scared of police ... and all government officials."<sup>56</sup>

The data on what happened to those who did pursue complaints sadly suggests that the others had good reason to be fearful. Of the thirty workers who reported that they had complained about their working conditions in the past twelve months, their employer ignored their complaint and took no action in 60% of the cases, gave them worse work assignments in 17% of the cases, reduced their hours in 23% of cases, and fired them in 20% of the cases. Twenty-seven percent of the time the employer yelled, threatened, or ridiculed the worker who had complained.

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## V. Recommendations

In this section, we offer an overview of public policy measures that would address the underpayment, overwork, safety, abuse, and exploitation described in the foregoing pages. It is beyond the scope of this report to provide a comprehensive set of recommendations to address the myriad and complex problems captured by our data. Nor is this the right forum to fully engage with the counter-arguments, which are worthy of fuller elaboration than we provide. Instead, this section of the report seeks to begin a dialogue in our region about solutions, and we offer this broad survey of potential responses in that spirit.

From a legal perspective, the problems described in this report roughly divide into three categories: those that speak to the need to expand the law's coverage, those that illustrate the need to enforce existing laws, and those that reveal the need to improve the laws on the books. These are addressed in the next three sections.

In each section, we note whether the recommendations could be implemented at the city, state, or federal level. Recognizing that our data is specific to Tucson, we focus particular attention on local measures. Appendix C provides additional discussion of the extent to which Tucson has the legal authority to undertake the local-level recommendations.

### RECOMMENDATION #1: EXPAND THE LAWS

Many of the hardships described in this report may sound like they should be illegal, yet they are not, due to exclusions of certain types of workplaces from the coverage of existing employment laws. Here are just a few examples:

- Patricia, the live-in domestic worker profiled in “Underpaid,” received no over-time pay, despite the fact that she worked over twelve hours a day, six days a week. She had no legal right to overtime, because live-in domestic workers are explicitly excluded from existing overtime provisions in federal law.
- Through the casework of the Workers’ Rights Clinic, the Bacon Program has met countless workers who, like Patricia, Natalia, and Ana, earn far less than the state-mandated minimum wage. We have calculated that some could be owed thousands of dollars in back wages if their employers paid them the minimum hourly wage. Yet some workers who earn surprisingly low wages per hour are not legally required to be paid the minimum wage because they work for small, localized businesses grossing less than \$500,000 per year.
- More than half of the survey respondents (52%) were working for an employer with fifteen workers or less, which means that these employers would be exempt from

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most of the laws that are designed to protect workers from discrimination. These workers have no legal recourse when they are subjected to comments like those described in “Abused:” “You like to clean up the sh\*# because you’re Mexican” or “Mexicans come here to rob.”

- A live-in domestic worker, described in “Unsafe,” reported on the survey that she was bitten by a spider at work and her employer refused to provide her with medical care or even give her time off to address the bite before it became infected. Unlike most workers, she could not bring a claim for workers’ compensation for the workplace injury because as a domestic worker she is excluded from protection under existing state workers’ compensation law. She is also excluded from safety and health regulations, which exclude employers in private homes from coverage.

**The following reforms would address these gaps in the law:**

### **Expand the Coverage of Wage & Hour Laws**

Under current law, the federal Fair Labor Standards Act (FLSA) sets a federal minimum wage (currently \$7.25)<sup>57</sup> and requires overtime pay (one and one half times the hourly wage) for every hour worked over forty in a seven-day work week.<sup>58</sup> The State of Arizona passed its own minimum wage law in 2006, which currently requires that workers receive \$7.90 per hour.<sup>59</sup> Arizona has no overtime law, so the federal law governs.

Many of the women described in this report work in the underground economy, typified by small-scale employers who pay in cash and/or do not keep tax or other employment records. Most of these employers would not be covered by existing federal and state wage laws. At the federal level, FLSA is a complex law with detailed provisions that exempt certain types of workers from its protections. Broadly speaking, FLSA provides protection to three categories of employees. First, employees directly engaged in interstate commerce are covered regardless of the size of the enterprise.<sup>60</sup> This is unlikely to impact many of the workers described in this report, who provide highly localized services.<sup>61</sup> Second, FLSA covers employers who employ two or more employees and have an annual dollar volume of sales of \$500,000 or more.<sup>62</sup> Third, FLSA covers employers, regardless of annual sales, who are in a business that provides medical or nursing care, hospitals, schools, and government agencies.<sup>63</sup>

Unlike the majority of states, Arizona applies FLSA’s limited coverage to its state minimum wage law.<sup>64</sup> As a result, workers who worked in small businesses that may have gross annual sales of less than \$500,000 are not legally entitled to minimum wage in Arizona. The majority of states have addressed this gap; in fact, forty-two states have state minimum wage coverage that is more expansive than FLSA.<sup>65</sup> States have expanded coverage in a variety of ways, including lowering the total annual revenue requirement,<sup>66</sup> requiring a flat number of employees, from one to five,<sup>67</sup> and establishing a tiered system with different wages required for large and small business.<sup>68</sup>

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**We recommend that Arizona amend the state minimum wage law to cover small businesses that often employ immigrant women workers.**

**In the absence of statewide reform, we recommend that Tucson establish minimum wage coverage for all employees within the city limits.**<sup>69</sup> In doing so, Tucson would join a growing number of cities around the country that are establishing city-wide minimum wage laws.<sup>70</sup>

## **Expand the Coverage of Anti-Discrimination Laws**

Small businesses are exempt from federal and Arizona civil rights laws, which only cover enterprises with fifteen or more employees.<sup>71</sup> This means that many of the women who experienced discrimination on the job – over 23% of survey respondents experienced discrimination in the last twelve months – have no legal recourse because their small employers are not covered by anti-discrimination laws.

Thirty-six states have seen fit to address this gap in coverage by extending the coverage of their anti-discrimination laws to employers with less than fifteen employees.<sup>72</sup> **We recommend that Arizona join the majority of states and expand the coverage of its anti-discrimination laws to reach all employers, regardless of size.** It has already done so in the case of sexual harassment, the prohibition of which covers all employers of one or more employees.<sup>73</sup>

At the local level, Tucson has responded to the need for expansion in this area. Chapter 17 of the Tucson City Code prohibits workplace discrimination within city limits on the basis of race, color, national origin, age, ancestry, disability, religion, gender, gender identity, sexual orientation, marital status, and familial status.<sup>74</sup> This provision extends to all employers regardless of size. Thus, in terms of coverage, Tucson is a leader in this area. However, as we discuss in the section, “Enforce,” below, there are several ways in which this law could be more effectively implemented at the local level.

## **Expand the Legal Protections for Domestic Workers**

One more targeted approach to reform would be legislation specifically focused on establishing legal protections for domestic workers. As noted at the outset, domestic work is one of the most common types of employment for immigrant women workers. Twenty-seven percent of survey respondents in this study were domestic workers. As reflected by the profile of Patricia and others excerpted throughout the report, these workers described many of the most egregious rights violations.

Currently, live-in domestic workers are expressly excluded from overtime protections and workers’ compensation in Arizona. In addition, due to the small size of their employers, both live-in and live-out domestic workers are not covered by most anti-discrimination, civil rights, and labor relations laws.<sup>75</sup>

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In recent years, four states have recognized the unique vulnerability of domestic workers and have passed laws known as Domestic Worker Bills of Rights, and other state campaigns are underway.<sup>76</sup> States that have successfully passed a Domestic Worker Bill of Rights have extended coverage to workers including nannies, childcare providers, caregivers, housecleaners, gardeners, and cooks. Generally those employed on a casual basis such as part-time babysitters remain outside the law.

**We recommend that Arizona pass a Domestic Workers' Bill of Rights.** It should contain, at a minimum, the following provisions:

Wage & Hour: Extend overtime protection to live-in domestic workers. States that have passed domestic worker bills have all recognized this a key gap in coverage and addressed it in a variety of ways.<sup>77</sup> The most straightforward would be to simply extend federal overtime protection to live-in domestic workers for hours worked after forty per week and/or eight per day.

Written Notice: Employers of domestic workers are required to maintain records of hours worked and wages paid.<sup>78</sup> Stories like Patricia's, in which she was told her weekly pay would be one amount and upon arrival received a lower amount, demonstrate the importance of written records for this population. Furthermore, the fact that 83% of survey respondents lacked a written contract indicates the likelihood that the current regulations are often not enforced. Other states have seen fit to strengthen record-keeping and notice requirements for domestic workers.<sup>79</sup> A provision requiring employers to provide domestic workers with a written agreement at the time of hire and a wage statement at each pay period would greatly strengthen the workers' ability to protect themselves.

Health & Safety: Currently domestic workers are exempt from workers' compensation<sup>80</sup> and safety and health regulations.<sup>81</sup> Domestic work contains many safety hazards, such as the exposure to infectious diseases, falls, and strains described in this report. A new bill could simply delete the statutory exemption from workers' compensation so that domestic workers have the same protection for work-related injuries as other employees receive. It could also require employers to provide domestic workers with sick leave and/or rest days to ensure they have a means to take time off for their health.<sup>82</sup>

In the absence of statewide reform, or as a precursor to it, **we recommend that Tucson pass a Domestic Workers' Bill of Rights as a local ordinance.** Montgomery County, Maryland, provides a helpful model. In 2006, the county passed an ordinance that grants legal protections to domestic workers, including a right to minimum wage and written contracts.<sup>83</sup> It also established a complaint mechanism and penalties for violations.<sup>84</sup>



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## RECOMMENDATION #2: ENFORCE THE LAWS

Many of the incidents described in this report are currently illegal, yet the law on the books is not enforced on the ground. A few examples include:

- Under existing law, Patricia, Natalia, and Ana each should have received minimum wage. Instead, the family that hired Patricia to be their live-in domestic worker paid her \$3.33 per hour (plus room and board), the elder care facilities where Natalia worked an overnight shift paid her \$2.90 to \$3.30 per hour, and the used clothes factory paid Ana roughly \$2.00 per hour.
- In Natalia's case, even after she received a judgment in her favor from small claims court, she had to fight for two more years to receive just a fraction of her unpaid wages.
- Overall, one in ten workers surveyed did not earn the minimum wage. Given the fact that 49% of survey respondents worked in companies with more than fifteen employees that are likely to meet the minimal annual revenue for FLSA and Arizona minimum wage coverage, it is likely that many of the employers should have been paying the minimum wage.
- Workers' compensation is intended to broadly cover nearly all workplaces to ensure that injured workers receive medical and compensation benefits no matter what the cause of the job-related accident. Yet of the nineteen survey respondents who reported injuries in the last year, only three filled out a workers' compensation form, and only five received compensation for any lost wages or medical expenses from their employer.

**The following reforms would address the lack of enforcement of existing laws:**

### Increase Outreach & Education to Immigrant Women Workers

The majority of employment laws require “bottom up” enforcement, meaning they rely on workers to bring claims to protect their rights, rather than relying on “top down” enforcement by government agencies.<sup>85</sup> This approach is appealing in that it puts power into workers' hands. However, recent studies have suggested that this bottom up approach is failing many low-wage front-line workers due to gaps in their legal knowledge and powerful incentives to stay silent in the face of workplace abuse.<sup>86</sup>

Our survey suggests that just such a failure is underway when it comes to immigrant women workers in Tucson. Of the survey respondents, 78% did not know the current minimum wage, 60% did not know how or when overtime wages are calculated, and over half of the workers who responded either did not think they are covered by the worker protection laws in the United States or did not know whether or not they were covered. Just as one would expect, as a result, very few of these workers attempted to seek legal recourse for their problems at work. Of the workers surveyed, 85% had never approached a government agency for help, and this figure went up to 92% for undocumented workers.



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To address these gaps in legal knowledge, **we recommend increasing community education to immigrant women workers and their advocates about workplace rights.** Government and private funding sources should provide greater resources to community groups and government agencies to undertake this important outreach work.

## **Provide Protection from Retaliation**

In addition to knowledge about legal rights, workers must feel sufficiently safe to move from knowledge to action. Many of the workers who did not report workplace complaints expressed their fear at the potential consequences of such action. By law, nearly all of the federal and state employment statutes provide workers with remedies if they experience retaliation when they seek to enforce their rights.<sup>87</sup> Unfortunately, these provisions do not appear to stop employers from effectively using threats to prevent employees from filing complaints.

Furthermore, Arizona has one notable legal loophole: it lacks a clear anti-retaliation provision for violations of its wage payment statute. The state's minimum wage law contains a strong anti-retaliation provision, but it is specifically limited to minimum wage violations.<sup>88</sup> This is particularly of concern because the vast majority of wage claims in the state are processed as a violation of the state's wage payment law, rather than its minimum wage law.<sup>89</sup> Thus, workers who want to file a claim for unpaid wages are without protection from retaliation.<sup>90</sup>

**We recommend that Arizona include an anti-retaliation provision for violations of the state's wage payment law. We further recommend strengthening the existing protections against retaliation, drawing on state models that offer workers greater protections.**<sup>91</sup>

In addition, Tucson currently lacks any protection from retaliation for workers who seek to enforce their rights under the local ordinance. **Tucson should recognize this protection is a crucial part of effective implementation of the ordinance's provisions and add to Chapter 17 an anti-retaliation provision with meaningful penalties.**

Immigrant workers may be particularly hesitant to exercise their workplace rights because they are concerned about not just losing their job but facing deportation as a result of speaking up. Ten out of seventy-four survey respondents reported that they had never approached a government agency for help because they were worried about immigration consequences. This amounts to 14% of respondents, and 31% of those who were undocumented.

In 2000, Congress recognized the extent to which fear causes immigrants to suffer victimization in silence. To encourage immigrant crime victims to come forward without fear, Congress created a special type of visa, the "U" visa, that provides legal status to immigrants who cooperate with law enforcement officials in the investigation or prosecution of certain serious crimes.<sup>92</sup> Many of the enumerated crimes covered by the U visa arise in the workplace.<sup>93</sup>

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To obtain a U visa, an immigrant must receive a certification from a law enforcement agency that she or he helped in the investigation of the qualifying crime.<sup>94</sup> Around the country, federal and state agencies responsible for investigating workplace abuse and enforcing worker protection laws have recognized the value of U visas as law enforcement tools and have issued guidelines for certification of U visa petitions.<sup>95</sup>

Our interviews indicate that Arizona could make greater use of this means of encouraging immigrants to safely report workplace-related crimes.<sup>96</sup> **We recommend that the employment related government agencies in Arizona establish protocols and points of contact for U visa certification so that immigrants who suffer severe violations of workplace rights can participate in the investigation without fear of immigration consequences.**

### **Increase Resources for Government Agencies & Create Mechanisms for Community Input**

Another approach to the problem of “bottom up” enforcement is to shift at least some of the work to be “top down.”<sup>97</sup> Government agencies could play a more robust role in oversight and investigation, particularly in industries that are known to be problematic and employ highly vulnerable workers. A thorough assessment of the current state of Arizona’s employment law enforcement agencies is beyond the scope of this report. It is clear, however, that a “top down” approach would require concerted resources that are currently lacking when it comes to the enforcement of employment laws.

**We recommend that the Arizona Legislature and/or Governor increase resources, training, and staffing for Arizona’s labor enforcement agencies. In addition, these agencies should consider creating task forces or other mechanisms so that workers’ advocates and stakeholders can share information and help the agency prioritize implementation and enforcement efforts.**

At the local level, the Tucson Office of Equal Opportunity (“TOEO”) is in charge of enforcement of the anti-discrimination chapter (Chapter 17) of the Tucson City Code. The TOEO has an office downtown, and one investigator focuses on Chapter 17 complaints. In recent years the caseload has been very small, with two employment discrimination complaints in 2012 and three in 2013.<sup>98</sup> According to its staff members, TOEO does not receive complaints from many of the industries in which immigrant women workers tend to work. Specifically, the city has never received a complaint from a domestic worker, home healthcare worker, residential care worker, tortilla factory worker, janitor, retail store employee or factory/warehouse employee.<sup>99</sup>

**There are several steps Tucson could take to more effectively enforce employment laws at the local level.**

- For violations of Chapter 17, **provide monetary remedies to employees.** Currently, if the commission finds a violation, employers are subject to a civil fine but the worker receives no remedy other than, in some cases, reinstatement.

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- For violations of Chapter 17, **create a longer statute of limitations**. Currently, a worker must file within ninety days. Extending this to 180 days would match the statute of limitations under the Arizona Civil Rights Act and give workers greater opportunity to seek out help and referrals that would lead them to the TOEO.
  - **Compile demographic data on complainants** to have a better idea about which industries and cross-sections of the workforce are filing complaints and where outreach is needed.
  - **Create a task force and/or community hearings**, in order to give workers and other stakeholders mechanisms to provide input on the local enforcement of employment laws.

## RECOMMENDATION #3: IMPROVE THE LAWS

Certain hardships described in this report vividly bring into focus the limitations of our current legal system. For example, the following facts would require new laws to address the injustices they reveal:

- Even if every women worker described in this report were to receive the minimum wage, nearly all would still be living at or below the poverty level. This is particularly the case given that the women live with an average of 2.8 other people, over half reported that they were the main income earner in their household, and 47% reported sending money to relatives in their home country as well as supporting their households in this country.
- Barbara, in “Overworked,” described intense pressure to clean numerous hotel rooms per day in order to keep her job and make her wages. Tortilla factory workers described pressure to complete eighteen trays of tortillas per hour, resulting in burns and broken fingers. Although these paces are startling, these workers are not entitled to any breaks under existing law.
- Laura, described in “Abused,” took just one day off from work after she fell and seriously injured her ankle. Her employer threatened that there wouldn’t be more work for her if she took off more time. Like Laura, eighty percent of survey respondents did not receive paid sick days. Thirteen workers reported they would not be able to receive permission to take time off to see the doctor. Under existing law, none of these workers is entitled to take a sick day, regardless of how many years they have been employed.
- Undocumented workers repeatedly described threats and fears preventing them from speaking out about workplace abuse and exploitation. With their ability to stay in this country and maintain their families on the line, very few workers are willing to risk anything that could jeopardize their jobs. So long as existing laws permit such a large population of undocumented workers to persist in the country, the informal economy will thrive and workers will be unlikely to challenge their working conditions.

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The following reforms would address these problems:

### Increase the Minimum Wage

The Arizona minimum wage as of January 1, 2014 is \$7.90 per hour.<sup>100</sup> Working forty hours per week at this rate would result in an annual salary of \$16,000 before taxes. Furthermore, most women struggled to find full time work – on average survey respondents only worked for twenty hours in their primary job during the preceding week – meaning their annual salary would be even lower.

Many states and cities are recognizing the benefits of increasing the minimum wage, both for working families and the economy more generally.<sup>101</sup> Moreover, the federal government has also proposed to increase the federal minimum wage to \$10.10.<sup>102</sup>

**We recommend that the Arizona Legislature increase the state minimum wage. In the absence of state reform, we recommend that Tucson increase the minimum wage for all employers within the city limits.**

### Increase Worker Protections

Federal wage and hour law fails to provide workers with a right to a rest or meal break after a certain number of consecutive hours of work. Nor does it provide workers with any right to paid time off to deal with health-related issues. In fact, many workers do not even have legal protection to request unpaid time off for health matters, and as a result, may forego necessary medical care for themselves or family members because they cannot risk losing their job by requesting time off.

Currently, Arizona has no state laws that go above and beyond the federal minimum in this area. Around the country, however, an increasing number of states and cities are recognizing the importance of providing workers with rest periods, paid sick days, and family leave. As of 2014, one state and six cities have passed legislation requiring paid sick days.<sup>103</sup> Three states have passed family leave acts, which allow partially paid leave to care for a new baby or deal with a serious health conditions of oneself or a family member.<sup>104</sup> Many other states, including Arizona, are currently considering legislation regarding sick and family leave.<sup>105</sup> **Arizona should pass legislation to ensure that employees receive paid sick days and family leave.**

As for statutorily required breaks, twenty-one states require a meal break and eight states mandate rest breaks.<sup>106</sup> **Arizona should join these states and ensure that workers are not subject to relentless pressure to work for hours on end.**

Finally, with regard to overtime, only employees who work over forty hours in one week are provided overtime compensation under FLSA. Workers surveyed in the report only worked for an average of twenty-eight hours in their primary job during the preceding

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week. Yet many workers described exceedingly long days, of ten to twelve hours, which would not entitle them to overtime so long as their weekly total did not surpass forty hours.

Domestic workers are especially likely to work far less than full time, given their reliance on individual house cleaning jobs. On average, the domestic workers who were surveyed in this report worked for a total of twenty hours in the preceding seven days. If a worker is not covered under FLSA, then that worker is never entitled to any overtime pay in Arizona.

Four states – Alaska, California, Colorado, and Nevada – have laws that provide for overtime based on daily hours worked.<sup>107</sup> **Arizona should join these states and create a right to overtime based on daily rather than weekly hours worked.**

### **Pass Comprehensive Immigration Reform that Protects Immigrant Workers**

The experience of women like Laura, who labored for fourteen years in a hotel in which she was subject to relentless abuse and paid less than the minimum wage, encapsulate the tight connection between working conditions and immigration status. Laura had everything to lose if she were to complain or walk away from the job, since her entire life was centered on her ability to work and send money to her children in Mexico. Only with secure legal status could she take steps to address her exploitation.

Many of the current immigration reform proposals under consideration would do little to address immigrant worker’s vulnerability. Policies that place immigrants in long periods of “provisional status” only further the incentive to keep one’s head down and stay silent in the face of employment abuse.

While a full analysis of the complex interaction between immigration reform and employment law is well beyond the scope of this report, we would be remiss if we did not acknowledge the pervasive impact that the current state of paralysis by the federal government has on working conditions for immigrant workers.

**According, we recommend that Congress pass immigration reform that includes robust protections for workers and allows for labor market mobility.**

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## VI. Conclusion

This report is a first step in the long process of reform. We offer the experiences of ninety immigrant women in Tucson, and share the in-depth stories of Patricia, Barbara, Natalia, Laura, and Ana, in the hope that a glimpse into their unseen workplaces will begin a conversation in our region about change. While our list of recommendations is long, we are encouraged by the many models of states and cities in other parts of the country that are taking pro-active and creative measures to put an end to the exploitation and abuse of immigrant women workers. We believe the women profiled in this report deserve a sustained effort by multiple stakeholders to ensure that they no longer attend to our most intimate matters – caring for our children and aging parents, cleaning our homes, making our beds, serving our food – in the shadows.

# Appendix A

Survey Site	Description of Recruitment
Border Action Network	Researchers approached prospective participants before and after ESL or GED courses and the Workers' Rights Clinic's Know Your Rights (KYR) presentations.
Casa San Juan	Researchers approached prospective participants during a community event and before and after medical and food assistance programming.
Southside Workers' Center	Staff and volunteers referred workers to researchers who scheduled appointments for surveys with particular workers.
Pima County Libraries & Literacy Connects	Literacy Connects invited researchers to speak to ESL students about the survey after an ESL class; researchers met with individual participants who had previously scheduled survey participation timeslots.
YWCA	Researchers approached perspective participants after "Mi Carrera" [My Career] class.
Islamic Center of Tucson	Researchers approached prospective participants after Workers' Rights Clinic KYR presentation.
Mexican Consulate, Tucson	Researchers approached prospective participants who came to the Consulate for other matters; staff referred interested individuals to researchers.
Somali Bantu Association	Researchers approached prospective participants after ESL and citizenship classes; staff referred interested individuals to researchers.
Rogers College of Law, Workers' Rights Clinic	Researchers approached prospective participants who contacted the Clinic for information or assistance pertaining to immigration or employment matters; researchers used this site as a meeting place for previously schedule survey administration.
Private homes and public spaces	When invited to do so, researchers attended meetings with small groups of women in private homes or public spaces and administered the survey to volunteers present at those meetings.

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# Appendix B

## General Descriptions of Interviewees

<b>Women workers</b>	Hotel housekeeping Residential care home Retail establishment Tortilla factory Warehouse Office Restaurant Domestic work (private home)
<b>Community leaders</b>	Refugee assistance organization Labor union Immigrant rights organization
<b>Government agencies<sup>108</sup></b>	National Labor Relations Board Arizona Attorney General's Office, Civil Rights Division Arizona Division of Occupational Safety and Health Arizona Industrial Commission, Labor Department Tucson Office of Equal Opportunity



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# Appendix C

## Tucson's Authority to Enact Local Measures

Many of the recommendations in this report are pitched at the local level. The authority of cities to enact local employment-related regulations varies from state to state.<sup>109</sup> Some states have affirmatively legislated on the topic, either expressly permitting or forbidding local ordinances that regulate employment. Others have no laws in place, leaving the issue of legal authority untested.

In the case of Arizona, the current law is clear: cities in Arizona have legal authority to enact employment-related ordinances. However, the state has a particularly complex history regarding the issue that has resulted in multiple conflicting laws, creating the possibility of confusion on this point. For the sake of clarity, we outline the key legal provisions and historical developments below.

In 1997, the Arizona legislature passed a law tying its minimum wage to the federal level and prohibiting political subdivisions from independently changing the minimum wage paid to their workers.<sup>110</sup>

In 2006, Arizona voters passed the Raise the Minimum Wage for Working Arizonans Act or Proposition 202, a ballot initiative approved by 65% of statewide voters.<sup>111</sup> In addition to increasing the statewide minimum wage, Proposition 202 explicitly empowered localities to further increase their local minimum wage and provide enhanced benefits to workers within their jurisdictions. In relevant part, the law states,

[A] county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage lower than that prescribed in this article.<sup>112</sup>

With this language, Proposition 202 impliedly repealed the 1997 law. In passing Proposition 202, Arizona voters gave local governments the authority to increase the minimum wage within their boundaries. This was confirmed by the Arizona Attorney General in a legal opinion on the matter in 2007.<sup>113</sup>

In 2013 the Arizona legislature passed a bill that purports to repeal the portion of the state minimum wage law that authorizes cities, towns, and political subdivisions to increase their local minimum wage or other worker benefits.<sup>114</sup>

**However, there is a constitutional prohibition on legislative repeal of voter initiatives, rendering the 2013 law invalid.**

The Arizona Constitution provides that laws enacted pursuant to ballot initiative may not be repealed by the State Legislature, and may only be amended in very limited circumstances. Specifically, the Constitution provides:

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The legislature shall not have the power to repeal an initiative measure approved by a majority of the votes cast thereon or to repeal a referendum measure decided by a majority of the votes cast thereon.

The legislature shall not have the power to amend an initiative measure approved by a majority of the votes cast thereon, or to amend a referendum measure decided by a majority of the votes cast thereon, unless the amending legislation furthers the purposes of such measure and at least three-fourths of the members of each house of the legislature . . . vote to amend such measure.<sup>115</sup>

Thus, the Arizona Constitution plainly prohibits the state government from repealing or limiting any provision of Arizona's minimum wage law, including its provision granting localities the authority to increase the minimum wage or benefits for workers. This renders the 2013 law invalid and unenforceable. The state Supreme Court has overturned similar attempts by the legislature to interfere with voter-enacted laws.<sup>116</sup> Proposition 202's authorization of local government action on wages and benefits for low-wage workers remains in full effect.

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# Endnotes

- 1 Researchers also conducted one follow-up interview and two additional interviews of workers in April 2014.
- 2 The 2014 federal poverty line for a family of two is \$15,730, and for a family of three is \$19,790. Annual Update of the HHS Poverty Guidelines, 79 Fed. Reg. 3593 (Jan. 22, 2014), *available at* <http://www.gpo.gov/fdsys/pkg/FR-2014-01-22/pdf/2014-01303.pdf>.
- 3 ANNETTE BERNHARDT ET AL., NATIONAL EMPLOYMENT LAW PROJECT, BROKEN LAWS, UNPROTECTED WORKERS: VIOLATIONS OF EMPLOYMENT AND LABOR LAWS IN AMERICA'S CITIES (2009), *available at* <http://www.unprotectedworkers.org/brokenlaws> (hereinafter "BROKEN LAWS, UNPROTECTED WORKERS"). Specifically, the survey found that 26% of workers received less than the minimum wage, 76% of workers were not paid the legally required overtime rate, 55% of workers injured on the job had to pay their own medical bills or use their health insurance, and 43% of the workers who had complained about workplace conditions in the past year had experienced illegal retaliation from their employer. *Id.* at 2, 21, 25-27, 33.
- 4 *Id.* at 42. Specifically, 30% of the women workers experienced minimum wage violations, compared to 20% of the men, and nearly half (47%) of female unauthorized immigrants had minimum wage violations in the previous week, compared to 30% of their male counterparts. *Id.*
- 5 NATIONAL DOMESTIC WORKERS ALLIANCE, HOME ECONOMICS: THE INVISIBLE AND UNREGULATED WORLD OF DOMESTIC WORK (2012), *available at* <http://www.domesticworkers.org/pdfs/HomeEconomicsEnglish.pdf>. Specifically, the survey found 23% of domestic workers were paid less than the minimum wage, only 8% of the domestic workers had written contracts with their employers, 82% were not granted sick leave, 76% could not take even unpaid time off to see a doctor, and 29% had suffered a back injury in the past year. *Id.* at xi, xii, 18, 25, 30.
- 6 Immigrants constitute about 28% of the in-home health care workforce overall, a workforce that is largely dominated by women (90% of in-home healthcare workers in the United States are female and 56% are from a minority racial or ethnic group). INSTITUTE FOR WOMEN'S POLICY RESEARCH, INCREASING PATHWAYS TO LEGAL STATUS FOR IMMIGRANT IN-HOME CARE WORKERS 5 (2013), *available at* <http://www.iwpr.org/publications/pubs/increasing-pathways-to-legal-status-for-immigrant-in-home-care-workers>.
- 7 *See, e.g.,* Susan Buchanan, et al., *Occupational Injury Disparities In the U.S. Hotel Industry*, 53 AM. J. OF INDUS. MED. 116-17, 119-21, 123 (2010).
- 8 RESTAURANT OPPORTUNITIES CENTERS UNITED, BEHIND THE KITCHEN DOOR: A MULTI-SITE STUDY OF THE RESTAURANT INDUSTRY (2011), Executive Summary *available at* [http://rocunited.org/wp-content/uploads/2013/04/reports\\_bkd-multisite.pdf](http://rocunited.org/wp-content/uploads/2013/04/reports_bkd-multisite.pdf).
- 9 One follow-up interview and two additional interviews with workers were conducted in April 2014.
- 10 The study was reviewed and approved by the University of Arizona's Institutional Review Board ("IRB") prior to the commencement of data collection. As required by the IRB, all researchers completed an online research ethics training course and were trained to conduct the survey in an ethical and consistent manner in order to ensure voluntary participation and minimize variances in survey administration. In addition, research participants received and reviewed a disclosure form (available in

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Spanish and English) before participating in the survey or interview.

11 For an overview of this work, see *The Tucson Immigrant Workers' Project*, <http://www.law.arizona.edu/tiwp> (last updated Jan. 7 2014). All workers were assured that their participation in the research was purely voluntary and they would receive the clinic's services whether or not they chose to participate.

12 BROKEN LAWS, UNPROTECTED WORKERS, *supra* note 2, at 11 (“Workers who need to support their families are understandably reluctant to talk to researchers about their employers, because of possible retaliation, their immigration status, or because they are working off the books.”).

13 Cf. CENTER FOR LATIN AMERICAN STUDIES, UNIVERSITY OF ARIZONA, IN THE SHADOW OF THE WALL: FAMILY SEPARATION, IMMIGRATION ENFORCEMENT AND SECURITY 22 (2013), available at [http://las.arizona.edu/sites/las.arizona.edu/files/UA\\_Immigration\\_Report2013web.pdf](http://las.arizona.edu/sites/las.arizona.edu/files/UA_Immigration_Report2013web.pdf) (documenting widespread labor exploitation among recently deported immigrants at the Nogales port of entry); INSTITUTE FOR WOMEN'S POLICY RESEARCH, SOCIAL AND ECONOMIC STATUS OF LATINA IMMIGRANTS IN PHOENIX (2010), available for download at <http://www.iwpr.org/publications/pubs/social-and-economic-status-of-latina-immigrants-in-phoenix> (summarizing data on social and economic vulnerabilities that disproportionately affect Latina women in Phoenix).

14 Forty of the eighty people who responded to this question had children under the age of fifteen.

15 See *supra* note 1.

16 Interview with homecare employee, in Tucson, Ariz. (May 24, 2012).

17 Interview with hotel workers, in Tucson, Ariz. (July 26, 2012).

18 Interview with tortilla factory worker, in Tucson, Ariz. (June 11, 2012).

19 *Id.*

20 Interview with hotel workers, in Tucson, Ariz. (July 27, 2012).

21 Interview with home healthcare worker, in Tucson, Ariz. (May 24, 2012).

22 Interview with domestic worker, in Tucson, Ariz. (June 22, 2012).

23 Interview with hotel workers, in Tucson, Ariz. (April 16, 2014).

24 Interview with union staff member, in Tucson, Ariz. (March 4, 2013).

25 Interview with hotel workers, in Tucson, Ariz. (July 26, 2012).

26 Interviews with adult care home worker, in Tucson, Ariz. (Oct. 2012 – May 2013).

27 Interview with tortilla factory worker, in Tucson, Ariz. (June 11, 2012).

28 Interview with tortilla factory worker, in Tucson, Ariz. (June 11, 2012).

29 Thirteen workers, 14%.

30 Eight workers, 9%.

31 Thirteen workers, 14%.

32 Twenty-five workers, 28%.

33 Eight workers, 9%.

34 Six workers, 7%.

35 Interview with retail employee, in Tucson, Ariz. (Nov. 12, 2012).

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- 36 Interview with hotel workers, in Tucson, Ariz. (July 26, 2012).
- 37 Seven workers (8%).
- 38 Seven workers (8%).
- 39 Six workers (7%).
- 40 Six workers (6%).
- 41 Five workers (6%).
- 42 Three workers (3%). In addition, three workers attributed it to their age, one attributed it to family status, and one attributed it to her disability.
- 43 Interview with homecare worker, in Tucson, Ariz. (May 24, 2012); interview with hotel workers, in Tucson, Ariz. (July 26, 2012).
- 44 Interview with hotel workers, in Tucson, Ariz. (April 16, 2014).
- 45 Interview with retail employee, in Tucson, Ariz. (Nov. 12, 2012).
- 46 Interview with warehouse employee, in Tucson, Ariz. (June 6, 2012).
- 47 This includes one respondent who was unsure of her immigration status and two who refused to provide information about it.
- 48 Interview with hotel workers, in Tucson, Ariz. (July 26, 2012).
- 49 These percentages are likely to be underestimates, because some of these surveys were administered to individuals directly after they had attended one of the workplace rights presentations put on by the Bacon Program, and both the minimum wage and overtime were covered during those presentations.
- 50 Interview with hotel workers, in Tucson, Ariz. (July 26, 2012).
- 51 Interview with community organizer, in Tucson, Ariz. (Oct. 3, 2012).
- 52 Interview with leader in refugee community, in Tucson, Ariz. (Sept. 7, 2012).
- 53 Interview with community organizer, in Tucson, Ariz. (Oct. 3, 2012).
- 54 Interview with hotel worker, in Tucson, Ariz. (July 26, 2012).
- 55 Interview with hotel workers, in Tucson, Ariz. (July 26, 2012).
- 56 Interview with leader in refugee community, in Tucson, Ariz. (Sept. 7, 2012).
- 57 29 U.S.C. § 206(a)(1)(c).
- 58 29 U.S.C. § 207(a)(1).
- 59 ARIZ. REV. STAT. § 23-362 et seq. (2007).
- 60 29 U.S.C. § 206(a), 29 U.S.C. § 207(a)(1).
- 61 One notable exception, however, is that minimum wage coverage does extend to domestic workers. 29 U.S.C. § 206(f).
- 62 29 U.S.C. § 203(s)(1)(A)(i)-(ii).
- 63 29 U.S.C. § 203(s)(1)(B); see also, U.S. DEP'T OF LABOR, WAGE AND HOUR DIVISION, FACT SHEET #14: COVERAGE UNDER THE FAIR LABOR STANDARDS ACT (2009), *available at* <http://www.dol.gov/whd/regs/compliance/whdfs14.pdf> (providing an overview of the employers that FLSA covers).
- 64 ARIZ. REV. STAT. § 23-362(B) and (C) (excluding from the statutory definition of employer, any small business that grosses less than \$500,000 in annual revenue and is exempt from the FLSA).
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65 See DANIEL ABRAHAMS ET AL., PUBLIC EMPLOYER’S GUIDE TO FLSA EMPLOYEE CLASSIFICATION, RELATIONSHIP OF THE FEDERAL FLSA TO THE STATE WAGE AND HOUR REQUIREMENTS ¶1000 (2013) (providing state-by-state descriptions of minimum wage coverage). The states that do not expand coverage, in addition to Arizona, are Alabama, Florida, Louisiana, Mississippi, Missouri, South Carolina, and Tennessee. *Id.* Five of these states have no state minimum wage law whatsoever. *Id.* The remainder, Florida and Missouri, include exemptions from their state minimum wage law that are parallel to FLSA exemptions. *Id.*

66 For example, Kentucky exempts from its minimum wage certain enterprises with an annual gross volume of sales of less than \$95,000 for the five preceding years. K.R.S. § 337.010. Iowa exempts establishments grossing less than \$300,000 annually. Iowa Code Ann. § 91D.1(2)(b).

67 For example, Illinois extends its state minimum wage (currently \$8.25) to all employers with four or more employees. 820 Ill. Comp. Stat. 105/3(d)(1), 105/4(a)(1). New Mexico extends its state minimum wage law (currently \$7.50) to all employers with one or more employees. N.M. Stat. Ann. § 50-4-21(B), -22(A).

68 For example, effective August 1, 2014, Minnesota has a minimum wage rate \$1.50 higher for businesses with \$500,000 or more in annual revenues (\$8.00 as compared to \$6.50 for small businesses, with specific increases each year through 2016). Minn. Stat. Ann. § 177.24.

69 For a discussion of Tucson’s legal authority to enact such an ordinance, see Appendix C.

70 Most recently, Seattle made headlines when it announced a \$15.00 minimum wage for the city. Kirk Johnson, *Seattle Approves \$15 Minimum Wage, Setting a New Standard for Big Cities*, N.Y. TIMES, June 3, 2014, at A15. As of March 2014, nine localities in the United States had enacted minimum wage laws: Albuquerque, NM; Bernalillo County, NM; Montgomery County, MD; Prince George’s County, MD; San Francisco, CA; San Jose, CA; Santa Fe, NM; Santa Fe County, NM; and Washington DC. See MICHAEL REICH ET AL., INST. FOR RESEARCH ON LABOR AND EMPLOYMENT, LOCAL MINIMUM WAGE LAWS: IMPACTS ON WORKERS, FAMILIES AND BUSINESSES 1 (2014), available at <http://laborcenter.berkeley.edu/minwage/local-minimum-wage-laws.shtml>. The wage levels mandated by these ordinances range from \$8.50 in Bernalillo County to \$10.74 an hour in San Francisco. *Id.*

71 42 U.S.C. § 2000e(b) (defining “employer” to require fifteen or more employees); ARIZ. REV. STAT. § 41-1461(6)(a)(same).

72 The websites of “The WAGE Project” and “NOLO for All” provide summaries of the coverage of state anti-discrimination laws. *State-by-State Anti-Discrimination Laws*, THE WAGE PROJECT, [http://www.wageproject.org/files/anti\\_discrimination\\_laws.php](http://www.wageproject.org/files/anti_discrimination_laws.php) (last visited July 16, 2014); *Employment Discrimination in Your State*, NOLO LAW FOR ALL, <http://www.nolo.com/legal-encyclopedia/employment-discrimination-in-your-state-31017.html> (last visited July 16, 2014). Of these states, 18 have laws that cover all employers, regardless of the number of employees. *Id.*

73 ARIZ. REV. STAT. § 41-1461(6)(a).

74 TUCSON, ARIZ., CODE ch. 17, art III, § 17-12.

75 For an overview of existing exclusions, see NATIONAL EMPLOYMENT LAW PROJECT AND NATIONAL DOMESTIC WORKERS ALLIANCE, WINNING DIGNITY AND RESPECT: A GUIDE TO THE DOMESTIC WORKERS’ BILL OF RIGHTS (2013), available at <http://ctpcsw.files.wordpress.com/2010/07/from-marla-shiller-winning-dignity-respect-9-27-13.pdf>.

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76 California, Hawaii, New York, and most recently, Massachusetts have passed comprehensive bills. Beth Healy, *Governor Patrick Signs Domestic Workers Bill of Rights into Law*, BOSTON GLOBE (July 2, 2014), <http://www.bostonglobe.com/business/2014/07/02/governor-patrick-signs-domestic-workers-bill-rights-into-law/lwNjtWDjISbvUHBGqCaquJ/story.html>. Other states, including Illinois and Connecticut, are considering similar bills in 2014. See NATIONAL DOMESTIC WORKERS ALLIANCE, <http://www.domesticworkers.org/> (last visited July 16, 2014) (providing an overview of state campaigns).

77 In New York State, domestic workers have a right to overtime after forty hours of work in a calendar week, and for live-in domestic workers, after forty-four hours of work per week. N.Y. LAB. LAW § 170. In California, overtime is paid to “personal attendants” after nine hours a day and/or 45 hours per week. CAL. LAB. LAW § 1454.

78 ARIZ. REV. STAT. § 23-364(D) (requiring keeping such records for four years).

79 In New York, written notice is required of an employer’s policies on sick leave, vacation pay, holidays, and schedule. N.Y. LAB. LAW § 195; see also N.Y.S. DEP’T OF LABOR, FACTS FOR EMPLOYERS, available at <http://www.labor.ny.gov/legal/laws/pdf/domestic-workers/facts-for-employers.pdf>. The recently enacted Massachusetts legislation seeks similar recordkeeping and notice requirements. S.B. 2132, 188th Sess. (Mass. 2014) (enacted).

80 ARIZ. REV. STAT. § 23-902(A).

81 29 C.F.R. § 1975.6.

82 New York requires employers to provide domestic workers with one day of rest per week, and at least three paid days off after one year of work. N.Y. LAB. LAW § 161.

83 Montgomery County’s Domestic Workers Law applies to workers who work at least twenty hours per week for at least a thirty day period, performing primarily childcare, housekeeping, cooking, cleaning or laundry-type work, or working as a companion to a sick, convalescing, disabled, or elderly individual. The ordinance states that domestic workers are covered by state minimum wage laws and requires that the employer obtain an employment contract for anyone working over twenty hours per week. Montgomery, Md., Cnty. Code ch. 11, § 11-4B; see also DOMESTIC WORKERS, MONTGOMERY CNTY. MD. OFFICE OF CONSUMER PROTECTION, <http://www.montgomerycountymd.gov/ocp/domestic/law.html> (last visited July 16, 2014).

84 Montgomery, Md., Cnty. Code ch. 11, §§ 11-6, 11-11.

85 See Charlotte S. Alexander & Arthi Prasad, *Bottom-Up Workplace Law Enforcement: An Empirical Analysis*, 89 IND. L.J. 1069, 1070 (2014) (providing a thorough discussion of the bottom-up and top-down approaches to workplace enforcement).

86 *Id.* at 1072.

87 See, e.g., 29 U.S.C. § 215(a)(3) (anti-retaliations provisions in FLSA); Title VII, 42 U.S.C. § 2000e-3(a) (anti-retaliation provision in Title VII, the federal law prohibiting discrimination in employment practices); ARIZ. REV. STAT. § 23-364(G) (anti-retaliation provision Arizona’s Minimum Wage Act); ARIZ. REV. STAT. § 23-1501(3)(c)(iii) (anti-retaliation provision in Arizona’s Workers’ Compensation); ARIZ. REV. STAT. § 23-425 (anti-retaliation provision in the law regarding the Arizona Division of Occupational Safety and Health); ARIZ. REV. STAT. § 41-1464 (anti-retaliation provision in the Arizona Civil Rights Act).

88 See ARIZ. REV. STAT. § 23-364(G) (providing penalties for retaliation of “this Article,” which only includes minimum wage; other wage claims are covered in Article 7).

89 In 2011-2012, the Arizona Labor Department received 2,570 wage claims and thirty-one minimum wage complaints. See LAURA L. McGRORY, INDUSTRIAL COMMISSION OF ARIZONA, ANNUAL REPORT FOR 2012 12,13 (2012), available at <http://www.ica.state.az.us/Commissioners/>



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[Forms/2012AnnualReport.pdf](#). This may be due to the fact that the Wage Payment Act provides for treble damages, as compared to double under the Minimum Wage Act. It may also reflect the lack of easily accessible information about how to file minimum wage claims. See INDUSTRIAL COMMISSION OF ARIZONA, LABOR DEPARTMENT, [http://www.ica.state.az.us/Labor/Labor\\_main.aspx](http://www.ica.state.az.us/Labor/Labor_main.aspx) (last visited July 16, 2014) (providing a link to a wage claim form and no information about how to file a minimum wage complaint).

90 If they are fired in response to their attempt to recover their wages, Arizona employees could bring a claim for unlawful termination under the Arizona Employment Protection Act, Ariz. Rev. Stat. § 23-1501(A)(c)(ii). However, this statute only covers termination, not other adverse employment acts such as reduced hours or inferior work assignments, and does not specifically address retaliation relating to Arizona's wage payment law.

91 For example, California recently passed three bills that strengthen protections for workers from retaliation. A.B. 263, 2013 Leg. 2013, Ch. 732 (Ca. 2103) (enacted); A.B. 524, Leg. 2013, Ch. 572 (Ca. 2103) (enacted); S.B. 666, Leg. 2013, Ch. 577 (Ca. 2013) (enacted); see also NATIONAL EMPLOYMENT LAW PROJECT, FACT SHEET: CALIFORNIA'S NEW WORKER PROTECTIONS AGAINST RETALIATION (2013), available at <http://www.nelp.org/page/-/Justice/2013/ca-immigration-retaliationv3.pdf> (describing the provisions of the new legislation).

92 Victims of Trafficking and Violence Prevention Act of 2000, 8 U.S.C. §§ 1101(a)(15)(U), 1184(p).

93 Specifically, the U visa covers victims of peonage, involuntary servitude, trafficking, false imprisonment, unlawful criminal restraint, blackmail, extortion, felonious assault, witness tampering, obstruction of justice, and perjury. 8 U.S.C. § 1101(a)(15)(U)(iii).

94 8 U.S.C. § 1101(a)(15)(U)(i)(III).

95 See Eunice Hyunhye Cho, NATIONAL EMPLOYMENT LAW PROJECT, U VISAS FOR VICTIMS OF CRIMES IN THE WORKPLACE: A PRACTICE MANUAL (2014), available at <http://www.nelp.org/page/-/Justice/2014/U-Visas-for-Victims-of-Workplace-Crime-Practice-Manual-NELP.pdf?nocdn=1> (describing, among other things, state departments of labor in California, Illinois, and New York that have established policies and procedures for requesting U visa certifications based on investigations of certain workplace violations).

96 At least as of 2012-2013, staff members of the government agencies in charge of enforcing wage and hour and discrimination statutes in the region all reported that they were not familiar with the U visa and had no protocol in place for obtaining agency certification. Interview with staff member of Arizona Civil Rights Division, in Tucson, Ariz. (October 30, 2012); Interview with ADOSH staff member, in Tucson, Ariz. (Nov. 8, 2012); Interview with staff member of Arizona Labor Department, in Phoenix, Ariz. (March 12, 2013).

97 See Alexander, *supra* note 85, at 1117 (“ . . . fundamental reform would advocate shifting more enforcement from the bottom to the top, increasing government investigation and oversight rather than relying so heavily on workers themselves to be the drivers of enforcement activity.”).

98 Interview with staff member of the Tucson Office of Equal Opportunity, in Tucson, Ariz. (March 6, 2013) and annual data provided by the staff member (on file with the Bacon Program).

99 *Id.*

100 This amount increases on January 1 of every year to adjust for an increase in the cost of living. ARIZ. REV. STAT. § 23-363(B).

101 According to the National Conference of State Legislators, thirty-four states are considering increases to the state minimum wage in 2014. As of July, ten states have enacted increases in 2014: Delaware (\$8.25), West Virginia (\$8.75), Rhode Island (\$9); Michigan (\$9.25); Minnesota (\$9.50); Connecticut, Hawaii, and Maryland (all \$10.10); Vermont (\$10.50); and Massachusetts



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(\$11). See State Minimum Wages, 2014 Minimum Wage by State, <http://www.ncsl.org/research/labor-and-employment/state-minimum-wage-chart.aspx>. Fourteen states have minimum wages higher than Arizona's current \$7.90. *Id.* For an overview of city ordinances, see *supra* note 70.

102 See Raise the Wage, <http://www.whitehouse.gov/raise-the-wage>.

103 Connecticut passed a state law requiring paid sick days in 2011. Conn. Public Act 11-52. The cities to have done so are San Francisco, S.F. Admin. Code Ch. 12W (2006), District of Columbia, D.C. Code § 32-131.01 et seq. (2008, amended 2014), Seattle, Seattle Ordinance 123698 (2011), Portland, Ore., Portland Ordinance 185926 (2013), New York City New York City Int. 0097-2010 (2013), Int. 0001-2014 (2014), Jersey City N.J. Ordinance 13.097 (2013), and Newark, N.J. Ordinance 13-2010 (2014). For a chart of these measures, see NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES, STATE AND LOCAL ACTION ON PAID SICK DAYS (2014), <http://www.nationalpartnership.org/research-library/campaigns/psd/state-and-local-action-paid-sick-days.pdf>.

104 California, New Jersey, and Rhode Island have enacted family leave laws. For an overview of these measures, see NATIONAL PARTNERSHIP FOR WOMEN AND FAMILIES, STATE PAID FAMILY LEAVE INSURANCE LAWS (2013), <http://www.nationalpartnership.org/research-library/work-family/paid-leave/state-paid-family-leave-laws.pdf>

105 Arizona's Sick and Safe Time Act, H.B. 2585, 51st Leg., 2d Sess. (Ariz. 2014) (introduced in Spring 2014, the bill would allow all Arizona workers to earn a minimum of one hour of paid sick time for every 30 hours worked, up to 72 hours each year).

106 See U.S. DEP'T OF LABOR, WAGE AND HOUR DIVISION, MINIMUM LENGTH OF MEAL PERIOD REQUIRED UNDER STATE LAW FOR ADULT EMPLOYEES IN PRIVATE SECTOR, <http://www.dol.gov/whd/state/meal.htm> (last updated Jan. 1, 2014); U.S. DEP'T OF LABOR, WAGE AND HOUR DIVISION, MINIMUM PAID REST PERIOD REQUIREMENTS UNDER STATE LAW FOR ADULT EMPLOYEES IN PRIVATE SECTOR, <http://www.dol.gov/whd/state/rest.htm> (last updated Jan. 1, 2014).

107 Alaska, California, and Nevada provide for overtime rates (1.5 times the hourly wage) after an eight-hour day. Colorado provides for it after a twelve-hour day. California also provides double the hourly wage after twelve-hour day. Puerto Rico and the Virgin Islands also provide overtime after 8-hour days. See U.S. DEP'T OF LABOR, WAGE AND HOUR DIVISION, MINIMUM WAGE LAWS IN THE STATES-Jan. 1, 2014, <http://www.dol.gov/whd/minwage/America.htm> (last updated Jan. 1, 2014).

108 Despite multiple attempts to speak with representatives from the U.S. Department of Labor's Wage and Hour Division, the Department declined to participate in an interview.

109 For a discussion, see PAUL SONN, BRENNAN CENTER FOR JUSTICE, ECONOMIC POLICY BRIEF: CITYWIDE MINIMUM WAGE LAWS, A NEW POLICY TOOL FOR LOCAL GOVERNMENTS 6 (2006), available at [http://nelp.3cdn.net/5679d88e5330fbc9ce\\_ohm6bx3n9.pdf](http://nelp.3cdn.net/5679d88e5330fbc9ce_ohm6bx3n9.pdf).

110 ARIZ. REV. STAT. § 23-362.

111 JAN BREWER, STATE OF ARIZONA OFFICIAL CANVASS, 2006 General Election 15 (Nov. 7, 2006), available at <http://www.azsos.gov/election/2006/General/Canvass2006GE.pdf> (70% of Pima County voters).

112 ARIZ. REV. STAT. § 23-364(I).

113 2007 Ariz. Op. Att'y Gen. No. 107-002, at \*3 (Feb. 7, 2007) (concluding that "[b]ecause the language of Proposition 202 and the previous version of ARIZ. REV. STAT. § 23-362 cannot be interpreted harmoniously, Proposition 202 impliedly repeals the previous statute.>").

114 ARIZ. REV. STAT. § 23-204(A) ("The regulation of employee benefits, including compensation, paid and unpaid leave and other absences, meal breaks and rest periods, is of statewide concern. The regulation of employee benefits pursuant to this chapter and federal law is not

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subject to further regulation by a city, town or other political subdivision of this state.”).

115 ARIZ. CONST. ART. IV, PT. 1, § 1(6)(B), (C).

116 See, e.g., *Cave Creek Unified Sch. Dist. v. Ducey*, 233 Ariz. 1, 3-4 (2013) (holding that the legislature may not alter a voter approved public school funding scheme); *Arizona Early Childhood Dev. & Health Bd. v. Brewer*, 221 Ariz. 467 (2009) (holding that the legislature may not amend a funding scheme without three quarters majority as prescribed by the Arizona constitution).

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