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## **POLICY BRIEF:**

### **PROTECTING CAR WASH WORKERS IN NEW YORK CITY:**

### **THE RATIONALE FOR THE CAR WASH ACCOUNTABILITY ACT**

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## EXECUTIVE SUMMARY

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Despite recent efforts by state agencies and prosecutors to crack down on wage and labor violations at car washes in New York City, these violations continue on a wide scale throughout the industry. In 2008 an investigation by the New York State Department of Labor (NYSDOL) found that 78 percent of the city's car wash operators were guilty of minimum wage and overtime violations. In the years that followed, several high-profile investigations, some resulting in multi-million dollar settlements, further exposed the pervasiveness of wage theft and worker exploitation at car washes.

Newly gathered evidence from interviews with car wash workers in New York City strongly suggests that these violations remain common practice in the industry. Car wash workers consistently report that they are paid less than the tipped minimum wage, are subject to overtime violations, are made to pay for towels and uniforms, and go weeks at a time without receiving their wages.

Unscrupulous car wash operators are emboldened to commit wage theft with such impunity because of the very nature of the business. Car washes operate largely on a cash basis, and their workforce consists primarily of immigrants—often unaware of their rights—paid off-the-books. These factors make it difficult for investigators to prove labor violations occurred.

New measures are needed to end the illegal exploitation of workers at car washes and to ensure that operators are no longer able to skirt state and federal labor laws. The long record of labor violations justifies the establishment of an enhanced regulatory regime for car wash operators. A bill introduced in the New York City Council, the Car Wash Accountability Act, would provide workers with a financial safeguard against wage theft and workplace abuse and establish new standards for operating a car wash:

- **Licensing:** The Act includes a new licensing requirement in which only operators deemed to be in good financial and moral standing would be granted a license. For instance, operators with outstanding wage or labor violations would not be granted a license, and those that commit violations may have their license revoked.
- **Surety bond:** As a condition for obtaining a license, the operator would have to obtain a surety bond of \$150,000. This bond would keep operators from evading wage theft settlements and ensure that workers receive any back wages and damages awarded to them.



## The Car Wash Industry in NYC: Widespread and Persistent Labor Violations

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There are approximately 200 car washes in New York City employing 2,200 workers, according to data from the Bureau of Labor Statistics. However, given that a high proportion of car wash workers are paid off-the-books and therefore are not represented in the official data, it is likely that the car wash workforce is much larger. Some estimate that the industry employs more than 5,000 people in New York.

These workers are routinely subject to wage and labor violations. An investigation by the New York State Department of Labor in 2008 uncovered the extent to which these violations are prevalent throughout the industry. Of the 28 New York City car washes investigated, the Department found minimum wage and overtime violations at 21. Managers were found to improperly take a portion of workers' tips at 11 of the car washes, and 24 carwash operators were guilty of recordkeeping or wage statement violations. Across the state, the Labor Department estimated that workers had been underpaid by \$6.5 million.

Since the 2008 Department of Labor investigation, state agencies and prosecutors have placed greater scrutiny on the car wash industry in New York, and recent investigations into car wash operators have resulted in multi-million dollar settlements. In 2010 the New York Department of Labor settled with a single northern Manhattan car wash for \$1.9 million in unpaid wages and damages.

Most recently, New York Attorney General Eric Schneiderman announced a \$3.9 million settlement in 2014 after an investigation uncovered more than \$2.2 million in unpaid wages to 1,000 workers at 21 car washes across the city. These car washes are all owned in part by John Lage, dubbed the "Car Wash Kingpin" by the New York Daily News. In 2005 the United States Department of Labor filed a major lawsuit with Lage, and in 2009 he was ordered to pay over \$4.7 million in back wages, damages, and interest.

A report co-authored by the Center for Popular Democracy, Make the Road New York, New York Communities for Change, and the Retail, Wholesale, and Department Store Union uncovered how city agencies were spending taxpayer dollars at Lage-affiliated car washes, noting that between 2010 and 2013 the city had spent nearly \$180,000 at these car washes. While the city no longer spends money at Lage car washes on this scale, there has been over \$13,000 in city spending at Lage-affiliated car washes during fiscal year 2015.



There are several characteristics of the car wash industry that make it particularly prone to wage and labor violations. First, workers are often paid in cash off-the-books and rely on tips to supplement the wages paid by operators. While the minimum wage for most workers in New York is \$8.75 an hour, car wash workers are paid according to the tipped minimum wage. These workers are still entitled to a minimum wage of \$8.75, but under the tipped minimum wage workers are paid a base salary of \$6.60 an hour with the expectation that the difference will be made up in tips. If the amount earned in tips is not enough to bring their hourly wage up to \$8.75, it is up to the employer to compensate them.

However, car wash workers report that they often earn less than the tipped minimum wage. Interviews carried out by labor organizers in November and December of 2014, and subsequently provided to the Public Advocate's Office, indicate that workers may be paid less than the base tipped minimum wage. For example, Hernan Lopez of Vegas Auto Spa in Brooklyn reported that he made just \$5.50 an hour during the first four years he worked at the car wash. The amount of tips earned may vary widely from day-to-day, and there is no guarantee that the workers will earn the legally mandated minimum wage. Lopez reported that he would make between \$50 and \$110 over an 80-hour week in tips, bringing his total compensation well below the minimum wage.

Workers are often denied any overtime pay, despite many reporting that 60-hour-plus weeks are common. A survey of 89 car wash workers from 2012 found that 75 percent of these workers said they did not receive overtime pay when they worked more than 40 hours. The overtime rate for tipped car wash workers is \$10.98 an hour.

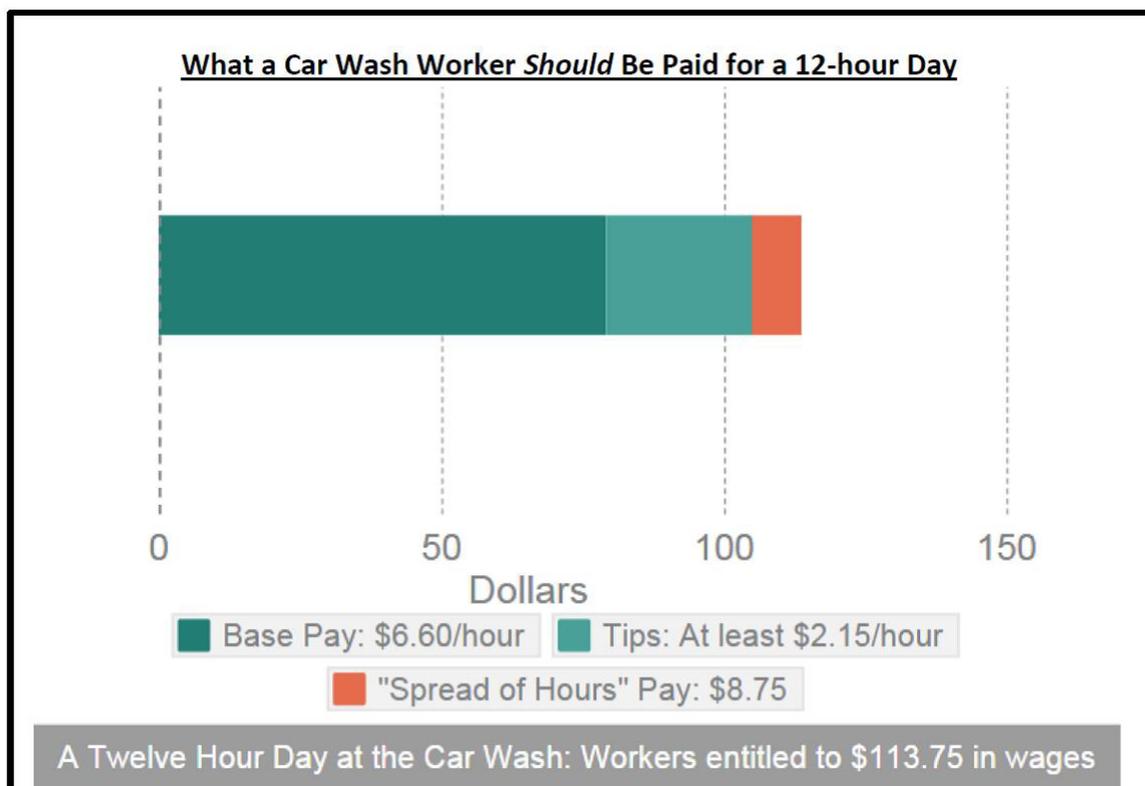
On the other hand, workers report that their schedules are very unpredictable and that the number of hours worked may vary widely from week to week, depending on the weather or other factors. Car wash workers report that they can be sent home if business is slow without the legally required compensation. Juan Eduardo of Vegas Car Wash said, "I would come in at 7:30 in the morning, when the car wash opened, and he would send me home at 8:00, paying me for the half an hour I was there." New York State law mandates that if a worker arrives to work, clocks in, and is sent home, they must be paid for a minimum of 4-hours at the regular minimum wage.

Incomplete or inaccurate recordkeeping often results in workers being paid less than the minimum wage and missing out on overtime pay. Furthermore, workers report that management will force them to falsely sign forms that inflate the amount of tips they earned. The lack of a paper trail makes it difficult to track and prove these violations.



Compounding matters, the car wash workforce is primarily made up of immigrants who may not be aware of their rights, or may not be able to assert these rights because of a lack of legal resources or a fear of retaliation. Nationally, foreign-born workers are twice as likely to suffer minimum wage violations as native born Americans.

According to the 2014 interviews, workers were often unaware of the nature of the tipped minimum wage, their rights under the minimum wage law, and the requirement that car wash owners make up any difference between the tips earned and the required minimum wage. Workers are also largely unaware of a law that requires car wash operators to provide extra pay if an employee works more than 10 hours in a day. Under this law, workers are entitled to one extra hour of the basic minimum wage of \$8.75 an hour when a workday exceeds ten hours, but workers report that they are not compensated as required by law.





## THE CAR WASH ACCOUNTABILITY ACT

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The persistence of wage and labor violations at city car washes—as evidenced by recent interviews with car wash workers and despite increased enforcement actions by state agencies and prosecutors—provides a clear rationale for city lawmakers to more carefully regulate the industry in order to uphold the law and protect workers.

The Car Wash Accountability Act, a bill introduced in the City Council in 2012, would provide a mechanism for the city to prevent those with a history of wage and labor violations from operating a car wash in New York City and would ensure that workers received back pay and damages in the case of a settlement.

The Act would require operators to obtain a license from the City that must be renewed periodically. Licenses and renewals would be denied to operators that have a history of violating federal, state, or local laws, including labor laws. Applicants for a license must prove that they have the appropriate liability insurance, workers' compensation, and disability insurance coverage. The fee for a license would be \$550 biennially.

The Act would also require car wash operators, as a condition for obtaining a license, to obtain a surety bond of \$150,000. Depending on an owner's credit score, the premium for such a bond will cost between \$1,500 and \$15,000 a year. The bond is a form of insurance—it ensures that car wash operators pay all earned wages, interest on wages, and fringe benefits due to their employees. If the principal fails to pay all sums appropriately, the bond protects harmed parties from financial loss. If the car wash is subject to a collective bargaining agreement, the amount of the bond need only be \$30,000. A \$150,000 surety bonds is required for car wash operators in California. In New York City, surety bonds are required in several industries, such as towing companies, car garages, and laundromats.



## CONCLUSION: NEW YORK CITY MUST PROTECT CAR WASH WORKERS

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Wage and labor violations remain common practice in the car wash industry even as state agencies and prosecutors have increased enforcement and levied multi-million dollar settlements. The Car Wash Accountability Act, currently under consideration in the New York City Council, would give City government a powerful new tool to protect workers and prevent car wash operators that have committed widespread wage and labor violations from continuing to operate car washes in New York City.



## ACKNOWLEDGEMENTS

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<sup>i</sup> “Labor Department Investigation of New York’s Car Wash Industry Uncovers nearly \$6.6 Million in Unpaid Wages,” press release, New York State Department of Labor, August 15, 2008. [http://www.labor.state.ny.us/pressreleases/2008/August15\\_2008.htm](http://www.labor.state.ny.us/pressreleases/2008/August15_2008.htm)

<sup>ii</sup> Quarterly Census of Employment and Wages, Bureau of Labor Statistics, 2014

<sup>iii</sup> Wash New York, The Dirty Business of Cleaning NYC’s Cars: Carwash workers face low pay, offensive conditions, and poor treatment. No date. <http://beta.washnewyork.org/files/car-wash-report.pdf>

<sup>iv</sup> Press release, New York State Department of Labor, August 15, 2008.

<sup>v</sup>Car Wash Kingpin. Center for Popular Democracy, Make the Road New York, New York Communities for Change, and the Retail, Wholesale, and Department Store Union, no date.

<sup>vi</sup> Checkbook NYC, New York City Comptroller. [checkbooknyc.gov](http://checkbooknyc.gov).

Interviews were carried out by organizers affiliated with Make the Road New York, New York Communities for Change, and the Retail, Wholesale, and Department Store Union.

<sup>viii</sup>The Dirty Business of Cleaning NYC’s Cars.

<sup>xi</sup> Interviews provided to the Public Advocate’s Office by Make the Road New York, New York Communities for Change, and the Retail, Wholesale, and Department Store Union.

<sup>x</sup> The Dirty Business of Cleaning NYC’s Cars.

<sup>xi</sup> Annette Bernhardt, et. al, Broken Laws, Unprotected Workers: Violations of employment and labor laws in America’s Cities, 2009. <https://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>

<sup>xii</sup> Based on current estimates from bond issuers.

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