

## Testimony of Stuart Appelbaum

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Honorable Chairs of the New York State Senate Finance Committee  
and the New York State Assembly Ways and Means Committee

February 11, 2014

My name is Stuart Appelbaum and I am the president of the Retail, Wholesale and Department Store Union (RWDSU). The RWDSU represents 100,000 workers throughout the United States, with 45,000 residing in New York.

In 2011, my union, the RWDSU, joined with other members of the Coalition to Prevent Wage Theft & Protect Responsible Businesses to introduce legislation that would help put an end to wage theft. This coalition of low-income workers, not-for-profit organizations, civic legal organizations, labor unions, and small businesses came together to highlight the rampant wage theft taking place within the retail industry. In NYC alone, more than \$18.4 million a week and nearly \$1 billion each year are stolen from workers and their families by their employers. This money that would otherwise be spent on food, rent and other necessities. This bill was supposed to turn around the perverse economic incentives that currently encourage wage theft, undermine responsible businesses, and steal from our tax base.

RWDSU is now a member of a new coalition, New York Coalition to End Wage Theft, to address the sad reality that the NYDOL lacks the resources to even make a dent in the wage theft epidemic. Since the 1960's and 1970's the number of NYDOL investigators per capita has plummeted. As of today, it would take an increase of 200 investigators to return the NYDOL to

the staffing levels of decades ago. We urge Albany to dedicate the resources this year to build on the NYDOL's great work and enable them to REALLY tackle wage theft.

Then and now, wage theft is still endemic to low-wage retail: it's been part of the low-wage retail business model for decades; employers regularly steal wages because the penalties are not severe enough to stop them.

In 2007, workers at the Yellow Rat Bastard (YRB) retail chain approached our union for help because workers were being forced to work for as low as \$5.25/hr, well below the standard minimum wage, received no overtime pay of time and a half, even though many worked 70 hrs a week, experienced rampant verbal abuse by managers and worked in an unhealthy work environment, including the 'rat infested' flagship store. After an extensive organizing effort, nearly 1,000 workers won \$1.4 million in unpaid wages through a lawsuit with the NYS Attorney General's office.

In 2009, workers at the footwear retailer Shoe Mania came to the RWDSU for help. They told stories of working 12 hours a day, 6 or 7 days a week, without any overtime pay. Others complained of commission rates so low their hourly pay would fall below minimum wage. With our support, workers organized to take legal action against the Company to recover their lost wages. In all, 150 Shoe Mania employees opted-in to two class-action lawsuits filed in US Federal Court and won an historic victory together in a massive legal settlement of \$1.15 million.

In 2010, we met Carolina Ferrerya, a retail worker at Mystique Boutique who typically worked for 10 hours per day, six days a week, and was never compensated for overtime. Many workers like Carolina had suspected that they weren't being paid properly, and when they met with RWDSU organizers they discovered that the company had been violating minimum wage and overtime laws for at least six years. Many workers reported putting in 66-hour weeks without overtime pay and working for as little as \$5.15 per hour, \$2.10 below the federal and state minimum wage. Two years later, after a long legal battle, more than 100 Mystique Boutique employees received their back wages through a \$950,000 wage theft settlement obtained by the New York State Office of the Attorney General. This settlement included funds for restitution as well as independent monitoring for ongoing compliance with wage and hour laws.

When we fought to pass the Wage Theft Prevention Act, it was supposed to correct problems like this by stiffening penalties. It hasn't.

Nothing will improve until state government gives the Department of Labor the resources and staff necessary to fight wage theft. Low-wage retailers know there is a backlog of wage theft cases at the Department of Labor, and that gives them an incentive to keep stealing wages.

In New York City, no form of wage theft is more glaring than within the car wash industry, where it has practically become an industry standard.

In a recent report conducted by the RWDSU, 71% of NYC's car wash workers work an average of 60 hours a week however 75% of them don't receive any overtime pay exceeding 40 hours. When workers did receive overtime, it was far less than the legally mandated time and a half. 60% of NYC's car wash workers, also, reported make less than minimum wage, with some employers often forcing employees to work off the clock.

Wage theft in any industry is horrible, but it is most despicable when committed against especially vulnerable employees, such as car wash workers. Many of which are poor, immigrant workers who carwash owners have assumed that they can abuse without fear of repercussion.

With the vast majority of low wage workers lacking the resources and connections to hire private attorneys, it's imperative that the NYS Department of Labor be given the resources necessary to enforce minimum wage, overtime, prevailing wage, and other basic labor protections. A weak and understaffed Department of Labor makes the Wage Theft Prevention Act useless and tells low-wage retailers that they will not be held accountable for their illegal exploitation of workers. Inaction undermines responsible employers and keeps our state from tackling the problem of rising income inequality.

The lack of viable enforcement allows a culture of non-compliance by other employers. Law-abiding employers may feel that they have no choice but to match industry standards set by those who are aimlessly breaking the law in order to compete. A strong DOL would ensure that compliant employers are not undermined and can compete fairly.

That's why it's so important that we take immediate action. As we emerge from an economic recession, we must ensure that our renewed economy is driven by decent employers, not those who undercut good businesses by stealing workers' wages.

New Yorkers need a tough wage theft prevention law with teeth. It's time to transform economic vulnerability into economic security.

In order to have real reform, the NYS Department of Labor must hire an additional 200 investigators to reduce the extensive backlog of claims, close loopholes in retaliation protection to ensure that workers are not victims of intimidation during the course of the investigation of their case and improve basic provisions to help workers actually collect wages, damages, and fines found due by the DOL, the office of the Attorney General or the Courts.

These basic measures will ensure a stronger, more enforceable wage theft prevention law that will serve as a solid deterrent to low-wage retailers: No one is above the law.

