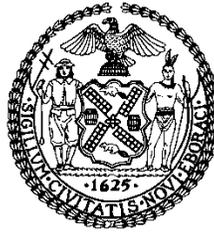


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Hon. Daniel Dromm, Chair

Thursday, February 28, 2013

“Oversight: Labor Issues Affecting New York City’s Immigrant Workers”

Res. No. 1598:

By Council Members Dromm, Brewer, Chin, Ferreras, James, Koppell, Lander, Mendez, Williams and Rodriguez

Title:

Resolution calling on the United States Congress to pass and the President to sign H.R. 2169/S.1195, also known as the POWER Act, which would allow victims of any federal, state, or local labor law violations with regard to wages and hours, labor relations, family and medical leave, occupational health and safety, and discrimination to apply for lawful status if they have suffered substantial mental or physical abuse as a result of the violation, have been helpful or are likely to be helpful in the investigation of the violation, and will suffer extreme hardship if removed from the United States.

I. Introduction

On Thursday, February 28, 2013, the Committee on Civil Service and Labor, chaired by Council Member Michael Nelson, and the Committee on Immigration, chaired by Council Member Daniel Dromm, will hold a hearing entitled, “Oversight: Labor Issues Affecting New York City’s Immigrant Workers.” The Committees will also hear Resolution Number 1598 (“Res. No. 1598”), a Resolution calling on the United States Congress to pass and the President to sign H.R. 2169/S.1195, also known as the POWER Act, which would allow victims of any federal, state, or local labor law violations with regard to wages and hours, labor relations, family and medical leave, occupational health and safety, and discrimination to apply for lawful status if they have suffered substantial mental or physical abuse as a result of the violation, have been helpful or are likely to be helpful in the investigation of the violation, and will suffer extreme hardship if removed from the United States. Those invited to testify include immigrant advocates, unions, and community based organizations.

II. Background

The large number of immigrants living in New York City has a profound impact on the City’s economy and job market. In 2009, New York City’s three million immigrants accounted for \$215 billion in economic activity, representing nearly 32 percent of the gross city product.¹ Immigrants contribute to every business sector, representing at least one-quarter of the workforce in each of the transportation, utilities, wholesale, and retail trade sectors.² Despite the significant financial contributions that immigrant New Yorkers make to the City, they may be subjected to a variety of labor law violations due to a limited understanding of the English language and the

¹ New York State Comptroller, *Report 17-2010: The Role of Immigrants in the New York City Economy*, 4 (Jan. 2010).

² Robert W. Fairlie, Ph.D., SBA Office of Advocacy, *Estimating the Contribution of Immigrant Business Owners to the U.S. Economy*, 22 (November 2008).

local labor market, and, for some, their lack of legal immigration status.³ These labor law violations⁴ include unpaid or subminimum wages, poor or unsafe working conditions, lack of over-time and breaks, and lack of benefits including workers' compensation.⁵ Additionally, immigrants repeatedly are more likely to work in jobs that carry greater risks of violations than native born workers.⁶ For example, some researchers have surmised that:

“...Immigrants might have different perceptions or knowledge of job risks than natives. Immigrants may perceive work-related risks differently than natives because job conditions in the United States may be less risky than those in some developing countries, for example. Immigrants might therefore be more willing than natives to take risky jobs because they do not perceive them as particularly dangerous.”⁷

Immigrant workers have also recounted that they often will not report workplace violations out of fear of retaliation by employers or because immigration authorities may deport them or their family members.⁸

In 2008, the New York State Department of Labor investigated 84 New York City carwashes and found that 78 percent of those car wash establishments were in violations of minimum wage and overtime laws, and 38 percent of those companies were stealing tips from their very own employees.⁹ In addition, community based organizations like the New Immigrant Community Empowerment, commonly known as NICE, has brought awareness and attention to

³ Neil F. Carlson, Hispanic Federation, *Future in the Balance: Meeting the Workforce Development Needs of Latinos in New York City*, 2 (2010).

⁴ “Labor law violations” and “Workforce violations” are used interchangeably throughout this Committee Report

⁵ See generally, Donald M. Kerwin & Kristen McCabe, Migration Policy Institute, *Labor Standards Enforcement and Low-Wage Immigrants: Creating an Effective Enforcement System*, 1 (July 2011).

⁶ Pia M. Orrenius and Madeline Zavodny, *Do Immigrants Work In Riskier Jobs?*, U.S. National Library of Medicine, National Institutes of Health (Aug. 2009), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2831347/>.

⁷ *Id.*

⁸ Kerwin & McCabe, *supra* note 5, at 22.

⁹ Annette Bernhardt, Diana Polson and James DeFilippis, *Working Without Laws: A Survey of Employment and Labor Law Violations in New York City*, 7 (2010).

the labor law violations among the City's immigrant community.¹⁰ Despite the efforts of State agencies and community-based organizations to address the needs of immigrant workers, some employers continue to take advantage of this population.

III. Efforts to Address Immigration Labor Law Violations

On the federal level, the POWER Act of 2011 (S.1195/H.R.2169) was introduced in July 2011 to alleviate some of the abuses and violations immigrants specifically face in the workforce. The POWER Act would amend the Immigration and Nationality Act to grant temporary immigration relief to undocumented immigrants who are victims of labor law violations and who cooperate with law enforcement in investigating and prosecuting such violation.¹¹ A legislative measure such as the POWER Act would increase protections to a vulnerable population and encourage undocumented immigrants to come forward to report abusive employers. Res. No. 1598, a Resolution which calls upon the U.S. Congress to pass and the President to sign legislation establishing the POWER Act of 2011, was introduced in the New York City Council in December 2011. Although the POWER Act has yet to be reintroduced in the current legislative session, there has been a significant amount of discussion, among immigrant advocates, of the need to introduce and pass similar legislation in order to help members of the immigrant labor force. More recently, two comprehensive immigration reform frameworks were announced in January 2013, both of which consider immigrant labor issues.¹²

¹⁰ Press Release, New Immigrant Community Empowerment, *More than 150 community members turn out as immigrants react to NY State agenda*, (January 2013), <http://hosted.verticalresponse.com/486851/7c6615ec9f/1484500992/afdab7b79e/> (last visited Feb. 27, 2013).

¹¹ S.1195/H.R. 2169 (2011-2012 Regular Session).

¹² Press Release, Senators Schumer, McCain, Durbin, Graham, Menendez, Rubio, Bennet, and Flake, *Bipartisan Framework for Comprehensive Immigration Reform*, (Jan. 29, 2013), available at http://www.mccain.senate.gov/public/index.cfm?FuseAction=PressOffice.PressReleases&ContentRecord_id=87afa1c7-c0ac-6131-5e8e-9bf8904159e6 (last visited on Feb. 28, 2013); Press Release, The White House, *Fact Sheet: Fixing our Broken Immigration System so Everyone Plays by the Rules*, (Jan. 29, 2013), <http://www.whitehouse.gov/the-press-office/2013/01/29/fact-sheet-fixing-our-broken-immigration-system-so-everyone-plays-rules> (last visited Feb. 28, 2013).

They include a pathway to citizenship for undocumented immigrants, who are represented in every sector of the workforce, as well as language which would curb labor law violations in the workforce.¹³ If enacted, immigrant workers could freely report on workforce abuses without fear of retaliation from their employers.

Res. No. 1598

New York City's immigrants have been victimized by the City's various labor industries. For example, in 2009, Amish Markets, a well-known New York City grocery establishment, denied their employees, many of whom are immigrants, overtime pay, firing employees after they were injured on the job and paid their employees subminimum wages.¹⁴ Since Amish Markets violated labor law practices, they agreed to pay \$1.5 million in unpaid wages to 550 workers. Additionally, in October 2008, Saigon Grill, a New York City Vietnamese restaurant, was found guilty by a federal judge for making illegal deductions from their employee's paychecks, for subminimum wages and other various wage theft violations.¹⁵ Saigon Grill was ordered to pay \$4.6 million in back wages and damages to its employees.¹⁶ These two cases illustrate how uncommon labor law violations occur in the City. Many immigrants are scared to report violations because of their immigration status and with good reasoning. Statistics show the U.S. Department of Homeland Security has deported more than 400,000 immigrants in both 2010 and 2011.¹⁷ These high deportation numbers may deter immigrants from lodging formal complaints with local enforcement agencies and in turn make them vulnerable to abuse.

¹³ *Id.*

¹⁴ Bernhardt, Polson and DeFilippis, *supra* note 9, at 7.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ John Simanski and Lesley M. Sapp, U.S. Dep't of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2011*, (Sept. 2012), http://www.dhs.gov/sites/default/files/publications/immigration-statistics/enforcement_ar_2011.pdf (last visited Feb. 28, 2013); Immigration and Customs Enforcement, *Removal Statistics*, <http://www.ice.gov/removal-statistics/> (last visited Feb. 28, 2013).

To bring attention to immigrant labor law violations and to further show the New York City Council's longstanding support of immigrants, in December 2013, the New York City Council introduced, Res. No. 1598, a Resolution which calls upon the U.S. Congress to pass and the President to sign legislation establishing the POWER Act of 2011. The City's immigrants would greatly benefit from such a bill and provide them with protections and temporary immigration relief.

IV. Conclusion

Today's hearing will examine Res. No. 1598 and the barriers immigrants face in the workforce, what best practices exist or can be implemented, and how the enactment of the POWER Act or a comprehensive immigration reform bill that includes components of the POWER Act can address labor law violations against immigrant New Yorkers.

Res No. 1598

Resolution calling on the United States Congress to pass and the President to sign H.R. 2169/S.1195, also known as the POWER Act, which would allow victims of any federal, state, or local labor law violations with regard to wages and hours, labor relations, family and medical leave, occupational health and safety, and discrimination to apply for lawful status if they have suffered substantial mental or physical abuse as a result of the violation, have been helpful or are likely to be helpful in the investigation of the violation, and will suffer extreme hardship if removed from the United States.

By Council Members Dromm, Brewer, Chin, Ferreras, James, Koppell, Lander, Mendez, Williams and Rodriguez

Whereas, New York City is home to approximately three million immigrants, and according to the State Comptroller's 2010 report *The Role of Immigrants in the New York City Economy* ("the Report"), immigrant New Yorkers represent 34 percent of the city's workforce; and

Whereas, According to the U.S. Department of Homeland Security ("DHS"), approximately 400,000 undocumented immigrants were deported each year from the United States in both FY 2010 and FY 2011; and

Whereas, The vigorous enforcement of immigration laws by the federal government has resulted in increased fear of apprehension and deportation among immigrants; and

Whereas, Immigrants are highly vulnerable to abuse and often subject to poor working conditions and unpaid and subminimum wages; and

Whereas, For example, in 2008, the Saigon Grill restaurant, located in New York City, was ordered by the United States District Court for the Southern District of New York to pay 36 delivery workers \$4.6 million in unpaid wages, and in 2009, Amish Markets in New York City agreed to pay \$1.5 million in unpaid wages to 550 workers, many of whom were immigrants; and

Whereas, In some cases, immigrants leave their native country due to political unrest or because of military conflicts within their country or region; and

Whereas, As such, immigrants who fear deportation are often afraid to report crimes or are unaware that they can seek relief from local law enforcement or the judicial system; and

Whereas, Furthermore, such fears often prevent immigrants from bringing cases or cooperating with the government when United States labor laws have been or are being violated; and

Whereas, To help curb some of the abuse immigrants face, on July 14, 2011, S.1195/H.R.2169, known as the "POWER Act," was introduced, according to the bill, "to protect victims of crime or serious labor violations from deportation during DHS's enforcement actions"; and

Whereas, If enacted, according to the bill, this legislation would allow an undocumented immigrant to be granted temporary immigration relief, "if the Secretary of [DHS] determines that the [immigrant]: (1) has suffered abuse or harm as a result of having been a victim of criminal activity; (2) has suffered substantial abuse or harm related to specified labor or employment violations related to a workplace claim; (3) is a victim of specified criminal activity and would suffer extreme hardship upon removal; (4) has suffered a workplace violation and would suffer extreme hardship upon removal; (5) has been helpful to a local judge, DHS, the Equal Employment Opportunity Commission (EEOC), the Department of Labor, or the National Labor Relations Board (NLRB) or to other authorities investigating, prosecuting, or seeking civil remedies for workplace violations; or (6) has filed, is a material witness in, or is likely to be helpful in the investigation of, a bona fide workplace claim and reasonably fears, has been threatened with, or has been the victim of, an action involving force, physical restraint,

retaliation, or abuse of the immigration or other legal process by the employer in relation to acts underlying or related to the filing of the claim"; and

Whereas, If enacted, the legislation would provide protections to undocumented workers and an avenue for immigrants to report abuses without the fear of deportation; and

Whereas, If enacted, the legislation would assist immigrants in this city who, according to the Report, accounted for \$215 billion in economic activity in 2008 and, therefore, play a vital role in the city's economic health; now, therefore, be it

Resolved, That the Council of the City of New York calls upon the United States Congress to pass and the President to sign H.R. 2169/S.1195, also known as the POWER Act, which would allow victims of any federal, state, or local labor law violations with regard to wages and hours, labor relations, family and medical leave, occupational health and safety, and discrimination to apply for lawful status if they have suffered substantial mental or physical abuse as a result of the violation, have been helpful or are likely to be helpful in the investigation of the violation, and will suffer extreme hardship if removed from the United States.

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