

Workers recover thousands in unpaid overtime

Case typical of experience among Central Texas immigrants, attorney says

By [Juan Castillo](#)

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When he was fired in 2007 from his job at a Hutto countertop factory after he and co-workers complained about not getting paid overtime, Ernesto Leyva harbored doubts about his legal rights. He heard pessimistic advice to forget it, that he wasn't entitled to overtime pay or that labor laws didn't protect someone like him.

But last week, Leyva looked confidently into television cameras and implored immigrant workers like himself not to be intimidated. U.S. employment laws protect workers no matter what part of the world they're from, said the soft-spoken 35-year-old from Veracruz, Mexico.

"Even if other people say no. Even if employers say they're more powerful than you. Those are lies," Leyva said before receiving a check for his share of \$30,150 in unpaid overtime wages that he and three other workers received in a settlement of a lawsuit against his former employer, J & H Granite Inc.

Leyva was flanked by his uncle, Jorge Ramirez, 40, who was also involved in the lawsuit, at a news conference and victory party at the offices of the Equal Justice Center in South Austin. The nonprofit legal office for immigrants and the Transnational Worker Rights Clinic, which the center operates with the University of Texas School of Law, represented the workers in the lawsuit that was filed in August against J & H in federal district court in Austin.

The case illustrates a common experience among Central Texas immigrants, who sometimes toil long hours without being paid overtime wages they are legally due, said their attorney, Bill Beardall, who is faculty director of the clinic and leads the justice center.

Beardall said that, when measured per worker, the recovered damages are among the largest of their kind in recent memory collected in Central Texas.

The workers' lawsuit alleged that J & H, which manufactures granite and stone countertops, violated federal overtime laws. Beardall said the plaintiffs made \$8 to \$15 an hour and routinely worked overtime — sometimes putting in as many as 70 hours per week — during a two- to three-year period.

He said J & H fired the workers around Jan. 31, 2007, after they asked to be compensated. The National Labor Relations Board investigated, and J & H agreed to pay \$4,400 in damages for the earnings the workers would have made had they not been fired, Beardall said.

Jason Rammel, an attorney who represented J & H, said the Hutto company never denied that it owed the overtime wages. "It was just the amount of penalties" that was disputed, Rammel said. He declined to comment further.

The total settlement was for \$45,500, including damages, costs and attorney fees.

As the local immigrant population has soared in recent years, several nonprofit groups have emerged to provide immigrant workers access to the legal system and to counsel them about rights they have in the workplace regardless of their immigration status. Hundreds of similar organizations exist across the country. Beardall said UT law students served as primary legal counsel on the J & H case.

Based on estimates provided by the Equal Justice Center, the clinic and other Austin groups, nonprofit organizations have recovered hundreds of thousands of dollars in unpaid wages for hundreds of workers. In many cases, the immigrants weren't paid at all for their work.

Rebecca Smith of the National Employment Law Project in New York said the U.S. Department of Labor enforces wage laws equally for all workers. "Otherwise, what you would do is encourage employers to go out and find undocumented workers just so they can abuse them," said Smith, whose organization is an advocate for the working poor and unemployed.

Undocumented immigrant workers often "have a fear to come forward, and employers take advantage of that by threatening to turn them into immigration if they exercise their legal rights," said Cristina Tzintzún of Austin-based Proyecto Defensa Laboral (Workers Defense Project).


Beardall also announced new lawsuits against three other businesses in Austin and Round Rock in which 19 workers are seeking unpaid wages. In one case, 14 workers allege that they weren't paid for four weeks of work.

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