

Winning Wage Justice: A Summary of Criminal Prosecutions of Wage Theft in the United States

Wage theft – shortchanging workers of the wages they are owed – is becoming a defining trend of the 21st century labor market. It takes many forms for workers, including being paid less than the minimum wage or other agreed upon wage, working “off-the-clock” without pay, getting less than time-and-a half for overtime hours, having tips stolen, being misclassified as an “independent contractor” instead of an employee¹ and underpaid, having illegal deductions taken out of paychecks, or simply not being paid at all.

A growing body of research – national studies, industry and regionally-specific studies, and government reports – documents a broad and worsening wage theft crisis in the United States. These studies show that far from being incidental or rare, wage theft takes place in industries that span the economy, including retail, restaurant and grocery stores; caregiver industries such as home health care and domestic work; blue collar industries such as manufacturing, construction and wholesalers; building services such as janitorial and security and personal services such as dry cleaning and laundry, car washes, and beauty and nail salons.

In response to the wage theft epidemic, many workers and workers’ rights organizations have urged lawmakers to pass tougher laws that would criminalize wage theft. In addition to the damages and fines an employer would have to pay for wage theft as a civil offense, the imposition of criminal penalties can further deter employers from

¹ There are many reports analyzing the prevalence of the misclassification of “employees” as independent contractors, and the impact this illegal practice has not just on workers, but on the public coffers. These reports are helpful to wage theft campaigns seeking to combat such misclassification because they detail the cost of this practice on taxpayers. For a summary of these reports, please see Sarah Leberstein, *Independent Contractor Misclassification Imposes Huge Costs of Workers and Federal and State Treasuries*, National Employment Law Project (October 2011).

cheating workers out of earned wages. Criminal penalties may include fines to be paid into public fund, restitution to victims of wage theft, and jail or probation sentences. The criminal prosecution of employers who steal wages has been effective in raising public awareness around wage theft and helps put industries on notice to ensure its business practices are in compliance with wage and hour laws.

Below, we briefly summarize recent (2011-2013) cases of wage theft throughout the country in which criminal charges were brought against employers. Various Attorney General, District Attorney, and County Attorney offices collaborated with state labor departments and in many instances community organizations to investigate complaints and file charges. Our goal is to provide communities with examples they can use in their advocacy and organizing efforts to end wage theft.

Industry-specific cases

▪ CARWASH

California: The Santa Monica City Attorney's Office filed an 11-count criminal complaint against Wilshire West Car Wash LLC and its parent company, Maxxam Enterprises III, LLC, for failure to pay the minimum wage, taking back wages that had already been paid, and grand theft of money and labor by false pretenses. A joint investigation with the California Labor Commissioner and U.S. Department of Labor investigation found that Wilshire West altered employee time records, created false time records, and coerced employees into signing declarations that falsely stated that they had received paid breaks. City of Santa Monica Press Release, http://www.smgov.net/Main/News_Tab/Wilshire_West_Car_Wash_Its_Owner_And_Managers_Charged_With_Criminal_Conspiracy_And_Grand_Theft.aspx (January 2013).

New York: Attorney General Eric Schneiderman's office secured guilty pleas from a Long Island car wash owner and his company for failure to pay at least 10 workers the state-mandated minimum wage and legally required overtime wages. An investigation revealed that for over a four-year period, the owner paid workers hourly rates of as little as \$4. As part of his plea, the owner will pay \$75,000 in restitution for unpaid wages and complete 40 hours of community service. The owner and company will also submit to 2 years of monitoring of employment practices by the Attorney General's Office. New York State Office of the Attorney General Press Release, <http://www.ag.ny.gov/press-release/ag-schneiderman-secures-guilty-plea-suffolk-car-wash-boss-who-failed-pay-minimum-wage> (May 2013).

▪ **CONSTRUCTION / DAY LABOR / LANDSCAPING**

California: Attorney General Edmund Brown, Jr. filed criminal charges against the owner of a Placer County concrete company, which included 15 felony counts of payroll tax evasion and workers' compensation insurance fraud. An investigation by the Attorney General Office's Underground Economy Unit found that the company submitted false payroll reports and misrepresented the status of its employees as independent contractors, cheating the state out of hundreds of thousands of dollars in taxes and workers' compensation premiums. From 2004 to 2009, the company under-reported the wages of 111 workers by \$2.1 million. State of California Department of Justice/Office of the Attorney General Press Release, <http://oag.ca.gov/news/press-releases/attorney-general-brown-files-charges-against-granite-bay-concrete-company-tax> (November 2012).

California: A painting contractor for San Francisco city and school projects was charged with 57 criminal counts, which included wage theft and workers' compensation insurance premium fraud. District Attorney George Gascon says the contractor failed to pay San Francisco's prevailing wage to workers and cheated them out of more than \$600,000 in wages. City and County of San Francisco District Attorney Press Release, <http://www.sfdistrictattorney.com/index.aspx?page=161> (January 2012).

Illinois: Attorney General Lisa Madigan's office charged a foreman and subcontractor on an O'Hare construction project with theft and forgery for cheating employees out of proper wages and pocketing more than \$270,000 in excess payroll funds. An investigation revealed that the foreman received weekly payroll checks from the subcontractor and kept much of the money for himself, failing to pay 10 carpenters he supervised the prevailing wage they were entitled to under the terms of their contracts. Illinois Attorney General Press Release, http://www.ag.state.il.us/pressroom/2011_02/20110223.html (February 2011).

Illinois: Attorney General Lisa Madigan's office brought criminal charges against a Chicago-area contractor for running a kickback scheme that defrauded several north suburban municipalities of more than \$400,000 for public works projects. The AGO's investigation revealed a scheme in which the contractor forced employees to kickback money from their paychecks each month and repeatedly submitted falsified, certified statements to the local agencies stating that he was paying his employees at a rate in compliance with state law. Illinois Attorney General Press Release, http://www.ag.state.il.us/pressroom/2012_10/20121018.html (October 2012).

Massachusetts: Attorney General Martha Coakley's office secured guilty pleas from a roofing company and its owners for failure to pay the prevailing wage and misclassification of employees as independent contractors. An investigation revealed

that the company misclassified multiple employees as independent contractors, failed to disclose more than \$2.4 million in misclassified subcontractor payroll, and paid workers below the prevailing wage rate. The company owners have been sentenced to jail time and probation, as well as ordered to pay over \$200,000 in fines and \$100,000 in restitution. The company has also been debarred from bidding on or contracting for public construction projects for five years. Office of the Attorney General of Massachusetts Press Release, <http://www.mass.gov/ago/news-and-updates/press-releases/2012/2012-01-10-newton-contracting-plea.html> (January 2012).

Massachusetts: A construction company and its owner pleaded guilty and were sentenced on charges including failure to pay the prevailing wage, willful misclassification of workers as independent contractors, and failure to submit true and accurate payroll records. The owner was sentenced to two years probation and both owner and company were ordered to pay over \$37,000 in restitution to 10 employees. Defendants were also debarred from bidding on or contracting for public construction projects for five years. Office of the Attorney General of Massachusetts Press Release, <http://www.mass.gov/ago/news-and-updates/press-releases/2012/2012-09-05-lancaster-enterprises.html> (September 2012).

Texas: The owner of an El Paso roofing company was indicted for criminal wage theft. The owner failed to pay an employee more than \$2,000 for replacing a roof. The Workers Defense Project and other advocacy organizations investigated and pursued the case with El Paso's Wage Theft Task Force. Texas Civil Rights Project Press Release, <http://www.texascivilrightsproject.org/blog/archives/341> (April 2013).

- **HOSPITALITY (HOTEL, RESTAURANT)**

New York: Attorney General Eric Schneiderman's office secured a guilty plea from a Queens restaurant for failing to pay 20 workers the minimum wage and retaliating against employees who filed complaints with the New York State Department of Labor. An investigation by the New York State Department of Labor revealed that for over 3 years, the defendants paid waiters daily rates of just \$25-40 per day, regardless of how many hours they worked. Waiters often had to work more than 12 hours per day, resulting in hourly rates of only \$2 per hour, or even lower. In addition, managers unlawfully kept a portion of the waiters' tips. The owner will pay \$450,000 in unpaid wages, interest, and penalties. Defendants will also undergo 3 years of monitoring of their employment practices by the Attorney General's Office. New York State Office of the Attorney General Press Release, <http://www.ag.ny.gov/press-release/ag-schneiderman-announces-guilty-plea-queens-employer-who-failed-pay-minimum-wage> (May 2012).

▪ **TRANSPORATION**

Minnesota: A trucking company pleaded guilty to felony "theft by swindle" charges for stealing thousands of dollars in wages from approximately 50 employees. An investigation found that while employees were required to be paid between \$25.13 and \$34.80 per hour under the prevailing wage law, they were actually being paid between \$11 and \$16 per hour. The company also withheld money from paychecks to cover job expenses, including gas and repairs for vehicles. Hennepin County Attorney Press Release, <http://www.hennepinattorney.org/NewsPress/tabid/391/EntryId/96/Charges-in-Groundbreaking-Theft-by-Swindle-Case.aspx> (March 2012).

For more information, please contact any of the following NELP staff: Rebecca Smith, rsmith@nelp.org; Cathy Ruckelshaus, cruckelshaus@nelp.org; Haeyoung Yoon, hyoon@nelp.org; Tseyeye Gebreselassie, tseyeye@nelp.org; Sarah Leberstein, sleberstein@nelp.org; or Eunice Cho, echo@nelp.org.