

# Winning Wage Justice: Choosing the Policy Options Right for Your Community

In January 2011, NELP released *Winning Wage Justice*, a comprehensive guide compiling 28 tried and true state and city policies that community groups can implement to fight wage theft. The *Winning Wage Justice* guide includes best practices and model policies along with stories of successful campaigns throughout the country to implement them. But there is no standard formula for putting together a state or local wage theft campaign. Advocates will need to conduct a thorough assessment of their community's needs; the legal, policy and political landscape in their state or city; and the availability of important local resources such as lawyers and researchers.

Below we offer a series of questions that local advocates should work through with their members and allies as a first step of any wage theft campaign development process.

## Understanding the Problem

A key first step is identifying the scope and scale of the wage theft problem and the obstacles to addressing it. Understanding how wage theft plays out in your community helps focus a campaign on the policies that will work for your community. This does not mean that groups have to mount large, ambitious surveys (although worker centers have developed viable and innovative models for member-driven surveys in recent years). Through a combination of talking with their constituents, conducting worker focus groups, canvassing allied organizations, interviewing enforcement agency staff, reviewing existing studies and surveys, and other research strategies, advocates can answer a range of questions:

1. What are the main wage theft problems in the community – such as minimum wage and overtime violations, non-payment of wages, retaliation by employers, misclassification of workers as independent contractors, inability to take rest and meal breaks, inability to collect on wage theft judgments, and so forth? Who are the workers hardest hit?
2. What types of employers are violating the law? For example, are they small fly-by-night businesses where collection of judgments is difficult, or big employers that have industry clout? Is the problem worse in one particular industry, so that you would want an industry-specific response? What are the biggest barriers to addressing the problem?

For example, is it inert public enforcement agencies, weak laws with weak damages, collaboration by employers with the police or immigration authorities whenever workers complain, or workers' lack of access to legal resources?

### Using Community Based Surveys to Identify Community Needs

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.

Community groups across the country have used community-based surveys to identify, by the numbers, the types of wage theft violations workers in their communities experience and the gaps in both standards and enforcement. Groups that have used this technique include the **National Day Laborer Organizing Network**, **Domestic Workers United**, and the **Restaurant Opportunities Center- United**. In addition to providing valuable information about the specific types of policies that could be most effective in addressing wage theft in their communities, these surveys have proved to be powerful organizing tools, bringing new members to groups and cultivating new community leaders. For a summary of these surveys, see NELP's *Summary of Research on Wage and Hour Violations in the United States*. NELP is available to help groups consider the pros and cons of doing their own surveys.

### Identifying Organizational Priorities

Different advocacy groups may have different organizational priorities, and sorting through these priorities is key to identifying the best policies around which to build a campaign. For example, legal services providers might be focused on improving wage theft litigation outcomes for their clients. Community groups, worker centers and unions might be focused on improving employer compliance with minimum wage laws in a particular industry or a particular neighborhood, or across the entire labor market in their region – and be focused on organizing their base as well as winning policy reforms. None of these are mutually exclusive and advocacy groups may well have multiple priorities.

## Using Policy Advocacy as a Base-Building Strategy

**Young Workers United** (YWU) is a multi-racial membership organization dedicated to improving the quality of jobs for young and immigrant workers and raising standards in the low-wage service sector in San Francisco. YWU has targeted the restaurant industry as both a big employer of young workers and as one which disregards basic labor protections. YWU focuses both on base building and winning policy reforms. Members of YWU themselves wrote San Francisco's landmark paid sick days legislation. And when members identified better enforcement of San Francisco's city-wide minimum wage law as a high priority, YWU and the **Progressive Worker Alliance** drafted and passed San Francisco's new Wage Theft Prevention ordinance, which streamlines the wage theft collection process and provides enhanced penalties against wage cheaters.

## Mapping the Legal Landscape at the State & City Level

This is perhaps the most important step in shaping a state or local wage theft campaign. It is crucial to emphasize that high rates of wage theft do not necessarily mean that the laws on the books are weak. In a number of states, existing wage and hour laws are in theory strong enough to fight wage theft, but are not enforced enough or used in court. In these cases, advocates should focus on improving enforcement of wage and hour laws, including leveraging public agency resources; increasing the capacity of legal services providers and law firms to bring cases in court; building up the resources of worker centers and unions to monitor workplaces; anticipating and protecting against retaliation for workers who complain, and potentially, writing new laws that amplify and improve enforcement tools for existing law. As advocates consider the right mix of legislative and administrative reforms, answers to the following set of questions will be critical:

1. What are the current provisions of the state's minimum wage, overtime and wage payment (or payday) laws, and what are their strengths and weaknesses? Note that five states (Alabama, Louisiana, Mississippi, South Carolina, and Tennessee) currently do not have their own minimum wage law, in which case a possible long-term campaign would be to establish such laws.
2. Does the state have its own department of labor, and does it have staff and funding dedicated to wage theft enforcement? Does the state Attorney General's office handle wage theft enforcement? And is there an adequate federal DOL presence in the state to leverage for wage theft claims?
3. For campaigns at the local level (e.g. city and county), does that locality have the legal authority to implement laws regulating wage theft? Or are there concerns that state

law may preempt or prohibit localities from adopting such laws? Even if a locality does have the authority to pass such a law, is there a risk that the state legislature might attempt to step in and block an ordinance if one was enacted? Even assuming that a local ordinance did eventually take effect, what level of staffing does the local government have, and could it realistically implement a new law that gave it authority to punish wage theft?

### Doing the Landscape Research

The **South Florida Wage Theft Taskforce** initially arose from a project of community groups We Count! and the American Friends Service Committee. The initial focus of the project was to address the issue of violence against day laborers. When it became clear that day laborers were suffering high rates of wage theft, in 2007 a larger group was formed to tackle this issue. Early on, they identified the lack of a process for enforcement of wage claims and wage recovery, particularly through small claims, as the major issue. Meeting monthly, the group investigated existing processes and mechanisms for enforcing the state's wage laws. Legal research was done by attorney members of the Task Force, followed by a group discussion of each potential strategy. In 2009, the group then drafted and passed an ordinance in Miami-Dade county. The ordinance created a county-level administrative process for workers to file unpaid wage claims of \$60 or more, awarding treble damages for violations.

Most successful campaigns have worked closely with volunteer attorneys, legal services lawyers, and law school clinical programs and classes in order to identify both the coverage and standards that already exist in the law, gaps in coverage and standards, how these standards compare across states, and possible legal preemption concerns in a given state. If your group needs legal analysis, NELP may be able to help locate free legal assistance in your area.

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