

Winning Wage Justice: Talking Points on the Need for Stronger Anti-Wage Theft Laws

What is wage theft?

The failure to pay workers the wages owed to them – commonly called wage theft – is an epidemic, locally, statewide, and nationally. While most employers in our communities do right by their workers, too many do not. Being paid less than the minimum wage, being shorted hours, being forced to work off the clock, not being paid overtime, or not being paid at all are pervasive practices across many industries.

How prevalent is wage theft?

A seminal 2009 study of nearly 4,500 low-wage workers found that more than two-thirds experienced at least one pay-related violation in their previous work week, including a quarter of workers who were paid less than minimum wage, and three quarters who were not paid overtime wages owed to them.¹

This study confirmed the finding of literally dozens of surveys and studies that have found staggering rates of violations of wage and hour laws – as just a few examples, surveys by the U.S. Department of Labor found 50% of restaurants in Pittsburgh, 74% of day care centers in Georgia, 50% of nursing homes in St. Louis, 38% of hotels and motels in Reno, and 42% of adult family homes in Seattle violating wage and hour laws.² For a summary of these and other surveys and research from across the country, see NELP's *Summary of Research on Wage and Hour Violations in the United States*.³

¹ Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (New York: Center for Urban Economic Development at UIC, National Employment Law Project and UCLA Institute for Research on Labor and Employment, 2009), available at www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf.

² U.S. Department of Labor, *1999-2000 Report on Low-Wage Initiatives* (Washington, DC: Employment Standards Administration, Wage and Hour Division, 2001), available at http://nelp.3cdn.net/a5c00e8d7415a905dd_o4m6ikkkt.pdf.

³ National Employment Law Project, *Summary of Research on Wage and Hour Violations in the United States* (January 2012), available at <http://www.nelp.org/page/-/Justice/2012/WinningWageJusticeSummaryofResearchonWageTheft.pdf?nocdn=1>.

Wage theft affects all workers across the low-wage economy – male and female workers, white, Hispanic, African-American and Asian workers, immigrant workers and the native-born. But employers are more likely to take advantage of vulnerable workers. While U.S. born workers suffer wage and hour violation rates of 17% for men and 18% for women, undocumented workers have the highest rates of violations: 29% for men and 47% for women.⁴

Who is affected by wage theft?

The consequences of wage theft are severe – for workers, for local economies and law-abiding businesses, and for taxpayers.

Workers suffer when they don't get paid. Workers in low-wage industries in the three cities of New York, Chicago and Los Angeles lose over \$56 million per week in unpaid wages.⁵ That means bills go unpaid, housing is unstable, and families have less food on their tables.

How does wage theft affect communities and taxpayers?

Local economies also suffer when wage theft becomes a way of doing business. Well-meaning businesses often can't compete with wage cheats that shave their operating costs by breaking the law. And the less money wage earners bring home, the less they have to spend at local businesses, dealing a further blow to local economies already suffering the effects of the Great Recession.⁶

When workers go without pay, tax revenues are shorted as well. Employers that cheat workers also rob state, local and federal budgets of payroll taxes and contributions to the unemployment and workers compensation systems, hampering our nation's economic recovery. In New York State alone, \$427 million in revenue is lost per year due to wage theft.⁷

Why can't current laws protect workers against wage theft?

Many workers never make complaints about these violations, fearing retaliation if they speak up. This fear is well-founded – according to one major study, 43% of workers who raised complaints faced employer retaliation

⁴ Workplace Violations, Immigration Status, and Gender: Summary of Findings from the 2008 Unregulated Work Survey, NELP, August 2011, available at http://www.nelp.org/page/-/Justice/2011/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf?nocdn=1

⁵ Bernhardt et al., *Broken Laws, Unprotected Workers*.

⁶ See e.g. Kai Filion, *A Stealthy Stimulus: How boosting the minimum wage is helping to stimulate the economy* (July 2009) available at http://epi.bluestatedigital.com/page/-/IssueBrief255_Final.pdf (highlighting the economic stimulative effect when low-wage earners have more money in their pockets by finding \$5.5 billion in consumer spending generated by modest federal minimum wage increase)

⁷ Amy Traub and Andrew Friedman, "Workers Deserved to be Paid," Albany Times Union, April 5, 2010, available at <http://www.drummajorinstitute.org/library/article.php?ID=7387>, last accessed December 10, 2010.

such as termination or suspension, cuts in wages or hours, and threats to call – or actual calls – to immigration authorities.⁸

Public enforcement of wage and hour laws cannot keep up with violations. On the federal level, the U.S. Department of Labor, which is responsible for enforcing federal wage, child labor and other laws has just over 1,000 investigators nationwide who are tasked with enforcing these laws in more than 7 million workplaces.⁹

Because of these scarce resources, the average employer has just a .001% chance of being investigated by U.S. DOL Wage and Hour Division or Occupational Safety and Health Administration in any given year.¹⁰ Thus, the chances of getting caught – let alone having to pay back wages owed – are so remote that most wage cheats don't have to think twice about the consequences of breaking the law.

Things aren't any better on the state level. According to a nationwide survey, states have the equivalent of one inspector for every 146,000 workers. Most states have fewer than ten investigators.¹¹ A comprehensive survey of agencies responsible for wage and hour enforcement in 37 states found increasing numbers of low-wage workers coinciding with cuts or freezes in resources dedicated to wage and hour enforcement.¹²

Private enforcement, such as private lawsuits, is rarely an option for low-wage workers to recover the wages due to them. The limited damages they would recover, combined with the time and expense in filing a lawsuit, mean that these workers can seldom find lawyers able to take their case.

What can we do about wage theft?

We have a chance to provide workers with a simple, powerful set of tools that would help level the playing field for workers and law-abiding employers, and boost our economy in the bargain.

⁸ Id.

⁹See FY 2011 Congressional Budget Justification from U.S. DOL Wage and Hour Div., available at <http://www.dol.gov/dol/budget/2011/PDF/CBJ-2011-V2-03.pdf> (stating that for 2011, WHD expect to have 1,006 full time investigators); U.S. DOL Comprehensive FLSA Powerpoint, available at www.dol.gov/whd/flsa/comprehensive.ppt (stating that more than 130 million workers in more than 7 million workplaces are covered by the Fair Labor Standards Act).

¹⁰ David Weil & Amanda Pyles, Why Complain? Complaints, Compliance and the Problem of Enforcement in the U.S. Workplace, 27 Comp. Lab.L. & Pol'y J. 59, 62 (2005).

¹¹ Policy Matters Ohio, *Investigating Wage Theft: A Survey of the States*, 2010, available at <http://www.policymattersohio.org/WageTheft2010.htm>.

¹² Columbia Law School, National State Attorneys General Program, *Enforcement of State Wage and Hour Laws: A Survey of State Regulators*, 2010, available at http://www.law.columbia.edu/null?&exclusive=filemgr.download&file_id=551819&rtcontentdisposition=filename%3DWage%20and%20Hour%20Report%20FINAL.pdf

These are tools that ensure that workers get paid for the work they do, and that companies that play by the rules aren't undercut by scofflaws.

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