

Billions Are Lost to Wage Theft Every Year—New Jersey Must Act to Protect Workers’ Paychecks and Level Playing Field for Employers

*More money is lost every year to wage theft than to shoplifting, resulting in billions of dollars in losses to the economy and wreaking havoc in the lives of millions of workers. The failure to enforce wage laws encourages unscrupulous employers to exploit workers in low-wage jobs, **unwittingly subsidizing abusive business models at the expense of honest, law-abiding employers.** According to an analysis by the **Economic Policy Institute** of existing survey data, **an estimated \$15 billion is lost just to minimum wage violations every year.***

*States and cities have been starting to fight back with improved enforcement measures and dedicating more resources to ensure that workers are compensated for the hard work they do. **New Jersey legislators are currently considering Senate bill S1790/A2903**, which would strengthen protections for workers in several ways—increasing the penalties that wage violators face (including escalating penalties for repeat violators), providing liquidated damages worth 200 percent of unpaid wages, providing remedies for workers who are retaliated against for filing complaints, and allowing for community-based organizations to do outreach in support of enforcement. With New Jersey’s minimum wage set to increase to \$15 by 2024, it is crucial that these gains are not siphoned off by employer wage theft, which has been called a “national emergency.”*

Workers Lose Billions Every Year to Wage Theft in the United States

Every year, workers lose billions to wage theft. The Economic Policy Institute studied survey data in the ten largest states (representing over half of the country’s working population) and found that \$8 billion had been lost to wage theft resulting just from minimum wage violations (not counting overtime and other violations).¹ Adjusted for the entire country, that would mean \$15 billion is lost to wage theft every year, more than the \$14.7 billion that is estimated to be lost to shoplifting.² For the average worker, that can be thousands of dollars lost each year—money that could go towards paying rent, buying clothes and food for children, making necessary repairs to cars, and spending money in the local economy. Workers who experience wage theft are also more likely to be living in poverty and reliant on public assistance to make ends meet.³

Wage theft occurs when workers do not receive their promised and legally required wages. It can result from various different violations: Failure to pay minimum wage or overtime,

asking workers to work off the clock, meal break violations, illegal deductions, tipped minimum wage violations, and employee misclassification.⁴ And yet wage theft receives far less attention from the media and law enforcement, partly because employers have a great deal more power and influence with lawmakers. The problem is so acute that M. Patricia Smith, NELP senior counsel and the former Solicitor of the federal Department of Labor, called wage theft an “epidemic” and a “national emergency” in a recent op-ed in *The American Prospect*.⁵ Good Jobs First and Jobs with Justice found that since 2000, from large employers alone, \$9.2 billion in penalties had been collected—clearly only a fraction of annual losses due to wage theft.⁶

Table 1. 2.4 million workers lose \$8 billion annually to minimum wage violations in 10 most populous states

	Total number of minimum-wage-eligible workers	Workers suffering wage violations	Share of eligible low-wage workers	Average weekly under-payment	Average weekly wages received	Average annual under-payment if full-year	Share of earned wages not paid	Total earned annual wages not paid to workers
Total	59,014,000							
California	14,569,000	590,000	19.2%	\$64	\$224	\$3,400	22.3%	\$1,979,000,000
Florida	5,515,000	404,000	24.9%	\$54	\$213	\$2,800	20.1%	\$1,124,000,000
Georgia	3,769,000	82,000	9.4%	\$71	\$203	\$3,700	25.9%	\$301,000,000
Illinois	5,185,000	243,000	22.1%	\$53	\$205	\$2,800	20.6%	\$675,000,000
Michigan	2,861,000	130,000	17.2%	\$63	\$169	\$3,300	27.3%	\$429,000,000
New York	6,047,000	300,000	19.4%	\$62	\$210	\$3,200	22.8%	\$965,000,000
North Carolina	3,111,000	84,000	12.3%	\$72	\$179	\$3,800	28.8%	\$316,000,000
Ohio	3,915,000	217,000	22.7%	\$53	\$185	\$2,800	22.4%	\$601,000,000
Pennsylvania	4,299,000	107,000	10.4%	\$80	\$164	\$4,200	32.9%	\$448,000,000
Texas	9,743,000	265,000	10.8%	\$85	\$182	\$4,400	31.7%	\$1,165,000,000

Note: Full-year annual wages are calculated by multiplying weekly wages by 52 weeks per year. Numbers may not add due to rounding. Shares are computed based on unrounded numbers. “Eligible low-wage workers” includes all minimum-wage-eligible workers in the bottom quintile of wage earners in each state. New Jersey was not included in this survey but table is provided as indication of scope of issue in states with large populations.

Source: EPI analysis of Current Population Survey Outgoing Rotation Group data, 2013–2015

S1790/A2903 Would Strengthen Protections for Workers Who Are Cheated Out of Their Paychecks by Unscrupulous Employers

New Jersey legislators are in the process of considering a bill, S1790/A2903, that could vastly improve workers’ chances of recovering unpaid wages and deter dishonest actors from taking advantage of workers in low-wage jobs who are ill-equipped to fight powerful, deep-pocketed employers.⁷ The bill would make several important changes in the law that would help to bring New Jersey in line with surrounding states, by removing obstacles to workers filing complaints and increasing penalties for employers who evade the law. Workers would now be able to file a complaint with the Department of Labor and Workforce Development if they experienced retaliation for exercising their right to complain about

unpaid wages. In the event of a finding of unpaid wages, workers would be able to receive 200 percent of the amount of unpaid wages in liquidated damages.

At present, the law is skewed towards employers, making it difficult for employees to speak up for fear of retaliation. These and other provisions would give workers better standing to pursue justice and ensure that law-abiding employers are not disadvantaged by employers who rely on abusive business models to pay their employees less than they are owed.

S1970/A2903 Helps Businesses by Leveling the Playing Field – Weak Enforcement Rewards Unscrupulous Employers and Skews Competition

Too often, unscrupulous businesses try to gain an advantage over law-abiding employers by exploiting workers, knowing that the likelihood that they will get caught – or even that an employee will speak out – may be small. Underpaying workers has sadly become the business model for too many irresponsible companies. That means that employers paying higher wages and providing decent working conditions may bear a higher cost for operating ethically and within the law. The result is that economic competition, particularly in industries with tight profit margins, is often skewed in favor of those businesses willing to skirt the law by underpaying their employees when they see the risk as small.

S1970 helps to change that by raising the costs of illegal practices. Good employers would no longer be disadvantaged by a weak law that rewards non-compliance. **Better enforcement is, in other words, good for business.** Nor would those same unprincipled employers be able any longer to pass on the costs of their dodgy business practices to society, in the form of employees' greater reliance on public benefits, decreased purchasing power, the costs of legal enforcement itself, and a weaker, lower-wage economy. Leveling the playing field will strengthen New Jersey's economy and bring it in line with regional leaders.

Wage Theft Hurts the Most Vulnerable Workers, Further Destabilizing Those Who Rely the Most on Their Paychecks to Survive

Wage theft is a crime of opportunity, most often found in industries with high concentrations of workers in low-wage jobs who, living paycheck to paycheck, are especially vulnerable to retaliation. A 2009 landmark study, "Broken Laws, Unprotected Workers" of thousands of workers in low-wage jobs in New York, Chicago, and Los Angeles found that two-thirds had been the victim of wage theft in their previous work week, including 76% who were not paid required overtime, and a quarter who were not even paid the minimum wage.⁸ One recent survey of fast food workers in the ten most populous U.S. metropolitan areas found that 9 out of 10 had been victims of wage theft.⁹

Immigrants and workers of colors, who are overrepresented in low-wage industries like food services and retail, are particularly vulnerable to wage theft.¹⁰ The Broken Laws study found that 37 percent of undocumented immigrants surveyed reported being victims of wage theft, compared to 24 percent of immigrants with work authorization, and 16 percent of U.S.-born workers.¹¹ The current federal administration's callous and xenophobic policies have only engendered more fear among immigrant communities.

Retaliation Against Workers Who Speak Up About Stolen Wages Is Rampant and Must Be Curbed to Ensure Effective Enforcement

Too many workers fear speaking up or filing a complaint about wage theft because of how rampant retaliation is, compounding the problem and allowing unscrupulous employers to go undetected, sometimes for years. Retaliation against workers who assert their rights is a significant challenge for the enforcement of employment laws. Termination, hours reduction, and harassment are just a few of the tools that employers use to retaliate against workers who speak up for their rights, wreaking havoc on their lives and making it even harder for them to cover their bills. Last month, the National Employment Law Project, the Center for Popular Democracy, SEIU 32BJ, and Fast Food Justice released a report with the results of a survey of 539 New York City fast food workers, finding that fifty percent had lost a job because their employers had made conditions intolerable.¹²

A forthcoming analysis by NELP of retaliation laws across the country finds that New Jersey is among a third tier of states that provide some process for wage recovery, yet still falls short of truly protecting workers.¹³ At present, New Jersey does allow workers to file private lawsuits for retaliation.¹⁴ However, workers who make a complaint for retaliation with the state's Commissioner of Labor do not have a clear right to recover damages, likely leading most workers to find legal representation in an environment that is increasingly hostile for workers in low-wage jobs seeking their day in court, thanks to numerous setbacks at the U.S. Supreme Court and elsewhere.¹⁵ As NELP noted in its *Winning Wage Justice* report: "The high cost of legal representation is a significant barrier to workers achieving redress for wage theft by means of a lawsuit."¹⁶

Workers need and deserve retaliation protection laws that both contain the essential elements for adequate compensation and deterrence and that do not place the burden exclusively on workers to ensure employer compliance with the law.

Conclusion and Recommendations

Wage theft is an endemic problem in our society, costing billions every year to workers and the economy. Experience and research have shown that some businesses come to rely on it as almost part of their business model. The result is an uneven playing field for law-abiding businesses and havoc in the lives of working people who depend on their paychecks to survive. New Jersey can improve its ability to combat wage theft by approving S1790/A2903, a measure that will bring the state's laws in line with the most advanced states in fighting wage theft.

Endnotes

1. David Cooper & Teresa Kroeger, "[Employers steal billions from workers' paychecks every year.](#)" [Economic Policy Institute](#), May 10, 2017.
2. Amy Traub, "[Wage Theft vs. Shoplifting: Guess Who Goes to Jail?](#)" *Demos*, June 13, 2017.
3. Cooper, op. cit.
4. Wagetheft.org, "[What is Wage Theft?](#)" Accessed March 13, 2019.
5. Michael Felsen & M. Patricia Smith, "[Wage Theft is a National Emergency](#)," *The American Prospect*, March 5, 2019.
6. Good Jobs First et al, "[Grand Theft Paycheck: The Large Corporations Shortchanging Their Workers' Wages](#)," June 2018.
7. New Jersey Legislature, "[S1790 Concerns law regarding failure to pay wages.](#)" Accessed March 13, 2019.
8. Annette Bernhardt et al, "[Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities](#)," September 2009.
9. Hart Research Associates, "[Key Findings for Survey of Fast Food workers](#)," April 1, 2014.
10. Cooper, op. cit.
11. Bernhardt, op. cit.
12. National Employment Law Project et al, "[Fired on a Whim: The Precarious Existence of Fast Food Workers](#)," February 13, 2019.
13. Forthcoming NELP analysis.
14. See N.J. Stat. Ann. § 34:19-3; N.J. Stat. Ann. § 34:19-5.
15. See N.J. Stat. Ann. § 34:11-56a24.
16. National Employment Law Project, "[Winning Wage Justice: An Advocate's guide to State and City Policies to Fight Wage Theft](#)," January 2011.