

The Top 5 Enforcement Tools for Local Minimum Wage Laws

Executive Summary

Approximately 42 percent of workers in America now earn under \$15 per hour.¹ They are nursing assistants, home care workers, janitors, waiters and waitresses, cashiers, truck drivers, and many others who keep our families and businesses going.² They are also disproportionately women, people of color, and immigrants.³ As the real value of wages generally continues to decline⁴ and income inequality worsens, raising the minimum wage must be a priority. However, the success of any local minimum wage law in delivering higher wages for workers will depend on effective enforcement of that

law. Wage theft is widespread across the country, costing workers and local economies billions of dollars each year.⁵

An effective enforcement scheme must protect workers who come forward to raise complaints; include strong public and private enforcement tools to better guarantee compliance; and help ensure collection of owed wages. To achieve these goals, NELP recommends, at a minimum, including the following **“Top 5” enforcement tools** in any local minimum wage law:



#1: Anti-Retaliation Protection

- Workers need strong protection so they will not be vulnerable to employer harassment and retaliation when they report a violation. This is especially important because enforcement relies heavily on workers coming forward and filing complaints.
- Retaliation is common. A national survey found that 43 percent of workers who complained to their employer about their wages or working conditions experienced retaliation.⁶
- Undocumented immigrant workers are particularly vulnerable to retaliation. By calling or threatening to report undocumented workers to Immigration and

Customs Enforcement, employers can coerce workers into silence.⁷

- Retaliation can severely undermine the goals of a minimum wage law. A national survey found that 20 percent of workers never made a complaint because they feared retaliation or thought it would not make a difference.⁸
- Retaliation can take many forms (i.e. harassment, being fired, threats to call immigration authorities).
- Employers should be subject to strong penalties when they retaliate.

#2: Dedicated Resources for Investigation and Enforcement

- To ensure that a city has the capacity to implement the local minimum wage law and workers can actually enforce their wage rights, a city that adopts a local minimum wage law must dedicate sufficient resources and staff to enforce the law.
- Because many cities may not have sustainable ways to fund enforcement operations, a local minimum wage law should include ways to generate dedicated revenue. A city could require businesses to pay an annual licensing fee to fund enforcement, for example. Another option could require employers to deposit one penny per hour of work performed by each hourly employee into a city enforcement fund.
- An enforcement team must, at a minimum, be able to issue rules and regulations; conduct thorough

investigations; perform outreach and education geared to both workers and employers; resolve complaints in a timely manner from start to finish; and recover the wages owed to workers.

- A well-resourced investigation and enforcement team should develop programs seeking to ensure that employers comply with the law; it should also collect and analyze data to identify gaps and strategically target enforcement.

While not every city may have the capacity to fund an enforcement team right away, advocates and lawmakers should incorporate the goal of strong city-level enforcement into any local minimum wage law.

#3: Community Partnerships

- Workers' fear of retaliation, as well as their limited knowledge about workplace rights and how to report violations, contribute to the high rates of wage theft.
- Community-based organizations are crucial partners for enforcement agencies. Their ties to workers in specific industries and sectors, as well as their roots

in certain racial or ethnic communities, can assist enforcement through outreach and education; detection and reporting of violations; filing complaints; and identifying high-violation industries and employers for proactive investigations.⁹

#4: Strong Remedies and Penalties

- When workers report violations, they should recover all the wages they are owed in addition to damages that compensate the worker for the time, effort, risk, and costs associated with reporting unpaid wages as well as costs resulting from not receiving those wages in the first place (i.e. late fees on monthly bills).
- Most local and state laws, as well as the federal Fair Labor Standards Act, allow workers to recover double the amount of wages owed (and some allow for triple the amount of wages owed or a fixed amount for each day a violation took place).¹⁰ Without such compensation, there would be little to deter an employer from violating the law—violating employers would only have to pay the wages they were required to pay in the first place.
- Strong non-discretionary penalties for violating a local minimum wage law are also key in deterring violations.
- Thus, strong damages provisions, in addition to strong penalties, are crucial to adequately compensating workers and deterring future violations.

#5: Private Right of Action

- A private right of action gives workers the right to bring a lawsuit in court to address violations and recover their unpaid wages.
 - A private right of action is important because wage theft is rampant and government agencies with limited public resources simply cannot tackle enforcement alone. Additionally, public agencies' funding and priorities for enforcement can change over time and giving workers access to courts ensures they always have a way to protect their rights.
 - A private right of action must also allow workers to recover attorneys' fees and costs. The prohibitive cost of legal representation is a significant barrier to low-wage workers who want to protect their rights.¹¹ This is why nearly all states allow workers to automatically recover attorneys' fees under state wage and hour laws.¹²
- The five enforcement tools described above are essential pillars of an effective enforcement structure for local minimum wage laws.¹³ NELP is available to work with advocates in developing specific language for their local bill or ballot initiative.

Endnotes

1. Irene Tung et al, The Growing Movement for \$15 (Nov. 2015) at 1, available at <http://nelp.org/content/uploads/Growing-Movement-for-15-Dollars.pdf>.
2. Id. at 6–8.
3. Annette Bernhardt et al, Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities (2009) at 9, available at <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf?nocdn=1>; see also supra note 1.
4. National Employment Law Project, Occupational Wage Declines Since the Great Recession (Sept. 2015), available at <http://www.nelp.org/content/uploads/Occupational-Wage-Declines-Since-the-Great-Recession.pdf>.
5. Brady Meixell and Ross Eisenbrey, Economic Policy Institute, An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year (Sept. 2014), available at <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>. A 2009 study surveyed over 4,000 workers and found that 26 percent were paid less than the required minimum wage in the previous work week, and nearly two thirds experienced at least one pay-related violation in the previous week (such as failure to pay overtime, not being paid for all hours worked, stealing workers' tips, etc.). See supra note 3 at 2.
6. National Employment Law Project, Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft (2011) at 55, available at <http://www.nelp.org/content/uploads/2015/03/WinningWageJustice2011.pdf>.
7. Id.
8. Id.
9. For a more detailed discussion of the importance of community-based partners, see Diego Rondón Ichikawa and Rebecca Smith, Delivering \$15: Community-Centered Wage and Hour Enforcement in Seattle (Oct. 2014) at 12–15, available at <http://www.nelp.org/content/uploads/2015/03/Delivering-15-Community-Centered-Wage-and-Hour-Enforcement-Seattle.pdf>.
10. Supra note 6 at 19–20.
11. Id. at 31.
12. Id. at 32.
13. For a more detailed discussion of components of strong enforcement provisions for local minimum wage laws, see Haeyoung Yoon and Tsedeye Gebreselassie, Building Robust Labor Standards Enforcement Regimes in Our Cities and Counties (Mar. 2015), available at <http://www.nelp.org/content/uploads/2015/03/Building-Robust-Labor-Standards-Enforcement-Regimes-in-Our-Cities-and-Counties-.pdf>.