



Retaliation Funds: A New Tool to Tackle Wage Theft *A Proposal to Help Workers Exercise Their Rights*

In *Retaliation Funds: A New Tool to Tackle Wage Theft*, NELP proposes a new practical tool to fight wage theft: a **retaliation fund**. This fact sheet briefly summarizes the need for such a fund and how it might work.

What Is a Retaliation Fund?

- A retaliation fund would offer quick and meaningful financial support to workers who have reported wage theft to an enforcement agency and then lost pay or their job because of retaliation.

Why Is a Retaliation Fund Necessary to Address Wage Theft?

- **Wage theft is rampant across the country.** Employers steal billions of dollars each year that should have been paid to workers under minimum wage and overtime laws. A seminal 2009 study found that more than two in three workers surveyed had experienced at least one pay-related violation in the previous work week (e.g., unpaid overtime or stolen tips).
- **Wage theft disproportionately harms workers of color, immigrant workers, and women.** Black workers experience wage theft at three times the rate of white workers. Foreign-born workers experience wage theft at twice the rate of their U.S.-born counterparts. And women experience wage theft at a rate of 30 percent, compared to 20 percent for male workers.
- **We cannot tackle wage theft without directly confronting retaliation.** To stop wage theft and hold employers accountable, workers must be able to report violations. Retaliation and the fear of retaliation, however, silence countless workers.
- **For too many workers, the financial risk of reporting wage theft is simply too much.** Even our strongest retaliation protection laws fail workers in a critical way: our laws fail to provide financial support when the retaliation first occurs. Existing retaliation cases generally take months, if not years, to reach a final decision. By then, workers may have missed one or more rent payments, faced eviction, gone further into debt, faced steep late payment fees, damaged their credit, and more.
- **A retaliation fund would provide workers with meaningful financial support when they need it most:** soon after retaliation occurs.

A retaliation fund enables workers to *quickly* access meaningful financial support if they lose their job or otherwise face retaliation for reporting wage theft.

How Would a Retaliation Fund Work?

- The retaliation fund would be paid for and set up by a labor enforcement agency. Employers, not workers, should ensure funding.
- For a worker to access a one-time payment from the fund: (1) the worker will need to have filed a wage theft complaint with the agency; (2) the employer must have had notice of the complaint; and (3) the employer must have reduced the worker's pay or fired the worker after learning of the wage theft complaint.
- The retaliation fund should err on the side of workers and not require workers to "prove" that retaliation occurred. A final determination on the wage theft claim and retaliation complaint should follow the normal adjudication process.
- If the enforcement agency eventually finds that the employer unlawfully retaliated, the employer should replenish the fund with a payment equal to three times the amount the worker received. The worker should not have to pay back the money they received.
- A labor enforcement agency that sets up a retaliation fund should work closely with community organizations to administer the fund.

Conclusion

- Ultimately, as workers, our ability to raise our voices without fear is a human right vital to building power on the job and a practical necessity in fighting back against wage theft. Our approach to enforcement must ensure that each and every worker can exercise their rights without fear.
- A retaliation fund offers a potentially new and effective tool to help address wage theft.
- NELP is eager to engage with and offer support to anyone interested in establishing a retaliation fund. For more information, please contact Laura Huizar at lhuizar@nelp.org.