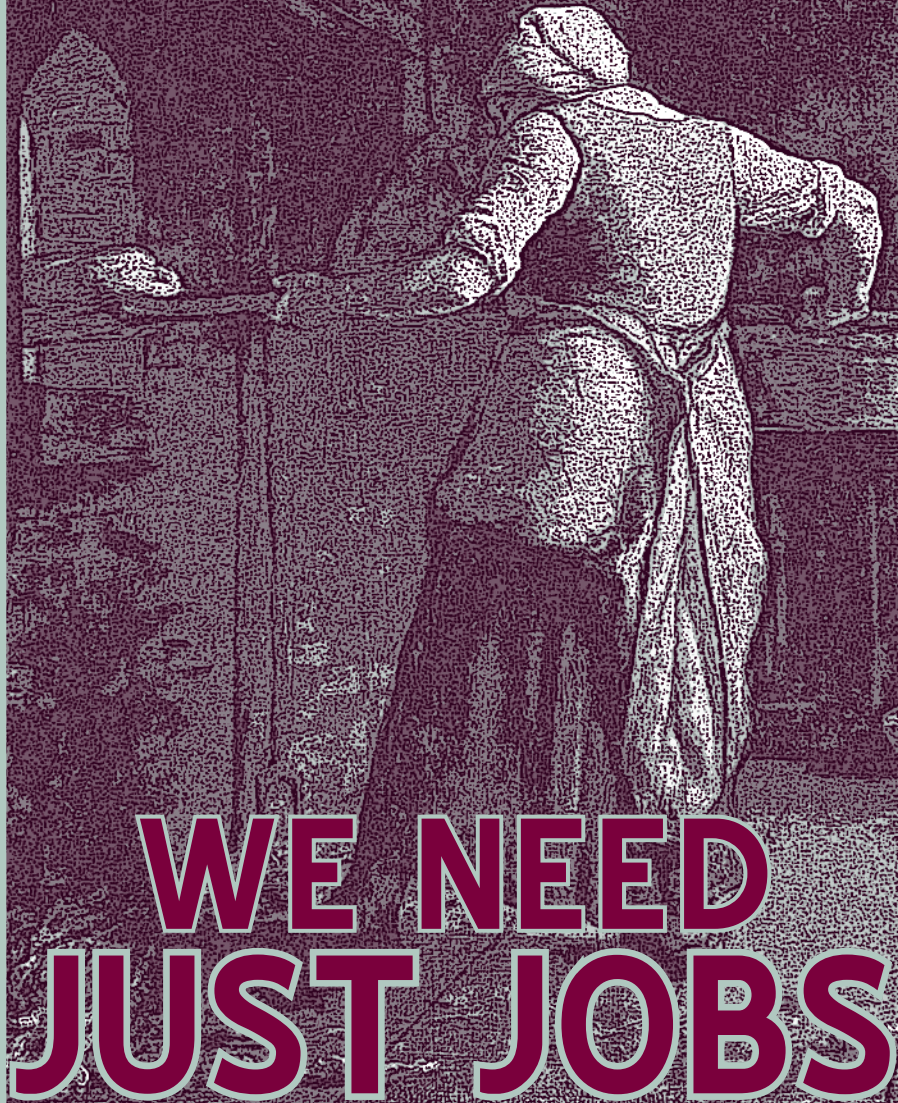


There has never been but one question in all civilization
- how to keep a few men from saying to many men:
"You work and earn bread and we will eat it."

Abraham Lincoln



A PRIMER ON WAGE THEFT



Contents

Wage Theft – A National Disgrace	3
Wage Theft Questions & Answers	5
Faces of Wage Theft	8
Wage Theft Victories	10
Talking Points on Wage Theft Legislation	15
What You Can Do About Wage Theft	17

Wage Theft – A National Disgrace

You shall not withhold the wages of poor and needy laborers, whether other Israelites or aliens who reside in your land.... You shall pay them their wages...because they are poor and their livelihood depends on them. (Deuteronomy 24:14-15)

Many American workers never worry about whether they will get paid. But for others, particularly those at the lowest rungs of the earnings ladder, a full day's work does not always yield a full day's pay. The U.S. Department of Labor (DOL) has found that violations of wage and hour laws occur in more than half of the businesses they have investigated in entire industries such as construction, garment assembly, poultry processing, and retail. Millions of workers, particularly those in low-wage jobs, suffer the theft of their wages by unscrupulous employers. This is a crime that most often robs from those with the least – the working poor, many of whom either do not know their rights or are afraid or unable to assert them.

Wage theft is all around us. Millions of workers each year are robbed of billions of dollars, often forcing them to choose between paying the rent or putting food on the table. It robs from the government's tax coffers, resulting in cutbacks of vital services. Wage theft puts ethical employers at a competitive disadvantage and can destroy community businesses, as working families cannot spend wages they haven't received.

Wage theft includes:

- violations of minimum wage laws;
- non-payment of time-and-a-half overtime pay;
- workers being forced to work off the clock;
- workers not receiving their final paychecks;
- workers having their tips stolen by management;
- payroll fraud: workers misclassified as independent contractors to avoid paying minimum wage and overtime, as well as the employers' share of payroll taxes, workers comp, and benefits.

In some egregious cases, workers are not paid at all, even after putting in hundreds or even thousands of hours of work.

This is a problem we can solve.

A national movement of workers and worker advocates against wage theft has been growing and expanding. Labor unions, workers centers, community organizations, faith groups, ethical businesses, lawyers, policy advocates, enforcement agencies, and progressive legislators at the federal, state, county and local levels have stepped up to shine a light on this issue and create solutions. The good news about wage theft is that we can stop it.

1. **Unions:** Having a union in the workplace is one of the best deterrents against wage theft, so supporting workers who seek to organize unions will stop and deter wage theft.
2. **Responsible Law Enforcement:** The U.S. Department of Labor (DOL), under Secretary Hilda Solis, and some state DOLs are recognizing and affirming the need to increase strategic enforcement and collaborate with community-based advocates and workers.

3. **Workers centers** that help workers build their own power to recover wages and organize improvements in smaller workplaces are vital innovators. More than 200 workers centers across the country have been organized in the last decade to help workers facing wage theft and preventable workplace injuries. Go to www.wagetheft.org to find a center in your city.
4. **State and Local Legislation:** State anti-wage theft legislation and laws that strengthen protections against payroll fraud have been passed in Colorado, Connecticut, Delaware, Illinois, Maryland, Massachusetts, Minnesota, New Mexico, New York, and Washington. A county wage theft ordinance was passed in Miami-Dade County, Florida. Denver, Kansas City, San Francisco and Seattle have passed city ordinances. There are campaigns underway to pass municipal ordinances in Little Rock (Arkansas), Central Falls (Rhode Island), Kalamazoo and Grand Rapids (Michigan), Los Angeles, Houston, and other cities. These laws set up streamlined legal process-

es to get workers their wages, increase fines and damages paid to workers, and strengthen reporting procedures for companies that claim a worker is not an employee, while raising penalties for payroll fraud.

5. **National Legislation:** Congress should pass The Payroll Fraud Act. Other legislation or regulations are needed to strengthen DOL enforcement, increase penalties, make sure workers receive pay stubs, and provide resources for community partnerships fighting wage theft.

It won't be easy to pass these laws. We know what the opposition has said and what they will say again: that these measures are burdensome to businesses, and that they should not be considered during a time of high unemployment.

Interfaith Worker Justice is offering this Primer as a resource for people and organizations that want to effectively stop wage theft and strive for just jobs – sustainable jobs with pay and benefits that can support a family, jobs for employers that don't steal your wages.

Wage Theft Questions & Answers

What is wage theft?

- Wage theft covers a variety of infractions that occur when workers do not receive their legally or contractually promised wages.
- Common forms of wage theft are nonpayment of overtime, not giving workers their last paycheck after a worker leaves a job, not paying for all the hours worked, not paying minimum wage, stealing tips, not paying the legal prevailing wage on federally funded construction projects, and payroll fraud, and even not paying workers at all.

What laws are broken in wage theft cases?

- Most commonly wage theft is a violation of the Fair Labor Standards Act (FLSA), which provides for a federal minimum wage and allows states to set their own (higher) minimum wage, and requires employers to pay time and a half for all hours worked above 40 hours per week.
- Under the Davis-Bacon Act, workers being paid by a contractor or subcontractor on a federal government contract are entitled to receive the prevailing wage for that work in the city or region of the U.S. where the work is done. Prevailing wages, which are calculated by the US Department of Labor (DOL), are significantly higher than minimum wage. Many contractors and subcontractors simply ignore this law.
- Wage theft may also involve violations of tax laws, through misclassification of employees as independent contractors. When a worker is called an independent contractor, the employer does not pay its share of federal taxes.
- Wage and hour laws apply to all workers in

the U.S., regardless of immigration or ex-offender status.

In what types of workplace or industry does wage theft occur?

- Wage theft is endemic, and no group of workers is immune, including workers earning good wages, though low wage workers are particularly vulnerable. It is more likely to occur in non-union workplaces – union workers generally receive pay according to their negotiated contract, and any theft would be challenged by the union. Immigrant and native born workers alike have their wages stolen. Undocumented immigrants and ex-offenders re-entering the labor market are particularly vulnerable because of their status issues and fears that they may be reported to government authorities if they complain or assert their rights.
- Restaurants, retail, construction, day labor, janitorial services, garment manufacturing, long term care, home health care, poultry processing, and agriculture are industries with significant cases of wage theft, according to the U.S. DOL and worker advocates.
- Wage theft is a national problem, affecting all regions of the country. It affects workers in large cities, suburban areas, small cities, and rural regions, and workers at small businesses or multi-national corporations.

Where do workers turn if their wages have been stolen?

- Many turn to one of the more than 200 worker centers throughout the country – small grassroots organizations that are at the forefront in training and organizing workers to recover lost wages.

- Some turn to private attorneys, usually pro-bono worker advocates. Many private attorneys don't accept these cases. However, some labor-side law firms and individual attorneys will explore filing class action cases against larger employers; attorney fees are usually included in class action settlements. Worker centers usually work with pro-bono lawyers in their area.
- Others file complaints with a government agency, often with the assistance of a worker center, labor union or other advocate.
- The number of DOL Wage and Hour investigators dropped by 14 percent between 1975 and 2004.
- The workforce covered by the Fair Labor Standards Act grew 55 percent in that time.

When Hilda Solis was confirmed as Labor Secretary in 2009, she said, "There's a new sheriff in town." She has secured the hiring of hundreds of new investigators and declared that wage theft enforcement is a top priority for the agency. But the agency still operates with way too few investigators (approximately 1,000 as of the fall of 2010) and attorneys, and the agency is now threatened with budget cuts.

Doesn't the Department of Labor enforce wage and hour laws?

- During the previous administration, the DOL concentrated more on policing labor unions than enforcing wage and hour or health and safety laws. But there had been a decline in the capacity of the DOL since the Fair Labor Standards Act was passed in 1938.
- In 1941, the U.S. Department of Labor's Wage & Hour Division, equipped with 1,700 investigators, physically inspected one in ten businesses covered by the Fair Labor Standards Act (FLSA), talking with workers and examining payroll records. At that time, there were 15.5 million workers covered by the law. But in 2008, there were only 750 investigators responsible for enforcing wage and hour laws for 130 million workers covered by the FLSA – the equivalent of one cop on the beat for every 135,000 workers, a marked increase from one for every 9,000 workers in 1941 (see *Wage Theft in America—Why millions of Workers Are Not Getting Paid—And What We Can Do About It*, 2nd Edition, by Kim Bobo, Executive Director of Interfaith Worker Justice).

What kinds of solutions are needed?

While many reforms are needed, there are some specific changes that can be made by the leadership of the DOL, and there are changes that require new legislation by Congress or state and local legislatures.

- Case-by-case resolution of individual complaints is not enough. The DOL must engage in targeted investigations of industries and employers where wage theft is rampant.
- The DOL and state DOLs need to embrace a community policing model, which has been recognized nationally as essential in law enforcement operations. These agencies can leverage their scant resources by establishing collaborative partnerships with community organizations and congregations that workers trust, groups that know the criminal employers in their communities.
- Workers need a consistently proactive, transparent, and accountable Department of Labor Wage and Hour Division (WHD). The WHD must also establish creative collaborations with other agencies within

Wage Theft Questions & Answers (cont.)

the DOL and other governmental agencies, including the Occupational Health and Safety Administration (OSHA), Equal Employment Opportunity Council (EEOC) and state enforcement agencies.

- All employers must give workers pay stubs that show all hours that were worked, how their pay was calculated and all deductions taken. This could be done through regulations issued by the DOL or could be mandated by national legislation.
- Federal Legislation has been introduced and must be passed to eliminate payroll fraud. Legislation was introduced in the 2009-2010 Congress to:
 1. Fix the statute of limitations on wage claims, which currently has many cases thrown out because the DOL has not been able to resolve them in two years.
 2. Provide resources to community organizations to partner with the DOL to eliminate wage theft and win back wages.
- Legislation is also needed to:
 3. Protect workers from retaliation for complaining about conditions at work.
 4. Create mandatory minimum penalties and allow for workers to receive three times what they are owed in damages if employers repeatedly violate the law.

What Can I Do?

- Organize a delegation of workers, religious leaders, and other community supporters to meet with your elected officials at the national, state, or local level. Ask them to champion or co-sponsor legislation to stop wage theft.
- Hold an educational forum for your congregation or at your campus on wage theft.
- Make sure that all workers you hire are paid all of their earned wages, and all businesses you patronize pay their workers fairly and legally.

Organize or participate in an event in your community on the National Days of Action Against Wage Theft, Thursday, November 17 through Sunday November 20, 2011.

Watch this IWJ Video on Wage Theft:

www.youtube.com/watch?v=Hn6nr2PviIU&feature=player_embedded

Contact IWJ Public Policy Director Ted Smukler for more information and ideas of what you can do to make a difference: tsmukler@iwj.org.

Faces of Wage Theft

For years, workers who clean cages and sterilize areas at an animal hospital in Cincinnati had their overtime wages stolen in a unique and creative way. The workers averaged 60-75 hours per week, and were given paychecks that fully covered time and a half for all the overtime hours, and pay stubs that reflected these payments. However, the owner of the establishment then demanded that they kickback the difference between straight pay and time and a half pay in cash. These workers were paid \$8.00 per hour. Their paychecks provided \$12.00 for the overtime hours, but the workers are forced to kick back \$4.00 an hour in cash. When this case was brought to the Cincinnati Interfaith Workers Center in 2010, three employees alone were owed more than \$24,000

in back wages, and had also been paying taxes on more income than they actually received. The owner made clear that workers who refused to kick back the money would be fired, and threatened to turn undocumented workers over to ICE for deportation if they complained. They were able to videotape the boss taking the kickbacks) <http://news.cincinnati.com/article/20110629/NEWS010702/306160032/Veterinarians-reach-settlement-immigrant-workers> With their own ingenuity and help from the workers center and the U.S. Department of Labor, 21 workers were paid \$85,000 in back wages and the company was fined \$23,100 for “willful violation of the Fair Labor Standards Act.

Alejandra and Onelia were recruited in Peru by an IBM executive and his wife. They were hired to care for children in Miami, but, once brought to the United States, the promised \$7 per hour plus benefits for eight hours per day did not materialize. Not only were the women paid less than minimum wage, but their duties expanded to cooking and cleaning in addition to childcare. They ended up working from 15 to 19 hours per day, six or seven days per week. The employers had the women sleep in a converted closet next to a smelly trash chute. They withheld the women’s passports and visas and constantly threatened the women with deportation, denunciation and arrest if they tried to escape. Alejandra, who has diabetes, was not paid for five months before she left, sick and distraught, never having received the promised medical insurance. The two women recently won a moral and financial victory in court when a jury awarded them \$125,000 in back wages and other damages. The couple that hired them lost on five counts, including violations of federal labor and trafficking laws.



Faces of Wage Theft

In rural Southeast Iowa, Henry's Turkey Service, a poultry processing plant run from Texas, employed mentally disabled adult men recruited from Texas by a labor contractor and housed in an old schoolhouse in absolute squalor, according to local reports. The men were paid \$65 dollars a month to pluck and gut turkeys, according to a lawsuit filed by the DOL in November 2008. They received the \$65 regardless of the number of hours worked, which computed to as low as 44 cents per hour. Meanwhile, Henry's had their Social Security checks signed over to the company. Some of the men, known as the Henry Boys, had been kept there in virtual slavery for more than 20 years. This case led to a Senate hearing chaired by Iowa Senator Tom Harkin which exposed these practices at Henry's and in industries that exploit disabled workers.



the small chain was featured in Crains Chicago Business. Six of the gourmet pizzeria workers approached Arise Chicago, an affiliate of Interfaith Worker Justice, after being asked to use expired food products and being harassed on the job. Fearing public health risks, they walked out and were fired and then denied their last paycheck. The workers had also been paid less than the Illinois minimum wage. When the business owner denied he owed any wages and refused to talk with the workers or Arise Worker Center staff, Arise Chicago organized workers, clergy, and allies to simultaneously visit the six locations of HomeMade Pizza (including one in Minneapolis) with flyers and requests to see the managers. Within 20 minutes the owner agreed to meet with the fired workers, and within one week, the workers received their full payment of wages, including minimum wage violations, totaling over \$8,000. By the end of the campaign the workers said they strongly believed in the power of staying united and organizing greater community support so that the owner couldn't push them around as individual workers: the whole community demanded justice.

Oprah Winfrey has said that Homemade Pizza is one of her favorite restaurants, and



HomeMade Pizza workers at the Arise Chicago Worker Center with their recovered wages.

This is a Battle We Can Win

Wage Theft Victories

The actions we take make a difference. Here are just a few of the big victories against wage theft that have been won since last year's *Wage Theft National Days of Action*:

Progressive news out of Florida: Miami-Dade workers to benefit from wage theft ordinance

By Marcos Restrepo | 09.23.11

Early Friday morning, Miami-Dade County Commissioners voted to approve county Mayor Carlos Gimenez's proposed budget of \$6.1 billion, which includes funding to enforce the county's wage theft ordinance.

According to a press release issued Thursday by the mayor's office:

"The Wage Theft Ordinance has proven to be an effective tool for promoting economic security and dignity for those working in the County. This is yet another example of how combining resources through collaborative partnerships leads to successful outcomes and achievement of objectives for everyone," said Mayor Carlos A. Gimenez.

The mayor's release adds that a collaboration between Miami-Dade County's Small Business Division – which implements the Wage Theft ordinance – and the U.S. Department of Labor resulted in the recovery of \$147,777 in unpaid wages for 47 employees who were "not covered under federal wage and hour laws but are covered under the County's ordinance were able to file complaints with SBD and were assisted with the recovery."

A 2010 Research Institute on Social and Economic Policy report on wage theft indicates that the restaurant, food, construction, health care and social assistance industries show the highest number of reported wage theft cases in South Florida.

During the month of August, a group of restaurant workers organized a series of protests at De Rodriguez Cuba, a restaurant owned by Douglas Rodriguez, to demand their wages for hours worked. According to Spanish-language news outlet Univision Noticias 23, the workers alleged Rodriguez owed them about \$21,000.

Juan Carlos Ocampo, a labor activist who supported the restaurant workers, tells the Florida

Independent that support from the Small Business Division helped the employees recover \$11,000.

According to the South Florida Wage Theft Task Force, in its first year, Miami-Dade County's wage theft ordinance "has processed 662 claims for a total amount of \$1,760,177. Almost \$400,000 has been recovered through conciliation and over \$300,000 has been awarded through a hearing examiner process. In August alone, the program recovered and collected through conciliation \$52,000 for 109 workers."

"It's amazing how many people weren't yet aware of the program," says the Task Force's Jeanette Smith. "While the program has been successful and we appreciate the support we have gotten from local government, we think this is a unique partnership we have with local government. I don't think we've gotten to the depth and breadth of the problem, and that will take a concerted effort between local government, community and local businesses. I think wage theft is one more thing that hurts small businesses."

Cynthia Hernandez, a research associate at the Research Institute on Social and Economic Policy, has extensively studied wage theft. She says wage theft cases, like the one recently exposed by the Independent at a Fort Lauderdale construction project, are "very common":

Small contractors to even large corporations like Wal-Mart and Toys-R-Us have used this method to not pay employees. It happens a lot in construction because there are so many different levels of contractors and subs, which make it even harder for the worker to identify ultimately who is responsible for their pay. I have even heard of sub-contractors (employers) who have been stiffed out of their cut by contractors and as a result, have been late or unable to pay their employees. Until we can actually get some enforcement, this will continue to happen.

Wage Theft Victories

Tougher wage-theft law offers hope for poor workers: Being stiffed is a common gripe

By HARVEY RICE, HOUSTON CHRONICLE | Wednesday, August 31, 2011

GALVESTON - Thomas Cameron hopes a toughened Texas anti-wage-theft law that takes effect on Thursday will help him recover the money he says a Galveston cleaning company owes him.

The amended law ends a loophole that allowed some employers to pay only a portion of wages they owed, one of several forms of wage theft that officials say is rampant in the Houston area.

Cameron was among more than 20 homeless people who received no wages on payday two weeks ago after being recruited at the Galveston Salvation Army shelter to clean vacation rentals.

The company finally handed out paychecks Saturday, but Cameron said he received about half of the \$140 he was owed.

“This makes no sense to have to wait seven days for a paycheck and then wait some more,” Cameron said.

He and others sought advice from Joe Compian, a counselor at Gulf Coast Interfaith.

“Who is going to believe someone who is poor, unemployed, living in a shelter, doesn’t talk very well in most instances, has a limited education and sometimes even a criminal record?” Compian asked. “(Employers) are banking on the fact that these homeless individuals don’t have the knowledge or the desire to follow through and collect their money.”

The problem of the homeless, day laborers and penniless job-seekers being refused paychecks affects all races and ethnicities in the Houston region, said Hamilton Gramajo, organizer for the Houston Interfaith Justice Center.

“They cheat on workers every day,” Gramajo said.

The center received more than 200 wage-theft

complaints over the last six weeks from the Houston region, Gramajo said. Over the last five years, the center helped workers reclaim about \$560,000 in unpaid wages, he said - a little more than 18 cents on the dollar.

Sam Dunning, a member of Houston Mayor Annise Parker’s immigration and refugee affairs committee, said the problem is so pervasive that the committee is discussing the need for an anti-wage-theft ordinance. Houston labor attorney Melissa Moore said few employers have been prosecuted under state law.

Intention not enough

The problem came to the attention of state Rep. Eddie Rodriguez, D-Austin, when two workers walked into his office and complained about not being paid.

“They couldn’t afford to pay rent,” Rodriguez recalled. He helped the workers get paid but discovered that the law allowed employers to dodge prosecution.

“Sometimes employers would pay half and wouldn’t pay the rest,” but the partial payment convinced courts that the employer intended to pay, Rodriguez said.

Rodriguez proposed the amendment that became law today, making the requirement for full payment more explicit.

Cameron, 39, who arrived in Galveston with his wife and four children in June, said he and other homeless people were recruited to work for West End Coastal Cleaning. Owner Lila Kay Jones said she started the company in May to obtain a contract to clean vacation rentals at the Pointe West resort.

Cameron and at least 20 other homeless workers said they received no paycheck on the Aug. 20 payday.

Wage Theft Victories

Jones acknowledged that she failed to pay workers but said it was because Pointe West had failed to pay her on time. She characterized the employees as ungrateful for her attempts at helping them and said she would no longer seek employees at the Salvation Army.

The employees were paid a week later, but Cameron said he was paid only half the money he is owed and that at least five other workers also were underpaid.

Cash flow, lack of data

As of last week, Jones said, she still had not paid wages to some employees who worked for her during the first six weeks she was in business because Pointe West took so long to pay her. She had so many obligations by the time the check arrived that she couldn't pay all the wages, Jones said.

She also acknowledged that several employees recruited at the Salvation Army were never given employment forms and that she did not know the complete names of several workers.

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City Council toughens penalties for wage theft

BY SCOTT GUTIERREZ, SEATTLEPI.COM STAFF | Monday, April 25, 2011

The Seattle City Council on Monday unanimously approved tougher penalties on employers who hire workers and don't pay them, a crime known as wage theft.

The ordinance makes it a gross misdemeanor to intentionally commit wage theft and adds new definitions of conduct that is considered illegal. It also clarifies city law to apply either at the "place where the agreement for service was made or at the location where the services are performed," so that workers hired in Seattle for work outside city limits also would be protected.

It aims to address increasing complaints about employers hiring day-laborers and not fully paying them, or at all, for their services. Many times, workers who aren't paid are immigrants hired by unlicensed or disreputable construction firms. Workers then fear retaliation if they complain.

The state Department of Labor and Industries typically handles wage theft claims under a civil process, but L&I doesn't have the resources to collect all lost wages owed to victimized workers, according to Councilman Tim Burgess, public safety committee chairman and legislation sponsor.

"The Council's action today sends a strong signal that wage theft will not be tolerated in Seattle," Burgess said in a statement. "This legislation protects workers and gives the City additional tools to target unscrupulous employers. For those businesses who operate fairly and honestly in Seattle, this legislation helps level the playing field by chasing away those who prey on their employees."

To give the law more teeth, the city's Director of Finance and Administrative Services is authorized to refuse a new business license or revoke an existing license under any of the following scenarios: an employer is convicted of wage theft; has been cited by L&I and received a notice of assessment for wage violations but has not paid within 30 days; or has been assessed civil liability by a court for wage theft and has paid within 30 days.

Hilary Stern, executive director of Casa Latina, said the organization receives about 250 calls per year from workers who say they weren't paid. In the past 18 months, Casa Latina has filed 100 complaints to L&I. In four years, L&I has assessed \$18 million in owed wages but has only been able to recover \$7.9 million, she said.

Wage Theft Victories

The new ordinance says authorities may consider certain circumstances, including situations where the employer threatens to report a worker's immigration status if the worker complains about not getting paid. The city also may consider when an employer fails "to respond within fifteen days to any written communication that makes a demand for unpaid wages from the person providing the services or any other person or

entity writing on that person's behalf."

A 2008 study found that more than two-thirds of 4,387 workers surveyed in low-wage industries experienced at least one pay-related violation in the previous work week amounting to an average loss of 15 percent of weekly earnings, according to the ordinance language.

San Francisco Enacts New Law To Stop Wage Theft

Author: National Employment Law Project | September 17, 2011

SAN FRANCISCO September 17, 2011 — San Francisco today became the latest U.S. city to enact stricter penalties for employers who violate minimum wage and overtime laws and illegally deny workers their due wages. The wage theft law, approved unanimously by San Francisco's Board of Supervisors and signed by Mayor Ed Lee, strengthens the city's ability to investigate violations and increases wage protections that, studies have shown, commonly elude workers in several leading low-wage industries.

"This ordinance represents a huge victory for San Francisco workers in these hard economic times. Given current political divisions, it is remarkable to see such broad consensus and overwhelming support for low-wage workers, and we hope to see it continue," said Shaw San Liu, lead organizer of the Chinese Progressive Association (CPA). A CPA study last year found that one in two restaurant workers in Chinatown earns less than minimum wage.

Ms. Liu's group is one of the members of the Progressive Workers Alliance, a multi-sector and multi-racial coalition of low-wage worker organizations in San Francisco that advocated for the new ordinance over the course of many months. (See Progressive Workers Alliance statement [here](#).)

"San Francisco has set national precedent in passing one of the strongest labor laws in the

country, during a time when wage theft is on the rise," said Tiffany Crain, co-director of Young Workers United.

"In a tough economy, employers have even more incentive to cheat their workers," said Mario de Mira of the Filipino Community Center. "It isn't easy for workers to stand up, but our members, along with workers from across San Francisco, have done just that," said de Mira.

"Wage theft is a national epidemic that hurts workers, responsible employers, and the local economy," said Christine Owens, executive director of the National Employment Law Project (NELP). According to a 2009 report co-authored by NELP - Broken Laws, Unprotected Workers - more than two-thirds of low-wage workers surveyed reported some type of pay-related violation in the previous week. Almost half of those who stood up to complain suffered retaliation or threats of retaliation. Workers were cheated out of \$56.4 million in earnings per week in New York, Chicago, and Los Angeles alone, according to the report.

The San Francisco ordinance enhances the power of the city's Office of Labor Standards and Enforcement (OLSE) to prosecute violations of the city's minimum wage laws, allowing investigators to access payroll records, interview workers, and inspect labor sites at any time during business hours. The ordinance also requires

Wage Theft Victories

employers to inform workers of pending investigations, and increases penalties against employers who retaliate against workers who complain.

The San Francisco ordinance is one of many anti-wage theft measures recently passed throughout the nation. In the past two years, Texas, Washington, New York, Illinois, and Maryland have all passed legislation to crack down on wage theft. Localities ranging from Seattle, Washington, to Fayetteville, Arkansas, have also recently passed anti-wage theft measures, according to NELP's most recent report on wage theft, *Winning Wage Justice*.

"The ordinance will provide the OLSE with important tools to address wage theft, and this is just the first step. We look forward to working with the city, employers, and other key stakeholders to develop a comprehensive strategy to end wage theft," said Renee Saucedo, community empowerment coordinator at La Raza Centro Legal.

The ordinance will go into effect in thirty days. The ordinance's lead sponsors were San Francisco Supervisors David Campos and Eric Mar. Co-sponsors included Supervisors John Avalos, David Chiu, Jane Kim, Ross Mirkarimi, and Scott Wiener.

The National Employment Law Project is a non-partisan, not-for-profit organization that con-

ducts research and advocates on issues affecting low-wage and unemployed workers. For more about NELP, visit www.nelp.org.

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Resources:

Progressive States Network – *Promoting Wage Law Enforcement Policies in 2010*

Center for Urban Economic Development, University of Illinois at Chicago – *Unregulated Work in Chicago: The Breakdown of Workplace Protections in the Low-Wage Labor Market*

National Employment Law Project – *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*

Interfaith Worker Justice – http://salsa. democracyinaction.org/o/1035/p/salsa/web/common/public/signup?signup_page_KEY=6311

Talking Points Memo – *Sunlight and Enforcement Are the Best Disinfectants (Against Wage Theft)*

Kim Bobo, Interfaith Worker Justice – *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid – And What We Can Do About It* (The New Press, 2011)

Talking Points on Wage Theft Legislation:

Answering the Opposition

MYTH: Workers are already protected by labor laws. It is employers who need relief from mountains of regulations they must interpret and comply with. Legislation or programs that set up well meaning community anti-wage theft partnerships would do little to protect workers but much to hurt businesses, especially small businesses. These entrepreneurs, who employ the majority of the U.S. workforce, could be forced out of business by overzealous enforcement agencies, taking their marching orders from vigilante anti-business organizations and labor unions.

TRUTH: Preventing wage theft is good for businesses that respect their workers and follow the law. Stopping wage theft would lead to a more level playing field, because ethical businesses won't be forced to compete with low road employers who steal from their workers to drive down labor costs. Consumers would spend more money buying goods and services that small businesses produce and provide if working families received all their hard earned wages.

MYTH: These are tough times for workers and small businesses. If legislation is passed that raises penalties, penalizes businesses that may make errors in how they classify workers, or creates other burdens, small businesses will be forced to make hard choices, including laying off workers or closing the doors altogether. Mom and pop shops will be unable to survive.

TRUTH: If business owners can only survive by paying less than the minimum wage and finding other ways to steal workers' wages, then they need to close. Most of the basic labor protections we have today were passed during the Great Depression of the 1930s: minimum wage, overtime pay, the right to form a union and engage in collective bargaining, and social security. These

laws helped pull the country out of the Depression and provided a basis for creating the middle class in America.

MYTH: Wage theft legislation will help illegal immigrants who are not authorized to work.

TRUTH: Wage theft affects all workers in the United States. Every worker – native born and immigrant alike – is protected by all of the nation's labor laws. It does not help law enforcement to tell employers that they may pay undocumented workers less than minimum wage, not pay them overtime, refuse to give them their last paycheck, commit payroll fraud against them, not record their work hours accurately, pay them in cash under the table, or threaten to turn them in to Immigration and Customs Enforcement (ICE) agents if they complain. Allowing employers to steal wages from undocumented workers encourages low road businesses to hire unauthorized workers. In fact, the DOL and ICE created a Memorandum of Understanding that creates a firewall between them, so that all workers, regardless of immigration status, will know that they can report wage theft and health and safety violations without fear of being turned over to ICE.

MYTH: Legislation that freezes the statute of limitations on a wage and hour claim would force businesses to defend themselves indefinitely against any complaint. Two years is more than adequate time to complete an investigation.

TRUTH: There are businesses that routinely and repeatedly steal their workers' wages. These low-road employers use delaying tactics to have cases dropped after two years, the statute of limitations in current law. Stopping the clock after a complaint has been received by the Department of Labor to allow all time needed to complete an investigation is a

simple and pragmatic reform to ensure that workers receive back wages they are owed, a reform suggested by the Government Accountability Office (GAO) in its non-partisan analysis of problems in wage and hour enforcement.

MYTH: The Payroll Fraud Act punishes businesses that make honest mistakes interpreting confusing rules. Wouldn't we be better off if we worked co-operatively with employers to institute compliance programs in which employers voluntarily work with the government to make sure they are following the laws?

TRUTH: The Payroll Fraud Act makes

it easier for companies to track and justify when they should classify a worker as an independent contractor rather than an employee. The bill would help employees receive all their legal wages, workers comp, and unemployment insurance, and not force them to pay the employer's share of payroll taxes. It would also recover billions of tax dollars owed to the government that employers get around paying when they misclassify workers, at a time of high unemployment when state and local governments cannot maintain basic services and are forced to lay off teachers, firefighters, police, and health-care workers.



What You Can Do To Stop Wage Theft

Wage theft – underpaying or not paying wages legally owed workers – is a national crisis. Unethical employers are stealing billions of dollars from millions of workers. Although some employers complain that labor laws are complicated, which is indeed true, the underpayment of wages has such serious consequences for workers and their families that employers must take their wage-payment responsibilities seriously.

The religious commandments against theft, including wage theft, are clear. Thou shalt not steal. Luckily, there are many things we can do to stop, reduce and deter wage theft.

1. Make sure those you or your congregation/ organization/business hire are paid fairly. Especially be careful when you:
 - Hire a contractor. Are all the workers paid fairly? Be sure to ask as part of the bidding process.
 - Leave cash tips. If you must use a credit card, find out whether the wait-staff actually receive the gratuity you're leaving.
 - Hire a service person. Ask how much the service person is paid and if the person is paid overtime (although not all service professions are required to pay overtime, many are).
2. Learn more about wage theft so you can talk with your friends and colleagues about the problems. You can:
 - Form a study group and read the book *Wage Theft in America: Why Millions of Working Americans are Not Getting Paid – and What We Can Do About It*, 2nd Edition by IWJ's Executive Director Kim Bobo.
 - Organize a wage theft forum lifting up wage theft problems in your community.
 - Visit www.CanMyBossDoThat.com to learn if you have been a victim of wage theft.
 - Visit www.wagetheft.org to connect with a worker center in your community.
3. Support policy initiatives to stop and deter wage theft. You can:
 - Contact your congressional leaders to voice your support for current wage theft legislation.
 - Support local wage theft initiatives coordinated by community-based workers centers.
 - Join the Interfaith Worker Justice e-mail action list. Sign up at www.iwj.org.