

Ending Wage Theft

THE PROBLEM

The economic struggles of low-wage workers are exacerbated by rampant wage theft. By paying less than legal wages or failing to account for total hours worked, employers are stealing more than \$50 billion a year from workers.

Wage theft is far too common. A survey by the National Employment Law Project found that 26% of low-wage workers were paid below the minimum wage. Additionally, 30% of tipped workers are not paid the tipped worker minimum wage and 76% of low-wage workers who work overtime were not paid the legal overtime rate.¹

Beyond hurting individual workers, wage theft hurts local economies, increases the poverty rate, and puts law-abiding businesses at an unfair disadvantage. New York is deprived of nearly \$1 billion in consumer spending each year due to wage theft. And yet anti-wage theft enforcement has become severely under-resourced – the U.S. Department of Labor has only 1,000 investigators for the more than 7 million workplaces nationwide.²

THE SOLUTION

Tackling wage theft is relatively uncontroversial because it entails cracking down on law-breaking employers that are cheating their workers and unfairly undermining businesses that play by the rules. Even cities constrained by preemption can use innovative policies to enforce wage theft laws.

POLICY ISSUES

BETTER ENFORCEMENT SYSTEMS: Cities that have the power to enact their own minimum or living wage can create local enforcement agencies to prevent wage theft. In **San Francisco**, the Office of Labor Standards and Enforcement (OLSE) investigates wage theft claims and enforces the city's minimum wage and wage theft standards. It collaborates effectively with other city agencies—the Department of Public



“30% of tipped workers are not paid the tipped worker minimum wage and 76% of low-wage workers who work overtime were not paid the legal overtime rate, averaging out at about eleven unpaid or underpaid overtime hours per week per worker.”

— National Employment Law Project,
“Broken Laws, Unprotected Workers”

Health can revoke health permits from certain violators, the Office of Small Business educates business owners, and the Office of the Treasurer and Tax Collector collects from employers who fail to pay. OLSE has recovered over \$6.5 million in stolen pay and over \$1.7 million in penalties. In 99% of cases where employers were found at fault, workers were paid all back owed wages.³

In cities where enacting a minimum wage is preempted, there are other innovative ways to prevent wage theft. City agencies can partner with external enforcement, such as with local prosecutors, state agencies, or the federal government. As of 2010, Texas's state enforcement agency, the Texas Workforce Commission, had only 25 investigators to cover thousands of claims and had not conducted a field investigation since 1993. Therefore, in **Houston**, the Office of the Inspector General thoroughly investigates complaints before he refers them to the commission.⁴

Cities can also use community organizations to investigate claims. **Burlington's** living wage law was largely ineffective because of lack of enforcement. Now the city funds an independent monitoring agency, currently the Vermont

Worker's Center, which staffs an employee hotline, investigates complaints, and refers violations to the City Attorney.

Including wage theft provisions in industry-specific legislation is another way to prevent wage theft in cities where an all-encompassing law is not feasible. This opens the door for cities to use license revocation, as well. **New Brunswick** and **Princeton** have passed laws allowing refusal to grant or renew the license of a business found guilty of wage theft.

BETTER INFORMATION: Cities can require employers to explicitly inform employees of their rights. In **Santa Fe**, failure to prominently post wage information in both English and Spanish can result in a business's license being suspended or revoked.

Cities can also require employers to inform the public of wage violations. In **San Francisco** and **Washington, DC**, employers are required to inform workers of pending investigations. They are also required to post notice to the public if they have failed to comply with a settlement or decision. And in **Houston**, any company with a record of wage theft is listed on a public online database for five years.

Employers in high-violation industries could be required to pay for training, so that workers are informed about their rights and the enforcement process.

STRONGER SANCTIONS: Cities with minimum wage power should severely penalize retaliation by employers. **Santa Fe's** ordinance states that any adverse action against a worker within 60 days of filing a wage theft complaint raises a rebuttable presumption of retaliation. **Seattle** bans "directly or indirectly" threatening to inform authorities about a complaining employee's immigration status.

Even cities without the power to set wages could pass catch-all whistleblower and anti-retaliation laws. Such laws could create strong penalties for any employer who punishes a worker who attempts to exercise her legal rights on the job, inform another person of his or her rights, or speak out about any legal violation. Although Federal law preempts cities from establishing penalties specifically for retaliating against workers for collective action, a broad anti-retaliation law can give workers protection while surviving preemption.

Cities can also use license revocation as a way to increase sanctions. **New Brunswick** and **Princeton** have passed laws allowing refusal to grant or renew the license of a business found guilty of wage theft.

Lastly, cities can use criminal laws to increase sanctions. Thirty states have criminal penalties for unpaid wages, and thirty-eight states have a criminal theft of services provisions. In **Washington, DC**, any employer who violates the wage theft law can be found guilty of a misdemeanor and sentenced to up to 90 days and prison and a \$50,000 fine.

DAMAGES AND PENALTIES: Workers are often unable to recover money owed to them, even after a favorable judgment. Cities can tackle this problem by mandating that employers in high-violation industries post surety bonds. Cities could also instate wage liens, which give workers a claim against employer's property until a dispute is resolved, thereby incentivizing payment from employers.

Even when employers pay back the wages owed, the cost of restitution is often relatively minimal and does not affect the employer's bottom line. Furthermore, cities often fail to pursue administrative penalties, because the cost of holding a hearing exceeds the potential revenue. Without these economic penalties, there is little incentive for employers to adhere to the anti-wage theft law.

In order to deter wage theft and encourage employee reporting, cities with minimum wage power should require employers to pay workers treble or quadruple damages. **Washington, DC's** law allows workers to recover four times their unpaid wages. Cities can also increase the severity of their administrative penalties. DC's law allows for penalties from \$50-\$100 per worker per day, to be paid to the city.

LANDSCAPE AND RESOURCES

For more on local wage theft enforcement, visit the **National Employment Law Project**, the **Center for Popular Democracy**, and the **Office of Labor Standards Enforcement in the City and County of San Francisco**.

NOTES

1. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Project (2009).
 2. "Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft," National Employment Law Project (2011).
 3. "Santa Clara County Wage Theft Report," Santa Clara County Wage Theft Coalition (2014).
 4. Down with Wage Theft, Frequently Asked Questions, www.downwithwagetheft.org.
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