ENDING WAGE THEFT

THE PROBLEM

The economic struggles of low-wage workers are exacerbated by rampant wage theft. A recent study by the Economic Policy Institute found that just one form of wage theft – paying workers below the applicable minimum wage – affects 17 percent of low-wage workers, and estimated that US employers steal over $15 billion each year in minimum wage violations. Beyond hurting individual workers, wage theft hurts local economies, increases the poverty rate, reduces tax revenues, and puts law-abiding businesses at an unfair disadvantage. New York, for example, is deprived of nearly $1 billion in consumer spending each year due to wage theft.

Enforcement of workplace rights is severely under-resourced – the U.S. Department of Labor has only 1,000 investigators for the more than 7 million workplaces nationwide. Even in states with relatively pro-worker governments, the agencies that enforce workers' rights are too underfunded to undertake comprehensive and timely investigations. Yet workers are unable to make up for lackluster public enforcement power by taking their employers to court, hamstrung by unreliable or absent attorneys' fees provisions, challenges in collecting judgments, and pre-dispute arbitration requirements buried in the fine print of employment contracts. These "forced arbitration" clauses foreclose judicial remedies, while making it nearly impossible to achieve justice through arbitration.

THE SOLUTION

As cities enact innovative workplace protections such as earned sick leave, paid family leave, and fair workweek protections, it is more important than ever to ensure that effective enforcement delivers on those legislative promises. Policymakers can build consensus around strong wage theft prevention policies that crack down on law-breaking employers and allowing law-abiding businesses to compete in the marketplace. Even cities constrained by preemption can use innovative policies to enforce wage theft laws.

POLICY APPROACHES[2]

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 through collaboration with other city agencies – the Department of Public 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. In cities where enacting a minimum wage is preempted, there are other innovative ways to prevent wage theft. For example, in Florida, **Miami, St. Petersburg,** and **Osceola Count**y (home of Orlando) all established Wage Theft and Wage Recovery programs with mediation and administrative hearing processes to enforce state and federal wage laws.

The most effective wage theft prevention programs deputize community organizations to educate workers about their rights, investigate violations, and help workers file complaints. **Burlington, San Francisco, Seattle**, and other cities give grants to community-based organizations to provide linguistically and culturally appropriate outreach to low-wage workers who are most at risk of wage theft, including conducting know-your-rights trainings, consulting with workers about suspected violations, and resolving or referring complaints. Organizations that have gained workers' trust can make a unique contribution to enforcement by empowering workers to speak up about noncompliance.

Investigation and enforcement procedures should encourage workers to come forward by protecting the confidentiality of complaints, allowing third parties (such as worker centers) to initiate complaints, and investigating an entire workplace based on the complaint of one worker. These steps are especially important to protect undocumented workers.

Industry-specific wage theft legislation can target industries where wage theft is rampant, and may be a good approach in cities where more universal provisions are not feasible or to pilot more innovative and aggressive policies. **New York City**'s Car Wash legislation, for example, requires car washes to post a surety bond as a condition of receiving a business license.

> ***"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."***
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> **—National Employment Law Project,** "Broken Laws, Unprotected Workers"

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 a 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.

ZERO TOLERANCE FOR RETALIATION: 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. Cities should also define retaliation broadly, to capture all the forms of retribution that employers use to intimidate workers, such as threatening to inform authorities about a complaining employee's immigration status or reducing weekly work hours. Retaliation protection should extend to workers who mistakenly but in good faith allege violations of law.

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.

DAMAGES, PENALTIES, AND SANCTIONS: 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 establish 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 too minimal to 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. Cities can also impose heavier penalties for repeat violators.

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.

LANDSCAPE AND RESOURCES

For more on local wage theft enforcement, contact Rachel Deutsch at the **Center for Popular Democracy**: rdeutsch@populardemocracy.org.