

The Crisis of Wage Theft

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

Wage theft is all around us. The illegal underpayment or nonpayment of workers’ wages affects millions of workers each year, 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 increased unemployment and cutbacks of vital services. Wage theft puts ethical employers at a competitive disadvantage. Wage theft is an abomination.

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; misclassifying employees as independent contractors to avoid paying minimum wage and overtime (as well as employers’ share of FICA tax); and not paying workers at all.

The average low-wage worker in New York City, Chicago, and Los Angeles in 2008 had \$51 stolen out of average weekly earnings of \$339, or 15 percent of their pay (see *Broken Laws, Unprotected Workers*, published by the Center for Urban Economic Development, UCLA, and the National Employment Law Project – http://nelp.3cdn.net/1797b93dd1ccd9e7d_sdm6bc50n.pdf). The findings, based on a landmark survey of 4,387 workers, are representative of front-line workers (excluding managers, professional or technical workers) in low-wage industries in the three cities – a population of about 1.64 million workers, or 15 percent of the combined workforce of Chicago, Los Angeles and New York. Illinois, New York, and California have some of the more effective and dedicated state Departments of Labor.

In February 2008, a temporary agency needing extra workers went to Cincinnati’s downtown homeless shelter. The day labor agency promised workers \$8 per hour to work an hour and a half away from downtown at a DHL site in Wilmington, Ohio, separating packages at the commercial airport. Two hours after Mary, a mentally challenged

homeless worker, started her eight-hour shift, the supervisor decided she could not handle the volume of work and told her to leave the line. The day labor representative then put her on the company bus, which had no heat, where she waited 10 more hours until the other workers finished their shifts. After the two-hour bus ride back to Cincinnati, Mary was paid \$2.50. The company had illegally deducted seven dollars in transportation costs and several more dollars in equipment charges. This is a common occurrence with day laborers in Cincinnati, who are mostly homeless. After these involuntary deductions such as transportation and safety equipment charges, workers earn below minimum wage.

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.

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 & hour laws for 130 million workers covered by the FLSA – the equivalent of one cop on the beat for every 170,000 workers, a marked increase from one for every 9,000 workers in 1941 (see *Wage Theft in America* by Kim Bobo, Executive Director of Interfaith Worker Justice).

Wage Theft Solutions

Stealing wages from workers has become a systemic issue, a business strategy to reduce costs and squeeze workers to increase the bottom line and gain a competitive advantage over unionized workplaces and honest employers. It is not simply a problem of a few bad or misinformed employers, but a widespread practice that robs from those with the least. Wage theft happens because it pays off, and because good laws that protect workers are not enforced.

There has been a demonstrated lack of will from previous leaders at the U.S. Department of Labor (DOL) to prevent wage theft. Rather than going after industries that everyone knows commit wage theft, DOL enforcement staff have been tasked with taking complaints from individual workers. Although most workers don't even bother to lodge a complaint, the DOL has been flooded with them. The DOL has not partnered with community groups in meaningful ways, despite the recognition that people in the community have very good—and often better—access to workers and information about where and when wage theft occurs in their communities.

The new leadership of the DOL vows to reverse this decline. Hilda Solis, the newly appointed Secretary of Labor, stated that “There’s a new sheriff in town,” and the DOL is hiring hundreds of new investigators. But the DOL cannot enforce the law by itself. It must work in partnership with worker advocates—unions, workers’ centers, congregations, etc.—groups on the ground where workers go for help, that know who the bad companies are, and that help workers fight for their wages.

The Wage Theft Prevention Act (HR3303), introduced by Congressman George Miller (D-CA) in July 2009, amends the Fair Labor Standards Act so that the DOL can offer stronger protections for workers. The bill will do away with a statute of limitations that limited the DOL to two years to resolve a wage complaint. This important first step also allows workers to file private lawsuits while the DOL is still investigating a complaint. The vast majority of wage lawsuits are filed by private attorneys, not the DOL.

Interfaith Worker Justice and its network of 23 workers’ centers calls on Congress, the DOL, worker advocates, and the business community to take the following additional measures:

- Educate and raise public consciousness of the crisis of wage theft. The greatest stimulus for the economy would be for all workers to receive their legal earned wages, which they would spend in their communities.
- Create meaningful wage theft prevention partnerships between government agencies and community organizations. Agencies that need to be at the table include the Wage and Hour Division of the DOL; state Departments of Labor; OSHA and the Equal Employment Opportunity Commission (bosses who steal wages are also likely to violate health and safety and anti-discrimination laws and regulations); and county and municipal agencies that can help create innovative programs. These agencies must collaborate with community based worker advocates, labor unions, congregations and faith-based organizations (often the first place a worker turns for help), and academic partners.
- Pass a national mandate requiring employers to provide workers with pay stubs that give complete information on the number of hours worked and how pay and deductions were calculated, and ensure meaningful enforcement of this law.
- Conduct targeted investigations of industries and companies that the DOL and community organizations have identified as willful, repeat violators. Wage theft occurs in every region of the country and all industries, but is most prevalent in low-wage industries such as construction, poultry processing, meat packing, retail, restaurants, landscaping, agriculture, garment assembly, and day labor.
- Assess meaningful penalties that would deter wage theft and punish its perpetrators.

How to Talk About Wage Theft

to Unions

Unions who represent workers in industries where wage theft is rampant such as construction, landscaping, food processing, nurses, and delivery services have first hand accounts of how these actions affect wages and benefits of those covered by collective bargaining agreements.

Workers organize a union to address a number of workplace situations and primarily to establish a written contract with their employer. This written contract sets standards for the employer and employee and establishes remedies to be enforced if contract provisions are violated.

The contract serves as the first line of defense for union members. However, with less than 10 percent of the private sector organized, many nonunion employers exploit the rights of workers and illegally steal their wages which degrades the standards and benefits that union workers enjoy.

Misclassification of workers is one way that employers steal wages from workers. In this scenario, workers who should be classified as employees are classified as independent contractors. Workers are forced to purchase their own work equipment and/or supplies, perhaps even pay a supply “fee” to work, but are clearly under the direction and scope of the employer. They are not paid overtime and sometimes don’t even receive the minimum wage. Since the Fair Labor Standards Act applies only to employees, companies see an incentive to misclassify employees. They also avoid

federal employment discrimination laws through these efforts.

Misclassification also enables the boss to evade paying social security taxes, workman’s comp and unemployment taxes. Employers who play by the rules, like those who have signed collective bargaining agreements, are put at a competitive disadvantage.

Working off the clock or refusing to pay overtime are other concerns that affect union standards. Ralph works at a local distribution center where he loads and unloads trucks. There is tremendous pressure to unload the trucks quickly. Ralph’s supervisor will tell the crew that they are “working too slow” and will clock them out after eight hours, even if they are still unloading the truck. Ralph and his co-workers know that this is not right, but fear that if they speak up, they will lose their jobs.

Prevailing wage laws, protected by Davis Bacon and applicable state laws, ensure that work on publicly funded projects is done by workers whose wages and benefits are set by local community standards. This enables workers, union and nonunion, to earn wage rates that are fair according to the job and skill level of the work. When contractors are able to underbid on these contracts because they are violating prevailing wage laws, they are stealing from the workers and from the taxpayers who are funding these projects.

Pitching Your Story

Reporters don't just go out and find the news – the news finds them. They rely on us to give them good stories. Wage theft is a story that interests reporters.

Whom to pitch: Find the reporter at a newspaper who covers labor, business or religion. If you're not making progress pitching on one angle, try a different angle.

What to pitch: Try to keep it interesting and have something newsworthy. Have an announcement, have a worker story, or have a news event you can tie in with what has happened locally.

For the Business Beat: Stealing wages from workers has become a systemic issue, a business strategy to reduce costs and squeeze workers to increase the bottom line and gain a competitive advantage over unionized workplaces and honest employers.

For the Political Beat: Wage theft robs from the government's tax coffers, which results in increased unemployment and cutbacks of vital services.

For the Religion Beat: The religious community is playing a leading role in helping stop and deter wage theft. This commitment makes sense given the clear religious mandates for treating workers fairly and against stealing.

When to pitch: It is best to pitch a story in the morning. For events you want covered, give the reporters as much notice as possible. Be aware of the reporters' deadlines for their stories.

When not to pitch: Friday is the worst day to pitch a story to any media. (The worst day for a story to appear is Saturday, when there are the fewest listeners/readers/viewers.)

Typical News Cycle

6 am	A radio news directors' day starts early. Be prepared to call in early for interviews
10 am	Good time to pitch stories to TV assignment desks. Good time to hold news conferences, media events.
11 am	Good time to pitch print reporters for upcoming events, stories and other items.
1:30-5 pm	Reporters on deadline are working on stories. Expect media inquiries. Be ready to answer questions and return calls.
5 pm	Deadlines for news sections of morning paper – not a good time to pitch.

How to pitch: People develop their own style when they call reporters. It is important to keep the pitch quick and interesting. If you haven't worked with the reporter in the past, briefly introduce yourself and your organization. Reporters are busy and are often on deadline so get to the point quickly. It is often effective to email a reporter with the pitch and follow up with a phone call.

When pitching to print media, you are not only pitching to the reporter, but also the reporter's editor. Often a reporter will need to pitch a number of stories to an editor and the editor will decide which ones to pursue. When you pitch, you want to make the reporter an advocate for your story.

Radio news decisions are generally made by the news director. Talk radio stations often have a full-time producer to book guests. Get to know this person.

You will need to be creative to pitch television news directors and their staff. Do you have a good visual? Is there an action that would provide compelling images? Keep this in mind when pitching for television.

Thou Shalt Not Steal

When one thinks of stealing, one thinks first about robbing someone of a possession. Stealing “things” from others is clearly wrong, but so too is stealing wages from workers. And stealing from the poor – stealing wages from poor workers – is particularly heinous. “Thou shalt not steal” provides a clear guideline, but this commandment is only one of many.

The Hebrew Scripture in Deuteronomy 24: 14-15 says: “Do not take advantage of a hired worker who is poor and needy, whether that worker is an Israelite or is a foreigner residing in one of your towns. Pay them their wages each day before sunset, because they are poor and are counting on it. Otherwise they may cry to the Lord against you, and you will be guilty of sin.” The text couldn’t be clearer. Not paying workers, especially poor workers, is sin.

Jesus, in the Christian scriptures, sums up God’s laws when he says, “Love God and love your neighbor as yourself.” How can one love a neighbor as yourself, if you don’t pay them?

The Prophet Muhammad gives the same message: None of you has faith unless you love for your brother what you love for yourself.

Although wage theft is all around us, we often don’t recognize it. The illegal underpayment or non-payment of workers’ wages affects millions of workers each year, often forcing them to choose between paying the rent or putting food on the table. Many of those served by congregations’ soup kitchens and shelters are the “working poor” who have been robbed of wages owed. According to a recent landmark study of more than 4,000 low-wage workers, the average low-wage worker had \$51 stolen out of average weekly earnings of \$339, or 15 percent of his or her pay.¹

In February 2008, a temporary agency needing extra workers went to Cincinnati’s downtown homeless shelter. The day labor agency promised workers \$8 per hour to work an hour and a half away from downtown at a DHL site, separating packages at the commercial airport. Two hours after Mary, a mentally challenged homeless worker, started her eight-hour shift, the supervisor decided she could not handle the volume of work and told her to leave the line. The day labor

representative then put her on the company bus, which had no heat, where she waited 10 more hours until the other workers finished their shifts. After the two-hour bus ride back to Cincinnati, Mary was paid \$2.50. The company had illegally deducted seven dollars in transportation costs and several more dollars in equipment charges. This is a common occurrence with day laborers in Cincinnati, who are mostly homeless. After these involuntary deductions, workers earn below minimum wage.

Unethical employers who underpay workers not only steal from workers and their families, but they steal from public coffers, which robs public schools, hospitals and vital services of needed resources.

Responsible employers who pay their workers legally and fairly are placed at a competitive disadvantage by those unethical employers who steal wages from workers and taxes from public coffers.

The most common forms of wage theft are not paying minimum wage, not paying overtime for hours worked over 40, requiring workers to work off the clock (they worked but the time isn’t counted), refusing to pay workers’ final paychecks; misclassifying employees as independent contractors to avoid paying minimum wage and overtime (as well as employers’ share of FICA tax), not paying for breaks as required by state laws, and stealing tips from waiters and waitresses.

Although minimum-wage violations are most common among immigrants, the other forms of wage theft are equally common among immigrants and native born workers. Stealing wages from workers has become a systemic issue, a low-road business strategy to reduce costs and squeeze workers to increase the bottom line and gain a competitive advantage over unionized workplaces and honest employers. It is not simply a problem of a few bad or misinformed employers, but a widespread practice that robs from those with the least. Wage theft happens because it pays off, and because good laws that protect workers are not enforced. Wage theft endangers all workers, especially all workers in low-wage jobs, and undermines the integrity of our economic system.

Wage Theft Solutions

There are many things individuals and congregations can do to address the crisis of wage theft. Be sure to read *Wage Theft in America: Why Millions of Working Americans are Not Getting Paid and What We can Do about It*.³ Consider studying the book using the congregational study guide in a adult educational forum and discussing ways you can stop and deter wage theft in your local community.

Stopping wage theft nationally requires a strong commitment of will and resources by leaders at the U.S. Department of Labor (DOL), the agency responsible for enforcing most of the nation's workplace laws. Over the last few decades, the departments staffing levels and overall approach to addressing wage theft have not kept pace with the growing crisis. Rather than focusing on industries known for wage theft, DOL enforcement staff has had a complaint-driven approach, following up on individual complaints from workers. Although most workers don't even bother to lodge a complaint, the DOL has been flooded with them. This complaint-drive approach has been frustrating for workers who actually file complaints, because the process is so slow and the amount of money collected is often far less than workers are owed, and has failed to punish those who steal wages in meaningful ways and turn around major industries that have a business model based on stealing wages.

The new DOL leadership vows to reverse this decline. Hilda Solis, the newly appointed Secretary of Labor, claims, "There's a new sheriff in town." The DOL is hiring hundreds of new investigators. Although Interfaith Worker Justice applauds the new commitment to fighting wage theft and enforcing the law, there are some new approaches required. But the DOL cannot enforce the law by itself. It must work in partnership with worker advocates – unions, workers' centers, congregations – groups on the ground where workers go for help, that know who the bad companies are, and that help workers fight for their wages.

Workers also need some legislative changes to protect them and strengthen wage enforcement. The Wage Theft Prevention Act (HR3303), introduced by Congressman George Miller (D-IL) in July 2009, amends the Fair Labor Standards Act so that the DOL can offer stronger protections for workers. The bill will do away with a statute of limitations that limited the DOL to two years to resolve a wage complaint. This important first step also allows workers to file private lawsuits while the DOL is still investigating a complaint. The vast majority of wage lawsuits are filed by private attorneys, not the DOL.

Interfaith Worker Justice and its network of 25 workers' centers call on Congress, the DOL, worker advocates, and the business community to take the following additional measures:

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- Create meaningful wage theft prevention and enforcement partnerships between government agencies and community organizations. Agencies that need to be at the table include the Wage and Hour Division of the DOL; state Departments of Labor; OSHA and the Equal Employment Opportunity Commission (employers who steal wages are also likely to violate health and safety and anti-discrimination laws and regulations); and county and municipal agencies that can help create innovative programs. These agencies must collaborate with community based worker advocates, labor unions, congregations and faith-based organizations (often the first place workers turn for help), and academic partners.
- Pass a national mandate requiring employers to provide workers with pay stubs that give complete information on the number of hours worked and how pay and deductions were calculated, and ensure meaningful enforcement of this law.
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- Assess meaningful penalties that would deter wage theft and punish its flagrant perpetrators.

1. Center for Urban Economic Development, UCLA, and the National Employment Law Project, *Broken Laws, Unprotected Workers*, August, 2009. Download a copy free from www.nelp.org.

2. Overtime pay is required for most workers in low-wage jobs. Overtime is 1.5 times the regular rate for hours worked over 40 each week.

3. Kim Bobo, *Wage Theft in America, Why Millions of Working Americans are Not Getting Paid and What We Can Do about It* (New York: New Press), 2008.

A Wage Theft Guide

for Workers

The most powerful way to help people understand the seriousness and magnitude of wage theft is to tell our personal stories. Statistics and generalities do not have the same impact as someone telling how he or she has been personally affected by wage theft.

The Problem of Wage Theft

Wage Theft is widespread, common and growing. Some might think that this is a small or isolated problem of a few bad employers. If you know others who have experienced wage theft; share this information with them.

Wage theft takes many different forms. For example: The day laborers who aren't paid; workers who are systematically denied minimum wage and overtime for years; fired workers who are not given their final paychecks; Fed Ex drivers who are called "independent contractors" so that the company doesn't have to pay their overtime.

Those of us who are victims of wage theft are often the most vulnerable. We often work in minimum wage jobs, we live paycheck to paycheck. We don't have a lot of assets. A missed paycheck can mean not covering rent or not getting food or medicine.

In certain industries and sectors wage theft is rampant. Restaurants, construction, day labor, all see a lot of violations. You probably know a lot of people who have had the same problems.

The Solution to Wage Theft and Telling Your Stories

The enforcement process is too slow, the agency doesn't communicate with us about what is going on, and we feel like we have little input. Currently, in many parts of the country, the agencies charged with fighting wage theft at the Federal and State level are failing.

The U.S. Department of Labor (DOL) is broken and needs a major overhaul. It needs:

- More investigators and quicker action.
- Targeted investigations.
- Tougher penalties.
- To be more responsive and communicative with workers who file complaints.
- To collaborate with state agencies and community organizations.
- Recordkeeping requirements (such as pay stubs and wage agreements).
- Protection of workers who complain from retaliation by the boss.

Many State enforcement agencies also need major overhauls.

Tell your personal story. Make it real for people by including the details of what you have experienced. Tell how it made you feel. If you have had dealings with a state or federal agency, share your experience with the agency.

When we don't get paid, we often have to fall back on social services, charity, or friends and family, stressing the already weak safety net. This has a cascading effect—hurting us, our families, our communities and ultimately the economy. Share the effect this had on you and your family.

Don't feel obligated to answer any questions that you don't want to answer, just refocus on the main issue. For example, if you are asked "Are you legal?" answer "That's not the issue here. All workers, regardless of the work status, should be paid for their work."

The Crisis of Wage Theft

Wage theft is all around us. The illegal underpayment or non-payment of workers' wages affects millions of workers of all races and ethnicities. In fact, chances are that you, the reader, or someone you know has faced some form of wage theft.

There are multiple ways wages can be stolen from workers including 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; misclassifying employees as independent contractors to avoid paying minimum wage, overtime, and a share of taxes; and not paying workers at all. Wage theft not only treats workers unjustly, but also robs from the government's tax reserves resulting in cutbacks of vital services and putting employers who pay their employees justly at a competitive disadvantage.

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.

It's ironic that those who till the soil, cultivate and harvest the fruits, vegetables, and other foods that fill your tables have nothing left for themselves.

Cesar Chavez

There is a governmental body that ensures that employers pay workers their legal earnings, called The Wage & Hour Division within the Department of Labor. The sole responsibility of the people working for the Wage & Hour Division is to enforce minimum wage, overtime pay, record keeping and child labor laws. However, in recent years, this department has not been doing what it should be. In 1941, the U.S. Department of Labor's Wage & Hour Division, equipped with 1,700 investigators, physically inspected one in 10 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 170,000 workers, a marked increase from one for every 9000 workers in 1941 (see Wage Theft in America by Kim Bobo, Executive Director of Interfaith Worker Justice).

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There has been a demonstrated lack of effort from previous leaders at the U.S. Department of Labor (DOL) to take initiatives to prevent wage theft. Rather than going after industries that are notorious for wage theft violations, DOL enforcement staff simply take complaints from individual workers. Although most workers don't even bother to lodge a complaint, the DOL has been flooded with grievances because of the countless wage theft cases. These complaints were not properly investigated.

The new leadership of the DOL vows to reverse this decline. Secretary of Labor Hilda Solis stated, "There's a new sheriff in town," and the DOL is hiring hundreds of new investigators. But the DOL cannot enforce the law by itself. It must work in partnership with worker advocates (such as unions, workers' centers, congregations, student groups), groups on the ground where workers go for help. These groups know who the unjust companies are, and they help workers fight for their earned wages.

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Interfaith Worker Justice, its network of religion labor groups and 23 workers' centers calls on students and student groups on campuses nation-wide to take the following steps:

- **Raise Consciousness.** It's up to you to educate and raise consciousness about the crisis of wage theft on your campus. Ask yourself, how would your campus be different if all employers treated their workers fairly?
- **Conduct investigations of jobs and products on your campus.** Do all the staff and workers get paid fairly and on time? Do the companies that sell their products and services in your bookstores and cafeterias treat their workers fairly? Wage theft occurs in every region of the country and all industries, but is most prevalent in low-wage industries such as construction, poultry processing, meat packing, retail, restaurants, landscaping, agriculture, garment assembly, and day labor.
- **Encourage "wage theft free" practices.** Pass a campus-wide mandate that rejects the practice of wage theft on your campus. Require your school to provide workers with pay stubs that give complete information on the number of hours worked and how pay and deductions were calculated. Be sure to ask contracted companies about their practices as well.
- **Hold movie viewings about similar struggles,** such as "Made in LA." Hold a wage theft educational forum, survey students on campus about whether they have been victims of wage theft (you can download the Interfaith Worker Justice Wage Theft survey at www.iwj.org), collect stories of wage theft, and connect with activist and religious groups on campus.
- **Keep track of the hours you work.** Make sure your paychecks show all the hours you worked and that you are getting paid for the work you do.
- **Educate yourself on workers centers and get involved with a worker center in your city** (www.iwj.org/wcn).