

Issue: VA Economy

## Wage Theft in Virginia

The Economic Policy Institute reports that wage theft, “the practice of employers failing to pay workers the full wages to which they are legally entitled, is a widespread and deep-rooted problem that directly harms millions of U.S. workers each year.”<sup>1</sup>

### Definition of Wage Theft

Wage theft is not just a failure to treat workers fairly. It is a set of violations of federal and state laws committed by unscrupulous employers to underpay employees. These crimes include:

- **Minimum wage violations**—Paying workers less than the mandated hourly wage.
- **Overtime violations**—Failure to pay time and a half for work in excess of 40 hours per week.
- **Classifying employees as independent contractors**—Independent contractors are not entitled to the minimum wage and overtime pay, and employers avoid paying taxes.
- **Stealing tips**
- **Taking illegal deductions from paychecks**
- **Paychecks that bounce or employers simply not paying for work performed**

### The Extent of Wage Theft is Stunning

A landmark survey of 4,387 low income workers in three large cities found that in the previous week:<sup>2</sup>

- 26 percent of the workers surveyed were paid less than the minimum wage.
- 76 percent of those who worked overtime were not paid the legal overtime rate.
- About a quarter of the workers worked before or after their official shifts, but 70 percent of these did not receive any payment for the extra time worked.
- Legally mandated meal breaks were regularly interrupted, shortened or denied.
- Among employees who had deductions taken from their paychecks, 41 percent reported illegal deductions for things such as *damages, tools, or transportation*.
- 30 percent of tipped workers were paid less than the tipped worker minimum wage, and 12 percent had tips taken from them by supervisors or the company.

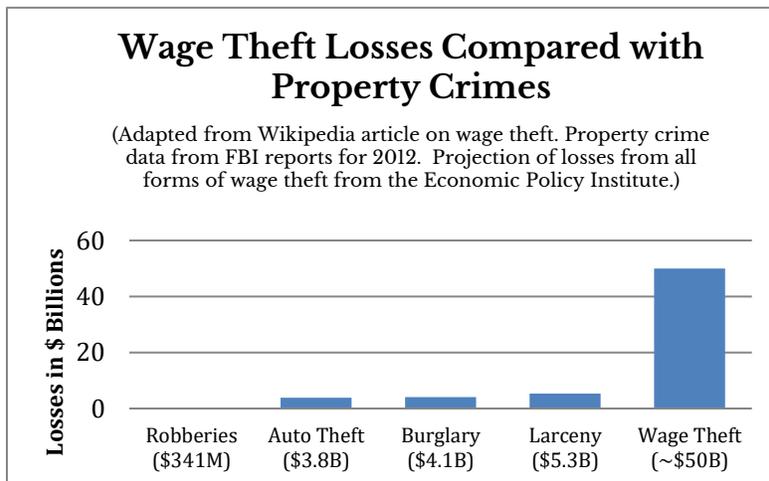
The Economic Policy Institute reports that in the 10 most populous U.S. states “2.4 million workers lose \$8 billion annually (an average of \$3,300 per year for year-round workers) to minimum wage violations—nearly a quarter of their earned wages.”<sup>3</sup>

The victims of wage theft tend to be more vulnerable than the average worker. People disproportionately affected include:<sup>4,5</sup>

- Low income workers
- Women
- The young
- Minorities
- Those who are less educated
- Foreign born workers
- Undocumented immigrants
- Non-English speakers

In spite of these skews, the Economic Policy Institute reports that “the majority of workers with reported wages below the minimum wage [i.e., victims of one of the more common forms of wage theft] are over 25 and are native-born U.S. citizens, nearly half are white, more than a quarter have children, and just over half work full time.”<sup>6</sup>

Although largely invisible, the total value of wage theft dwarfs property crimes in the U.S.<sup>7,8</sup> For example, there were 292,074 robberies in the U.S. in 2012 (e.g., street muggings, bank robberies, convenience store hold-ups). These resulted in total losses of \$341 million—a drop in the bucket compared to the more than \$15 billion workers are estimated to lose to minimum wage violations alone in just one year.<sup>9</sup>



The 2018 report *Grand Theft Paycheck: The Large Corporations Shortchanging Their Workers' Wages*<sup>10</sup> highlights the surprising levels of wage theft taking place at some of America's most respected corporations. After analyzing 1,200 wage theft cases brought against large companies since 2000, the authors stated, "Our findings make it clear that wage theft goes far beyond sweatshops, fast-food outlets and retailers. It is built into the business model of a substantial portion of Corporate America... These cases, in which employers have paid out a total of \$8.8 billion, involve occupations ranging from cashiers and security guards to financial advisors and pharmaceutical sales representatives."<sup>11</sup> The most penalized companies during this time (virtually all of which operate in Virginia) were:

### Wage Theft Penalties Paid Between 2000 and 2018<sup>12</sup>

Walmart	\$1,408,901,183	Citigroup	\$110,005,835
FedEx	\$502,165,827	Cerberus Capital Mgmt.*	\$103,494,221
Bank of America	\$381,499,089	Farmers Insurance	\$102,909,208
Wells Fargo	\$205,403,723	Microsoft	\$102,855,841
JPMorgan Chase	\$160,459,643	Morgan Stanley	\$102,695,000
State Farm	\$140,000,000	Novartis	\$99,199,443
AT&T	\$139,390,011	UBS	\$97,239,652
UPS	\$138,077,624	Oracle	\$92,268,000
ABM Industries	\$128,599,312	Sycamore Partners Mgmt.**	\$89,480,288
Tenet Healthcare	\$127,216,654	CVS Health	\$87,691,026
Allstate	\$122,000,000	Rite Aid	\$78,007,420
Ecolab	\$111,288,882	Tyson Foods	\$75,119,297

\*Parent of Albertson's and Safeway

\*\*Parent of Staples and other retailers

## Wage Theft is Rampant in Virginia as Well

Anecdotal evidence, data, and expert opinion suggest that wage theft is uncomfortably routine in Virginia.<sup>13</sup> According to the Virginia Interfaith Center for Public Policy ("VICPP"), "Worker centers, legal clinics, social services and congregations that serve low-income families know all too well how common wage theft is in Virginia." Particularly vulnerable are people who work in agriculture (especially farmworkers), the poultry industry, restaurants, retail stores, car washes, landscaping,

residential construction, home care, and childcare. One specific example is the widespread practice of restaurants classifying cooks and dishwashers as independent contractors, thereby depriving them of overtime, disability and unemployment insurance, and other worker protections and benefits.<sup>14</sup>

## Wage Theft Harms All Virginians

**Workers**—Wage theft is certainly harmful to the mostly low wage workers who are direct victims. The most detailed research on wage theft found significant harm to workers’ incomes: “More than two-thirds (68 percent) of our sample experienced at least one pay-related violation in the previous work week. The average worker lost \$51, out of average weekly earnings of \$339. Assuming a full-time, full-year work schedule, we estimate that these workers lost an average of \$2,634 annually due to workplace violations, out of total earnings of \$17,616. That translates into wage theft of 15 percent of earnings.”<sup>15</sup>

**Competing Businesses**—Companies that play by the rules and pay workers fairly are competitively disadvantaged versus companies that cheat.<sup>16</sup>

**Local Economies**—Low income workers tend to spend additional income on food and needed services. The money stolen from workers is taken out of the communities where those workers live, and local businesses suffer from loss of revenue.<sup>17</sup>

**State and Local Governments**—Wage theft results in underpaid taxes, and workers’ compensation and unemployment insurance premiums. Moreover, wage theft pushes many more people into poverty, thereby increasing the need for state and local assistance programs. The Economic Policy Institute states that eliminating minimum wage violations “would lift 31 percent of those in poverty above the poverty line.”<sup>18</sup>

**All Virginians**—Pervasive, unpunished wage theft erodes confidence in society and government, and undercuts faith in the rule of law.

## How to Reduce Wage Theft in Virginia

**Rigorously enforce current laws**—Virginia has very weak enforcement capabilities. In 1990 the Virginia Department of Labor and Industry (“DOLI”) had 20 people working on wage theft investigations. Today there are only three for the entire state.<sup>19</sup>

**Strengthen the laws**—See recommendations under “Additional Legislative Steps Warranted.”

**Create a Culture that Supports the Fair Treatment of Workers**—VICPP (<https://www.virginiainterfaithcenter.org>) has many ideas for achieving this. Director Kim Bobo, who wrote the book *Wage Theft in America*, is an excellent resource.

## 2019 Legislative Record

A measure (SB1079/HB2473) to eliminate so-called “Jim Crow-era” exemptions to Virginia’s minimum wage law was passed and signed into law by Governor Ralph Northam.<sup>20</sup> These exemptions had allowed employers to pay less than the minimum wage for jobs traditionally held by African Americans: “newsboys, shoe-shine boys, ushers, doormen, concession attendants and theater

cashiers.” Lead sponsors were Senators Lionell Spruill [D-SD5] and John Peterson [D-SD34], and Representatives Marcia Price [D-HD95], Jeffrey Bourne [D-HD71] and Joseph Lindsey [D-HD90].

Multiple bills that would have increased the minimum wage died in committee or were defeated in senate votes.<sup>21</sup> Virginia’s minimum wage is currently set at the federal rate of \$7.25 an hour.

Other bills that failed in committee would have:<sup>22</sup>

- Facilitated worker suits against employers for failure to pay wages.
- Authorized DOLI to investigate and take action against employers suspected of not paying wages.
- Protected workers from retaliation for making wage complaints.

## Additional Legislative Steps Warranted

VICPP has proposed changes to the **Virginia Minimum Wage Act** and the **Payment of Wages Act**. These changes would significantly strengthen the state’s laws against wage theft and make life better for many thousands of Virginians. The following recommendations are from the center’s website.<sup>23</sup>

### *VICPP Recommended Changes to the Virginia Minimum Wage Act*

- **Remove exemptions for piece work.** Those paid by the piece should still earn minimum wage.
- **Cover all workers.** Currently, the law covers businesses with four or more persons employed at any one time. VICPP proposes removing this and covering all employees who are not otherwise exempt. Most states cover all workers. Thirty-four states cover all employees regardless of number of employees. Three states (Indiana, Michigan, Vermont) cover businesses with two or more employees. Three states are the same as Virginia (Arkansas, Illinois, Nebraska). Five states have no minimum wage law (Alabama, Louisiana, Mississippi, South Carolina, Tennessee). And three have higher standards (Oklahoma is 10, but over \$100,000 in sales is covered; West Virginia and Georgia are 6).
- **Require recordkeeping.** The Fair Labor Standards Act (the federal minimum wage) requires employers to keep records. Virginia’s Minimum Wage bill should too. All good employers already do this and others should.
- **Define who is an employee.** There is a lot of confusion about who is an employee and who is an independent contractor. This will address the confusion and use definitions that are already used by other Virginia agencies, such as the Virginia Employment Commission.

### *VICPP Recommended Changes to Virginia Payment of Wages Act*

- **Private Right of Action.** Workers should be able to take their claims to court. If workers are assisted by an attorney and the defendant was found to have cheated workers of wages, the defendants should have to pay reasonable attorney fees. This would potentially reduce the workload for the Department of Labor and Industries (DOLI) because some workers would turn to attorneys instead of filing claims with DOLI.
- **Penalties for retaliation.** Right now, if a worker files a complaint for unpaid wages, the employer can fire the worker with no consequences. This is terribly wrong. There should be strong penalties against retaliation.
- **Ability to investigate.** Under current law, if an employer is cheating 100 workers, but only one files a complaint, DOLI can only investigate that one worker's complaint. The agency should have the ability to review all the payroll records if there is good reason to believe that multiple workers are being underpaid.

### *Budget Implications*

Creating a Private Right of Action could save on work time, but several of the other proposals, such as covering all-sized workplaces and investigating workplaces where DOLI staff suspect that lots of workers are being cheated would work add to the agency. Thus, we will advocate budget additions to cover the extra workload.

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<sup>1</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>

<sup>2</sup> <http://nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>

<sup>3</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>

<sup>4</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>

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<sup>6</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>

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- <sup>7</sup> [https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/23tabledatadecoverviewpdfs/table\\_23\\_offense\\_analysis\\_number\\_and\\_percent\\_change\\_2011-2012.xls](https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/23tabledatadecoverviewpdfs/table_23_offense_analysis_number_and_percent_change_2011-2012.xls)
- <sup>8</sup> <https://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>
- <sup>9</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>
- <sup>10</sup> [www.goodjobsfirst.org/wagetheft](http://www.goodjobsfirst.org/wagetheft)
- <sup>11</sup> [https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft\\_prrel.pdf](https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_prrel.pdf)
- <sup>12</sup> [www.goodjobsfirst.org/wagetheft](http://www.goodjobsfirst.org/wagetheft)
- <sup>13</sup> <https://www.virginiainterfaithcenter.org/issues/economic-justice/wage-theft/>
- <sup>14</sup> Kim Bobo, Director, Virginia Interfaith Center for Public Policy, telephone interview July 16, 2019 and email August 8, 2019
- <sup>15</sup> <http://nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>
- <sup>16</sup> <https://www.virginiainterfaithcenter.org/issues/economic-justice/wage-theft/>
- <sup>17</sup> <http://nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>
- <sup>18</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>
- <sup>19</sup> Virginia Interfaith Center for Public Policy fact sheet “Creating a Private Cause of Action”
- <sup>20</sup> <http://www.dimuro.com/2019-va-general-assembly-passes-only-a-few-employment-related-bills/>
- <sup>21</sup> <http://www.dimuro.com/2019-va-general-assembly-passes-only-a-few-employment-related-bills/>
- <sup>22</sup> <http://www.dimuro.com/2019-va-general-assembly-passes-only-a-few-employment-related-bills/>
- <sup>23</sup> <https://www.virginiainterfaithcenter.org/issues/economic-justice/strengthening-laws-against-wage-theft/>