

Issue: PA Economy

## Wage Theft in Pennsylvania

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 the legal rate for work in excess of 40 hours per week.
- **Improperly classifying employees as independent contractors**—Independent contractors are not entitled to protections guaranteeing minimum wage and overtime pay. Employers also avoid paying taxes when they wrongly classify workers as independent contractors. Refer to Local Majority’s report *Worker Misclassification in Pennsylvania* for detailed information on this topic.
- **Stealing tips**—Employers or supervisors taking tips left for workers.
- **Taking illegal deductions from paychecks**—Docking employees for fictitious or inappropriate expenses.
- **Not paying for work performed**—Issuing checks that bounce, or not counting all the hours worked.

### The Extent of Wage Theft is Stunning

*Broken Laws, Unprotected Workers*, a landmark survey of 4,387 low income workers in three large cities, found that in the previous week:<sup>2</sup>

- 26% of the workers surveyed were paid less than the minimum wage.
- 76% of those who worked overtime were not paid the legal overtime rate.
- About a quarter of the workers either started early and/or worked late, but 70% of these received no 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% reported illegal deductions for things such as *damages, tools, or transportation*.
- 30% of tipped workers were paid less than the tipped worker minimum wage, and 12% had tips taken from them by supervisors or the company.

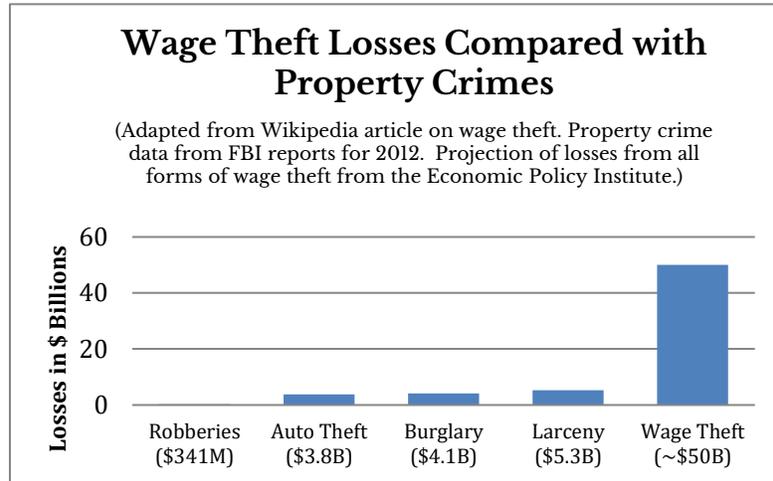
The Economic Policy Institute reports that in the 10 most populous U.S. states “2.4 million workers lose \$8 billion annually (an average of \$3,300 per year for year-round workers) to minimum wage violations—nearly a quarter of their earned wages.”<sup>3</sup>

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
- Young workers
- Minorities
- Those who are less educated
- Foreign-born workers
- Undocumented immigrants
- Non-English speakers

Notably, even less vulnerable groups are significantly affected. 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 that workers are estimated to lose to minimum wage violations alone in just one year.<sup>9</sup>



In its 2018 report *Grand Theft Paycheck: The Large Corporations Shortchanging Their Workers’ Wages*, the group Good Jobs First highlights the surprising levels of wage theft at some of America’s most respected corporations.<sup>10</sup> 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 in back wages and penalties, 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 Pennsylvania) 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 Pennsylvania

In 2006, a Philadelphia jury ordered Walmart to pay 186,000 Pennsylvania workers \$187 million for wages illegally withheld over an eight-year period (*Braun, et.al., v. Wal-Mart Stores, Inc.*). The Pennsylvania Supreme Court affirmed the judgment in 2014, and in 2016 the U.S. Supreme Court declined to review the case. By then, with interest, Walmart was required to pay the workers and their lawyers \$224 million.<sup>13</sup>

Unfortunately, the Walmart case was not an isolated example. According to a report by Temple University, each week in Pennsylvania almost 400,000 workers are paid less than the minimum wage; workers statewide lose between \$19 million and \$32 million in unpaid wages; and more than 300,000 workers are cheated out of overtime pay.<sup>14</sup> The report cites other disturbing facts:

- “40% of workers surveyed in Philadelphia’s restaurant industry worked ‘off-the-clock’ without pay.”
- “9% of Pennsylvania workers are misclassified as independent contractors.”
- “...minimal penalties [under Pennsylvania law] do not serve as a sufficient deterrent for employers who engage in wage theft.”

Moreover, Pennsylvania law does not protect workers who file complaints from retaliation by their employers.<sup>15</sup>

## Wage Theft Harms All Pennsylvanians

**Workers**—Wage theft is certainly harmful to the mostly low-wage workers who are direct victims. *Broken Laws, Unprotected Workers* reported significant harm to workers’ incomes: “More than two-thirds (68%) 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% of earnings.”<sup>16</sup>

**Competing Businesses**—Companies that play by the rules and pay workers fairly are competitively disadvantaged versus companies that cheat.<sup>17</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 a loss of revenue.<sup>18</sup>

**State and Local Governments**—Wage theft results in underpaid taxes, workers’ compensation premiums, and unemployment insurance premiums. Worker misclassification alone is estimated to cost the Pennsylvania’s Unemployment Compensation Fund more than \$200 million each year.<sup>19</sup> Moreover, wage theft pushes more people into poverty, thereby increasing the need for state and local assistance programs. The Economic Policy Institute states that eliminating minimum wage violations alone “would lift 31% of those in poverty above the poverty line.”<sup>20</sup>

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

## PA Wage Theft Protections are Weak, but Solutions are Available

In its 2020 publication *Enforcing Wins by Philly Workers: Transforming Laws on Paper into Real Change*, Temple University Law School made clear that many jurisdictions across America have begun to seriously address wage theft.<sup>21</sup> This has been achieved by (1) encouraging workers to report problems, (2) aggressively investigating violations, and (3) ensuring penalties are sufficient to discourage violations. Pennsylvania falls short in each of these three areas, but remedies are available. According to the Temple report, the key ingredients of successful anti-wage theft programs are:

**Partnerships with Trusted Community Organizations.** Because victims of wage theft (predominately workers of color, lower income workers and immigrants) are often distrustful of government, enforcement agencies should invest in relationships with community organizations known to be supportive of these workers. These organizations can educate workers on their rights and give them confidence to advocate for themselves. Cities have led the way on forming these partnerships, with Seattle, San Francisco, Chicago and Minneapolis at the forefront. Success requires investing both time and money (Seattle alone budgets \$1.5 million per year for this).<sup>22</sup>

Such partnerships are mostly missing in Pennsylvania, but the legislature could create incentives to enable enforcement agencies to form partnerships both statewide and locally.

**Advisory Boards** made up of employers and employees can advise government agencies on how to best support both industry and workers. Such boards have proven effective addressing a wide range of worker/business issues, including wage theft. Boards in Minneapolis and Seattle provide particularly good examples.<sup>23</sup>

Pennsylvania does not have a wage theft advisory board, but could readily form one. In doing so, it should empower this board to hold hearings and make recommendations to the legislature.

**Anti-Retaliation Protections**—Retaliation (including unlawful firing) against workers who file wage theft complaints is common.<sup>24</sup> Not surprisingly, this reduces workers' willingness to step forward. Confidentiality is the most powerful tool for protecting workers from retaliation. Allowing agencies to investigate an entire workplace based on a credible individual complaint also tends to protect complainants by further obscuring their identities.

Pennsylvania law doesn't always protect workers' identities when filing wage theft complaints, nor does it allow for anonymous wage complaints. Such protections should become state law. Illegal retaliation should be a separate violation, with fines that are separate from and in addition to those for wage theft.

**Adequate Investigative Resources**—Agencies charged with investigating wage theft must be adequately staffed and have the other resources needed to identify and pursue employers who steal from their workers. In 2018, Seattle's labor agency had a budget of \$6.6 million and a staff of 28; San Francisco's corresponding budget was \$6.3 million and its staff of 27 included 22 investigators.<sup>25</sup>

According to Nadia Hewka, a Senior Attorney at Community Legal Services of Philadelphia ("CLS"), the resources allocated to investigate wage theft in Pennsylvania are woefully insufficient.<sup>26</sup> In Pennsylvania the enforcement of laws related to wage theft falls to the Bureau of Labor Law Compliance ("the Bureau"), which is part of the Department of Labor and Industry. As of April 2020 the Bureau had 27 investigators for the entire state; four more slots were unfilled.<sup>27</sup> Adding to their existing workload, in October these investigators will also be tasked with enforcing PA's E-Verify law

in the construction industry, a responsibility that would seem to make it more difficult to build trusted relationships with many of the workers most susceptible to wage theft

Pursuing a wage theft case requires that a Bureau representative go in person to a court in the county where the violation occurred. As a result, it can take six months to get a response to a wage theft complaint in Pennsylvania.<sup>28</sup> Pennsylvania should dramatically increase enforcement staffing. Additionally, the Bureau should be empowered to levy administrative fines without going to court.

**Affirmative Enforcement**—Unscrupulous employers often reason that even if they get caught occasionally, wage theft in the normal course of business still makes economic sense. To address this, many jurisdictions allow investigations based solely on recognized patterns of wage theft in certain industries or by individual employers. Pennsylvania law allows this in some cases, but not for cases related to the non-payment of wages. Changing this would empower Bureau investigators to pursue known or reasonably suspected violators.

**Meaningful Penalties**—Jennifer Lee, a professor at Temple Law School and the co-legal director of Temple’s Sheller Center for Social Justice, notes that if penalties are insignificant some employers will conclude that cheating their employees pays off. Conversely, prevention of wage theft is more likely if guilty employers are required to pay accumulated stolen wages plus fines, penalties or liquidated damages equal to 100% to 200% of the amounts stolen. Beyond this, some jurisdictions (including Philadelphia) can punish serious offenders by revoking business permits or licenses, by publicizing the names of offending employers to create a reputational penalty, or by giving all workers the power to place a “wage lien” on employer assets to facilitate the collection of judgments.<sup>29</sup> (Construction workers can already use liens to ensure payments are made.)

In Pennsylvania penalties are limited to 25% of the wages owed or \$500, and criminal wage theft fines are limited to \$300.<sup>30</sup> To become a meaningful deterrent, these must be increased substantially. CLS recommends increasing this to 200% of wages or \$1,000. CLS also endorses making each week of unpaid wages a separate violation (current law is unclear on this point); enabling wage liens; and ensuring wage theft violators (not taxpayers) cover the cost of investigations via incremental fines.

## Indicated Action

Republican majorities in the House and Senate have repeatedly stymied efforts to amend or replace the laws that address wage theft in Pennsylvania, primarily The Minimum Wage Act and the Wage Payment and Collection Law.<sup>31</sup> Appendix 1 lists myriad bills related to wage theft that have been introduced in the 2019-2020 Regular Session by Democrats; in every case these have been referred to House or Senate committees, where they will likely die at the end of this year.

Given that the amounts stolen via wage theft far exceed all other thefts combined, and that wage theft reduces government revenues, increases social service expenses, cheats the most vulnerable, puts honest companies at a disadvantage and weakens local economies, it is essential that Pennsylvania strengthen its laws to allow aggressive investigation, prosecution and punishment of wage theft.

**Exhibit I: Bills Addressing Wage Theft in the 2019-2020  
Regular Session of the Pennsylvania Legislature**

**Senate Bills**

<b>Bill #</b>	<b>Short Title<sup>32</sup></b>	<b>Sponsor</b>	<b>Most Recent Action</b>
SB75	An Act amending the Wage Payment and Collection Law, further providing for definitions; providing for duty of department to report; further providing for civil remedies and penalties, for liquidated damages and for criminal penalties; providing for employer liability; and establishing the Wage Enforcement Fund.	Tartaglione (Dem SD2)	Ref. to Labor and Industry Committee January 23, 2019
SB 721	An Act amending the Equal Pay Law, further providing for definitions, for wage rates and for collection of unpaid wages.	Santarsiero (Dem SD10)	Ref. to Labor and Industry Committee June 6, 2019
SB38	An Act amending the Equal Pay Law, further providing for wage rates and for collection of unpaid wages.	Schwank (Dem SD11)	Ref. to Labor and Industry Committee January 11, 2019
SB12	An Act amending The Minimum Wage Act of 1968, further providing for definitions and for minimum wages; providing for gratuities; further providing for enforcement and rules and regulations, for penalties and for civil actions; repealing provisions relating to preemption; and providing for taxpayer savings and reinvestment.	Tartaglione (Dem SD2)	Ref. to Labor and Industry Committee March 22, 2019
SB813	An Act amending the Minimum Wage Act of 1968, further providing for definitions, for minimum wages and for civil actions.	Leach (Dem SD17)	Ref. to Labor and Industry Committee August 7, 2019
SB504	An Act amending the Equal Pay Law, further providing for definitions, for wage rates and for collection of unpaid wages.	Tartaglione (Dem SD2)	Ref. to Labor and Industry Committee April 3, 2019
SB79	An Act amending The Minimum Wage Act of 1968, further providing for definitions; providing for Federal compliance; and further providing for minimum wages and for exemptions.	Tartaglione (Dem SD2)	Ref. to Labor and Industry Committee November 22, 2019

**House Bills**

HB850	An Act amending the Equal Pay Law, further providing for definitions, for wage rates and for collection of unpaid wages.	Sims (Dem HD182)	Ref. to Labor and Industry Committee April 2, 2019
HB1215	An Act amending the Minimum Wage Act of 1968, further providing for definitions and for minimum wages; providing for gratuities; further providing for enforcement and rules and	Kim (Dem HB103)	Ref. to Labor and Industry Committee March 22, 2019

	regulations, for penalties and for civil actions; repealing provisions relating to preemption; and providing for taxpayer savings and reinvestment.		
HB405	An Act amending the Minimum Wage Act of 1968, further providing for definitions and for minimum wages; providing for tipped employees; and further providing for exemptions.	Nielson (Dem HD174)	Ref. to Labor and Industry Committee February 6, 2019
HB166	An Act amending the Equal Pay Law, further providing for definitions and for wage rates; providing for additional violations; further providing for collection of unpaid wages and for penalties; and establishing the Equal Pay Commission.	Donatucci (Dem HD185)	Ref. to Labor and Industry Committee January 28, 2019
HB2243	An Act amending the Construction Workplace Misclassification Act, further providing for improper classification of employees, for administrative penalties, for stop-work orders, for certain agreement prohibited and for use of penalty funds.	Harkins (Dem HD1)	Ref. to Labor and Industry Committee January 22, 2020
HB2215	An Act providing for criteria for independent contractors in the application-based service industry and for the powers and duties of the Department of Labor and Industry and the Secretary of Labor and Industry; and imposing penalties.	Burgos (Dem HD197)	Ref. to Labor and Industry Committee January 14, 2020
HB718	An Act amending the Construction Workplace Misclassification Act, further providing for improper classification of employees.	Snyder (Dem HD50)	Ref. to Labor and Industry Committee April 5, 2019
HB717	An Act amending the Construction Workplace Misclassification Act, further providing for administrative penalties, for stop-work orders, for certain agreement prohibited and for use of penalty funds.	Mullery (Dem HD119)	Ref. to Labor and Industry Committee April 5, 2019
HB715	An Act amending the Construction Workplace Misclassification Act, further providing for independent contractors. ["This bill addresses misclassification in the construction industry by further specifying that a worker would only be considered an independent contractor if the written contract is project-specific and time-specific."]	Galloway (Dem HD140)	Ref. to Labor and Industry Committee April 5, 2019
HB173	An Act amending the Construction Workplace Misclassification Act, further providing for improper classification of employees and for criminal penalties.	Caltagirone (Dem HD127)	Ref. to Labor and Industry Committee January 28, 2019

- 
- <sup>1</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
- <sup>2</sup> <http://nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>
- <sup>3</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
- <sup>4</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
- <sup>5</sup> <http://nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>
- <sup>6</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
- <sup>7</sup> [https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/23tabledatadeoverviewpdfs/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/23tabledatadeoverviewpdfs/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/>
- <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://rewire.news/article/2016/05/03/wage-theft-32-million-weekly-pennsylvania-low-wage-workers/>
- <sup>14</sup> <https://www2.law.temple.edu/csj/files/wagetheft-report.pdf>
- <sup>15</sup> <https://www2.law.temple.edu/csj/files/wagetheft-report.pdf>
- <sup>16</sup> <http://nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>
- <sup>17</sup> <https://www2.law.temple.edu/csj/files/wagetheft-report.pdf>
- <sup>18</sup> <http://nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>
- <sup>19</sup> <https://www2.law.temple.edu/csj/files/wagetheft-report.pdf>
- <sup>20</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
- <sup>21</sup> <https://www2.law.temple.edu/csj/cms/wp-content/uploads/2020/02/Enforcing-Wins-online-version.pdf>
- <sup>22</sup> <https://www2.law.temple.edu/csj/cms/wp-content/uploads/2020/02/Enforcing-Wins-online-version.pdf>
- <sup>23</sup> <https://www2.law.temple.edu/csj/cms/wp-content/uploads/2020/02/Enforcing-Wins-online-version.pdf>
- <sup>24</sup> <https://www2.law.temple.edu/csj/files/wagetheft-report.pdf>
- <sup>25</sup> <https://www2.law.temple.edu/csj/cms/wp-content/uploads/2020/02/Enforcing-Wins-online-version.pdf>
- <sup>26</sup> Nadia Hewka, Senior Attorney, Community Legal Services of Philadelphia, telephone interview, April 15, 2020
- <sup>27</sup> Bryan Smolock, Director of the Pennsylvania Bureau of Labor Law Compliance, telephone discussion, April 27, 2020
- <sup>28</sup> Nadia Hewka, Senior Attorney, Community Legal Services of Philadelphia, telephone interview, April 15, 2020
- <sup>29</sup> Jennifer Lee, professor at Temple Law School, telephone interview, April 10, 2020
- <sup>30</sup> <https://www2.law.temple.edu/csj/files/wagetheft-report.pdf>
- <sup>31</sup> Nadia Hewka, Senior Attorney, Community Legal Services of Philadelphia, telephone interview, April 15, 2020
- <sup>32</sup> References to existing laws have been simplified. In the Short Titles for these bills the original references are:
- For the Wage Payment and Collection Law: the act of July 14, 1961 (P.L.637, No.329), known as the Wage Payment and Collection Law
  - For the Minimum Wage Act: the act of January 17, 1968 (P.L.11, No.5), known as The Minimum Wage Act of 1968
  - For the Equal Pay Law: the act of December 17, 1959 (P.L.1913, No.694), known as the Equal Pay Law
  - For the Construction Workplace Misclassification Act: the act of October 13, 2010 (P.L.506, No.72), known as the Construction Workplace Misclassification Act
  - For the Administrative Code of 1929: the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929