

Issue: VA Jobs

Wage Theft in Virginia

In 2017 the Economic Policy Institute issued a report assessing the magnitude and prevalence of minimum wage violations in the ten most populous states, finding that millions of workers are cheated of billions of dollars of wages annually.¹ The report's recommended solutions were: "Strengthen states' legal protections against wage theft, increase penalties for violators, bolster enforcement capacities, and protect workers from retaliation when violations are reported."² That is exactly what the Democratic majority in the Virginia legislature has done over the past year. Now Virginia workers have a private right of action against employers who steal their wages, with stiff penalties for such violations, criminal prosecution possible, and a prohibition against retaliation.

Definition and Extent 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:³

- Paying less than the mandated hourly minimum wage
- Not paying overtime or required sick time
- Not allowing meal and rest breaks
- Taking tips
- Forcing employees to record fewer hours than actually worked
- Paychecks that bounce or employers simply not paying for work performed

Wage theft is very difficult to measure because it is greatly underreported—many workers do not know or understand their full rights on the job, or they may not know how to report the violation, and they also may fear being subject to retaliation if they speak up.⁴ The victims of wage theft tend to be more vulnerable than the average worker. People disproportionately affected include women, people of color, the young, and foreign-born workers.⁵

According to the Virginia Interfaith Center for Public Policy, which has taken a lead in lobbying for strengthening Virginia's protection of workers against wage theft, sectors in Virginia where wage theft has been widespread include agriculture, the poultry industry, restaurants, retail, car washes, landscaping, residential construction, and home care/child care.⁶

The 2018 report *Grand Theft Paycheck: The Large Corporations Shortchanging Their Workers' Wages* 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."⁷ These cases, in which employers have paid out a total of \$8.8 billion, involved occupations ranging from cashiers and security guards to financial advisors and pharmaceutical sales representatives.⁸

Putting Democrats in Power in Virginia has Put Employees in Power against Wage Theft

The election in 2019 put Democrats in the majority in the Virginia House and Senate. By the spring of 2020 the Virginia Wage Theft Law had been passed and signed by the Governor, effective on July 1, 2020. The bills HB 123, SB 838, HB 336, SB 49, HB 337, and SB 48 collectively do the following:

- Provide that an employee has a private cause of action against an employer who fails to pay wages to recover the amount of wages due, plus interest at eight percent annually from the date the wages were due. If the court finds that the employer knowingly failed to pay wages to an employee, the court shall award the employee (i) reasonable attorney fees and other costs and (ii) an amount equal to triple the amount of wages due.⁹
- Allow a general contractor to be found liable for a subcontractor's wage theft in large construction projects.¹⁰
- Provide that the Commission on Labor and Industry, if upon investigating the complaint of one employee regarding nonpayment of wages, has reason to believe other employees who have not filed a complaint may have also suffered non-payment of wages, is authorized to open an investigation into any other instances on behalf of other employees. The Commission may also institute proceedings on behalf of any employee against his or her employer.¹¹
- Forbid an employer from discriminating against an employee who has filed a complaint for non-payment of wages, either by dismissal or in any other manner, and allows the Commissioner for Labor and Industry to institute proceedings against the employer, which may result in reinstatement of the employee, recovery of any lost wages, and liquidated damages.¹²

In 2021 Governor Northam signed the Virginia Overtime Wage Act (VOWA), effective July 1, 2021. Previously Virginia did not have a state law governing overtime payments and only the federal Fair Labor Standards Act (FLSA) applied. HB 2063, passed on party lines, now:¹³

- Requires an employer to compensate overtime eligible employees at a rate not less than one and one-half times the employee's regular rate of pay for any hours worked in excess of 40 hours in any one workweek, as the FLSA does.
- Authorizes collective actions consistent with what is allowed under the FLSA.
- Differs from the FLSA in (i) the method of calculating the pay for salaried overtime eligible employees, (ii) providing a longer statute of limitations (three years rather than two), and (iii) providing for the same civil and criminal penalties, liquidated damages, as currently provided for failing to pay regular wages.

Keeping Democrats in Power in Virginia Is Required to Keep Employees Protected Against Wage Theft

A Republican state senator has already introduced a bill to repeal the Virginia Overtime Wage Act and limit Virginia's employees to the current provisions of the FLSA, acting just a month after the VOWA took effect.¹⁴ This bill, SB 7002, is in committee and unlikely to go further with a Democratic majority protecting employees. But should Democrats lose their majority, this bill could easily be reintroduced and could pass if a Republican is also elected governor. Parts or all of the 2020 Virginia Wage Theft Law would be equally at risk.

-
- ¹ <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
 - ² <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
 - ³ [https://wagetheftisacrime.com](https://wagetheftisacrime.com;); <http://wagejustice.org/wage-theft-facts/>
 - ⁴ <https://www.demos.org/research/steal-urgent-need-combat-wage-theft-retail>
 - ⁵ <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>;
<https://www.nelp.org/blog/exposing-wage-theft-without-fear-possible-necessary/>
 - ⁶ <https://www.virginiainterfaithcenter.org/economic-justice/wage-theft/>
 - ⁷ https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_prrel.pdf;
https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_report_revised.pdf
 - ⁸ https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_prrel.pdf;
https://www.goodjobsfirst.org/sites/default/files/docs/pdfs/wagetheft_report_revised.pdf
 - ⁹ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+HB123>
 - ¹⁰ <https://lis.virginia.gov/cgi-bin/legp604.exe?201+sum+SB838>
 - ¹¹ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb336>; <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=sb49>
 - ¹² <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb337>; <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=sb48>
 - ¹³ <https://lis.virginia.gov/cgi-bin/legp604.exe?212+sum+HB2063>
 - ¹⁴ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=213&typ=bil&val=sb7002>