

## Work and Wages

**PAY STATEMENTS A VITAL PROTECTION FOR WORKERS****Michael Shields**

The simplest way workers can ensure their employers have paid them all they're owed is to check their paystubs. But Ohio is among just nine states with no requirement that employers provide a pay statement to employees.<sup>1</sup> Ohio Reps. Brigid Kelly and Nino Vitale want to change that with House Bill 137 to require that all Ohio workers receive a pay statement. HB 137 passed the House and is now in committee in the Senate.

The Fair Labor Standards Act requires employers to maintain payroll records, but not to share the information with workers. This lack of transparency creates both honest mistakes and opportunities to short workers on their wages. Doing so is theft.

Policy Matters Ohio has documented a quiet crisis of wage theft in Cleveland<sup>2</sup> and Columbus.<sup>3</sup> Employers steal wages from an estimated 217,000 Ohio workers each year through minimum wage violations alone: On average, victims lose \$2,800. For workers employed by companies willing to steal from them, a paystub is a vital layer of protection.

Requiring employers to provide basic and accurate paystub information is a necessary element of preventing wage theft, but it isn't sufficient. Even though most states require employers to provide a paystub, an estimated 20 million U.S. workers do not receive them.<sup>4</sup> A landmark 2008 survey of low wage workers in New York, Los Angeles and Chicago by the National Employment Law Project (NELP) found that 57% of respondents had not received a paystub for their most recent work week, even though employers in all three cities are required to provide one.<sup>5</sup> This fact underscores the need to pair policy with robust enforcement. In Ohio, we need to start by making a payroll record a right for all workers.

House Bill 137 would help workers make sure their paychecks include the full wages they earn in each pay period, and account for all the hours they work. The bill was heard last week by the Senate Transportation, Commerce and Workforce Committee. The Committee should advance HB 137 to a vote, and the Senate should pass it.

**Why do working people need paystubs?**

Workers need a paystub to ensure that their employers have not shorted their wages, by accident or intent. Unscrupulous employers use tactics like shorting hours worked, not paying time-and-a-half rates for overtime, and misclassifying employees as contractors. When an employer must give workers a paystub, these practices become much easier to spot. If

<sup>1</sup> In 26 states, an electronic statement is enough, while 11 states require a written slip, and four states allow workers to receive a paper slip by opt-in or -out. Prime Pay, "State-by-state paystub requirements," <https://bit.ly/3btiDu9>

<sup>2</sup> Vidmar, William and Hannah Halbert. "Quiet Crisis: Wage Theft in Cleveland," August 26, 2019. <https://bit.ly/2wORU3N>

<sup>3</sup> Shields, Michael. "Wage Theft: A Quiet Crisis in Ohio," April 10, 2019. <https://bit.ly/2tMOFw8>

<sup>4</sup> Interfaith Worker Justice. "The goal: Paystubs for all workers," Paystubs for all, <http://bit.ly/39sjLbu>

<sup>5</sup> Bernhardt, Annette et.al. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Center, 2009. <https://bit.ly/2OKOTuS>

mistakes are made in pay, they can be quickly resolved. More than half of U.S. workers have spotted an error in their paystub at some time in their careers.<sup>6</sup> And if employers engage in wage theft, workers can use paystubs to document their cases and seek restitution.

Employers who don't provide paystubs cut their employees off from participation in basic aspects of economic life. When a worker lacks proof of income, securing everything from a car loan to an apartment may be off the table. Meanwhile, safety net programs exclude workers who can't prove they are working.

### Workers need paystubs:

- To rent an apartment or qualify for a mortgage.
- To qualify for credit, such as an auto loan.
- To verify eligibility for safety net programs.
- To determine whether they will owe a tax bill at filing time and whether their employer is paying payroll taxes at all.<sup>7</sup>
- To confirm that they are classified as an employee, not misclassified as a contractor.
- To know the identity of their employer.

According to the Northeast Ohio Coalition for the Homeless (NEOCH), receiving no paystub makes it difficult or impossible to qualify for basic services. A worker may have to go to the IRS office and ask for a record of pay, which the IRS itself may not have if the employer has not filed payroll tax forms. Traditional lenders may refuse buyers for auto loans, relegating them to buy-here-pay-here arrangements which charge higher interest. Such lenders often require family members to co-sign, jeopardizing their own credit standing if the worker's income is disrupted: Workers who can't prove employment get turned away for unemployment compensation when jobs fall through. Because low wage workers often work temp jobs with no guarantee of work on a given day, even NEOCH's housing requires eight paystubs.

### Paystubs help with wage and hour enforcement

Today just five wage and hour investigators and a supervisor oversee employment relationships for more than 5.6 million Ohio workers. That's one staffer for every 932,367 workers. Without a paystub, employees are deprived of critical information to protect their rights. When a paycheck is smaller than expected, the worker may not understand why, or may believe that the balance will come in the next check. A paystub puts everyone on the same page, every earnings cycle.

Ohio provides workers with a private right-of-action in wage theft cases, meaning they can hire a lawyer and sue their employer for unpaid wages. The system places on workers the burden of retaining and paying a lawyer; excludes workers whose pay is too low to afford an attorney; and lacks punitive authority. Yet, without sufficient wage and hour enforcement the private right-of-action is a vital tool for some workers to recover stolen wages.

Workers who do not receive a paystub may not get a check to verify earnings, either. The NELP study found that 97% of employers who paid workers in cash did not provide a

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<sup>6</sup> Reinicke, Carmen. "More than 50% of US workers have had a mistake in their paycheck - here's what to do," CNBC, November 5, 2018. <https://cnb.cx/38mDIAo>

<sup>7</sup> Mercado, Darla. "Here's the reason you need to check your paystub," CNBC, March 26, 2018. <https://cnb.cx/31LErsH>

paystub, and employers paying cash committed minimum wage theft violations at twice the rate of those that paid by check.<sup>8</sup>

### Spotlight

#### Payroll debit cards profit by restricting workers' access to information and pay

While employers who pay in cash are more likely to steal from their workers, a growing number of employers pay workers on debit cards that charge excessive fees. Some employers enroll their employees in payroll debit schemes without their consent.

Payroll debit cards are most common among lower-paid workers. They can provide benefits for workers without checking accounts and access to other basic banking services, but some come with predatory costs. Payroll debit card issuers market themselves to employers as low or zero cost payroll services. Instead, workers bear the costs. Card issuers can charge workers to access their money, check their balances, or do other banking. Sometimes card issuers even share profits with employers to gain access to workers.

Netspend, the largest payroll card issuer, charged workers 50 cents for each card purchase, \$5 for reprinted statements, \$10 to close an account, and \$7.50 per month for card inactivity. In some cases, workers made less than the minimum wage once all of the fees they incurred were accounted for.<sup>9</sup> While it's not clear how closely payroll debit cards are linked with non-issuance of pay statements, payroll debit cards make profits by placing workers' information behind paywalls. Workers told the Cincinnati Interfaith Workers Center that their employers paid them on debit cards and didn't give them any paystubs.

Consumer Financial Protection Bureau rules require payroll debit card issuers to provide workers with a list of fees upfront. While all states require employers to provide workers with some other means of pay, in Ohio employers can give payroll debit cards by default. The employee must opt out to receive another payment method.

To prevent abuse, workers receiving pay on a debit card should be able to access their pay at no cost at least once per pay period; have unlimited free access to their account information; and be free to opt into another payment method.<sup>10</sup> Any payroll debit system should be insured by the FDIC.

### What information does a paystub contain?

- **Gross and net pay amount.** Gross pay should equal the rate of pay times hours worked, match the rate agreed, and account for all hours worked. If there is no difference between gross and net pay, the employer has not withheld taxes. This is a red flag that the employer may be misclassifying the employee as an independent contractor. This leaves workers ineligible for unemployment or workers compensation and in for a big surprise when the tax bill comes. Independent contractors are responsible for both the employer and employee portion of payroll taxes. Thus, if an

<sup>8</sup> Bernhardt, Annette et.al. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Center, 2009. <https://bit.ly/2Si0PGL>

<sup>9</sup> Williams, Kalitha. "Testimony: Make sure payroll debit cards are good for workers," Testimony to Ohio House Commerce, Labor and Technology Committee on HB 253, May 7, 2014 <https://bit.ly/2OLdfVI>

<sup>10</sup> Ibid.

employer misclassifies and gives no paystub, they can shirk payroll taxes for months without the worker's knowledge.

- **Hours worked and rate of pay.** For hourly workers, the paystub should show the number of hours worked for the pay period, the hourly rate should match the rate agreed, and the hours times the rate should match the gross pay. A common practice among unscrupulous employers is to short workers on hours worked. A paystub helps workers verify they are getting paid for all their hours. Hours exceeding 40 should be paid at 1.5 times the base pay rate for most workers. A paystub can help workers determine whether they are being paid hourly, or on a salaried basis. Employers sometimes misclassify workers as salaried to avoid paying overtime.
- **The dates of the pay period.** When employers are deceptive about the start and end of the pay period, they create uncertainty for workers about whether they have been shorted pay, or are simply owed pay that will appear in a later check.
- **Deductions.** Employers may make deductions only for specific things. These include taxes, withholdings for employee health insurance, union dues, and voluntary contributions to retirement accounts.<sup>11</sup> Employers may not dock employees' pay retroactively as punishment. They may not charge employees for mistakes that damage products or equipment, unless the employee has signed an advance contract and still receives at least the minimum wage.<sup>12</sup> In its 2008 report, NELP found that New York, Los Angeles and Chicago employers illegally withheld money from 41% of employees. A paystub should clearly state the amount and purpose of all withholdings.
- **The employer's identity.** Firms increasingly use tactics to get workers off their payrolls. These include using temp workers; misclassifying workers as contractors; subcontracting to outside firms who put workers on their payroll instead; challenging franchisor joint employment; and implementing Alternative Employer apparatuses that insulate firms from tax and workers' compensation liability. These schemes help some firms get away with not paying workers at all. When a worker seeks legal help, they often learn that the business they've been reporting to is not their official employer. In some cases, workers are employed by subcontractors that run up big back-wage bills then dissolve the business and form a new one under a different name.

Most Ohio business owners follow the law and cultivate partnerships with their workforce. Providing an accurate and regular pay record establishes good faith between the company and workers, and may boost morale and productivity. It's an essential verification that workers need to obtain credit, secure housing, and verify their eligibility for work supports.

## Policy Recommendations

Workers need paystubs to spot earnings discrepancies and correct any mistakes; protect themselves from employers who would steal from them; verify eligibility for public work supports; and qualify for everything from a bank account to an apartment. Withholding paystubs from workers relegates them to unofficial employment status and closes off access to participation in basic facets of economic life. The Ohio House has passed House Bill 137 to address the problem. The bill now stands before the Transportation, Commerce and Workforce Committee in the Senate. The Committee should advance HB 137, and the Senate should vote it into law.

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<sup>11</sup> Ohio Revised Code 4113.15 Semimonthly payment of wages. <http://codes.ohio.gov/orc/4113.15>

<sup>12</sup> Ohio Revised Code 4113.19 Payment in scrip prohibited at higher prices - deductions from wages prohibited. <https://bit.ly/2OKPBZ4>