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Work and Wages

Wage Theft: A quiet crisis in Ohio

In absence of state investment, cities can take the lead

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Executive Summary

Wage theft is a serious and underreported problem. The National Employment Law Project estimates that wage theft accounts for some \$15 billion in nationwide losses each year and exceeds losses from shoplifting.¹ What's worse, wage theft most often harms poor workers who are both most dependent on their wages to survive, and most likely to face harsh consequences for speaking out. In Ohio, an estimated 217,000 workers face wage theft each year through minimum wage violations alone.² Six wage and hour agents monitor labor practices for over 5.5 million workers on a budget that shrinks with each budget cycle while the state legislature looks the other way.

Wage theft persists in Ohio because enforcement is lax. Too few resources are spent on wage and hour investigators, and employers face too few consequences when caught. The state should add at least \$1 million to the Bureau of Wage and hour this budget cycle to add to its six current staff and enable a strategic enforcement approach. And Ohio should discontinue its practice of foregoing treble damages for first-offenses.

Until the state legislature begins treating wage theft with the severity it deserves, cities can take steps to prevent wage theft within their jurisdictions. Cincinnati passed a wage enforcement ordinance in 2016,³ directing the city to take all possible action to recover incentives given to business if those businesses, contractors, or subcontractors violated wage laws. The ordinance strengthened oversight of incentivized projects and asserted the city's commitment to workers and law-abiding businesses. These changes are making a difference in Cincinnati. Columbus should be the second Ohio city to take on this challenge.

Other Ohio cities should follow suit. Cities can use:

- **Procurement.** Cities can prohibit contracts with any business that has a wage and hour violation in the past five years.
- **Licensing.** Cities can pull licenses or deny renewals for companies found to have violated wage and hour laws.
- **Tax Enforcement.** Employers that cheat workers of their wages are also committing tax fraud. Cities with an income tax can prosecute them.
- **Tax incentives.** Cities think twice about tax incentives. If used, they should be strictly limited to companies that comply with all wage and hour laws, and should mandate that recipients enforce these laws with all contractors and businesses within their developments.

¹ Leo Gertner, "Billions are lost to wage theft every year," National Employment Law Project, March 2019, available at <https://bit.ly/2Vw0lGT>, accessed April 9, 2019.

² Cooper, David and Teresa Kroeger, "Employers steal billions from workers' paychecks every year," May 10, 2017, <https://bit.ly/2U4Wt3s>, annualized pooled data from CPS-ORG 2013-2015

³ See, City of Cincinnati Municipal Code, Ordinance No. 22-2016

Ohio's quiet crisis

A quiet but pervasive problem

Wage theft is a pervasive problem in Ohio and the nation. Using data from the Current Population Survey, the Economic Policy Institute estimates that employers steal wages from 217,000 Ohio workers through minimum wage violations alone.⁴ Nationally, \$2 billion was recovered on behalf of workers in 2015 and 2016 – this represents a fraction of total losses which experts think are near \$15 billion each year.⁵ Among the nation's 10 largest states, Ohio ranked second in the share of low-wage workers reporting wages below the legal minimum wage in the CPS.

Wage theft occurs when employers refuse to pay promised wages, pay less than the minimum wage, fail to pay for all hours worked, or don't pay overtime compensation as required by law. Wage theft also includes other types of payroll fraud, which occur when employers misrepresent their true legal relationship with employees by treating workers as independent contractors (misclassification) or pay workers under the table. In both instances, the employer is misrepresenting its tax liability. Minimum wage violations alone are estimated to cost Ohio workers \$600 million per year.⁶ An earlier report by the Ohio Attorney General estimated that more than 900,000 Ohio workers were misclassified annually, costing the state of Ohio about \$790 million in lost unemployment compensation payments, workers' compensation premiums, and state income taxes.⁷

Ohio drops the ball

Ohio dedicates far too few resources to fighting wage theft to address or even fully understand the scope of the problem. Today, just five investigators and one supervisor oversee wage theft enforcement in a state that has more than 5.5 million jobs.⁸ The US Department of Labor also has investigators in Ohio with jurisdiction to enforce the federal Fair Labor Standards Act. Accounting for state investigators only, Ohio has one investigator for every 932,367 workers. And matters are getting worse: funding for the Bureau of Wage and Hour is down more than 24% on an inflation adjusted basis since 2010 and under the current budget proposal it will fall further. This has consequences. The Bureau only responds to complaints. There's simply not enough staff to engage in sector-based strategic enforcement or to develop a more proactive policy of engagement. Wage theft victims are often afraid to come forward to assert their rights. Many workers fear employer retaliation or are especially vulnerable because they are not citizens. A complaint-driven process makes it less likely that an employer will get caught, creating a disincentive to invest in getting the payroll right.

⁴ Cooper, David and Teresa Kroeger, "Employers steal billions from workers' paychecks every year," May 10, 2017, <https://bit.ly/2U4Wt3s>, annualized pooled data from CPS-ORG 2013-2015

⁵ McNicholas, Celine; Zane Mokhiber and Adam Chaikof, "Two billion dollars in stolen wages were recovered for workers in 2015 and 2016—and that's just a drop in the bucket," December 13, 2017, <https://bit.ly/2KtIVgS>

⁶ Cooper, David and Teresa Kroeger, "Employers steal billions from workers' paychecks every year," May 10, 2017, <https://bit.ly/2U4Wt3s>

⁷ Report of Ohio Attorney General on Impact of Misclassification, Feb. 2009, at <https://bit.ly/2U6R102>, accessed April 10, 2019.

⁸ Halbert, Hannah, "Budget Bite: Wage Theft ignored in proposed budget," forthcoming

What is wage theft?

- **Minimum wage violations:** Paying workers less than the legal minimum wage
- **Overtime violations:** Failing to pay nonexempt employees time-and-a-half for hours worked in excess of 40 hours per week
- **Off-the-clock violations:** Asking employees to work off-the-clock before or after their shifts
- **Meal break violations:** Denying workers their legal meal breaks
- **Pay stub and illegal deductions:** Taking illegal deductions from wages or not distributing pay stubs
- **Tipped minimum wage violations:** Confiscating tips from workers or failing to pay tipped workers the difference between their tips and the legal minimum wage
- **Employee misclassification violations:** Misclassifying employees as independent contractors to pay a wage lower than the legal minimum

Reprinted from the Economic Policy Institute, Cooper, David and Teresa Kroeger, "Employers steal billions from workers' paychecks every year," May 10, 2017, <https://bit.ly/2U4Wt3s>

Lax enforcement makes wage theft too easy

The National Employment Law Project has noted that one reason wage theft is so prevalent is that employers do not see it as breaking the law. The Economic Policy Institute found that the average wage theft committed against an Ohio worker through nonpayment of the mandatory minimum wage was \$2,800. In Ohio, theft of \$2,800 is a felony punishable by a jail or prison term of up to 12 months.⁹ Yet employers found to have committed wage theft are usually required to pay back only a portion of the stolen wages – not even the full amount owed.

Ohio fails to treat wage theft as a crime. The state chooses to treat enforcement as an opportunity to bring an employer back into compliance rather than an opportunity to make workers whole. This policy choice sends a signal to other employers. Technically, Ohio provides wage theft victims triple the amount actually owed, as a deterrent against wage theft. Ohio chooses to forgo that penalty for first-time offenders, seeing it as a way to educate employers about their legal obligations, not as a serious violation.¹⁰ But Northwestern University researcher Daniel Galvin found that during the 13 months starting in 2008 that Ohio enforced its treble damage provision, wage theft cases showed a statistically significant decline.¹¹ Once Ohio set them aside, cases rebounded. According to an analysis of wage theft actions between 2012 and 2017 by the Plain Dealer the Department of Commerce collected about 10% of what workers were owed, about \$359,000.¹² The state of California has jailed employers for stealing from workers.¹³

Employers commit wage theft because it is easy. Too few investigators means the chances of getting caught are small, and employers face insubstantial consequences when they are caught. The position of relative power employers enjoy over workers means many workers are too intimidated to report at all, and some employers further abuse their position by

⁹ Ohio Revised Code 2913.71 Theft, <http://codes.ohio.gov/orc/2913.02v1>; Penalties <http://codes.ohio.gov/orc/2929.14>

¹⁰ See. Olivera Perkins, Do wage theft laws in Ohio harm or help workers?, The Plain Dealer, April 2018, available at https://www.cleveland.com/business/2018/04/does_wage_theft_enforcement_in.html#incart_2box, accessed April 8, 2019.

¹¹ See. Olivera Perkins, Do wage theft laws in Ohio harm or help workers?, The Plain Dealer, April 2018, available at https://www.cleveland.com/business/2018/04/does_wage_theft_enforcement_in.html#incart_2box, accessed April 8, 2019.

¹² See. Olivera Perkins, Do wage theft laws in Ohio harm or help workers?, The Plain Dealer, April 2018, available at https://www.cleveland.com/business/2018/04/does_wage_theft_enforcement_in.html#incart_2box, accessed April 8, 2019.

¹³ Julie A. Su, California Labor Commissioner Division of Labor Standards Enforcement, "2016-2017 FISCAL YEAR REPORT ON THE EFFECTIVENESS OF THE BUREAU OF FIELD ENFORCEMENT," https://www.dir.ca.gov/dlse/BOFE_LeaReport2017.pdf

retaliating against those who do. In the industries where wage theft is common, workers may not even know their rights. This may be either because the industry targets workers who have limited knowledge of their rights, such as undocumented workers in construction trades; or because the law itself is easily misunderstood, as with tipped workers, whose employers are required to pay any shortfall below the minimum wage, but often do not.¹⁴

Deterrence is a matter of heated debate among criminal justice experts, but those debates imagine a perpetrator who is likely to be young, with limited education attainment, and poor. Business leaders, by contrast, enjoy a position of relative privilege and status. Because business leaders do not want to view themselves as criminals – much less be seen that way by prospective customers – wage theft is one area of criminal law where diligent enforcement is likely to work. California’s Bureau of Field Enforcement reports a chilling effect on cases following their stepped-up enforcement.¹⁵

Strategic enforcement

States can combat wage theft using one of two approaches. Either they can respond to complaints as they receive them, or they can pursue a policy of strategic enforcement, which targets industries known for frequent wage theft. Strategic enforcement includes targeting industries with bad records; partnering with communities to build trust among workers; meeting workers offsite and outside of normal business hours where they feel safe to talk; and investigating tips, not just formal complaints by workers, who may not report because they don’t know their rights or fear retaliation.

When the state of California switched to a strategic enforcement approach, violations per investigation rose from 45% in 2010 to 149% in Fiscal Year 2016-17.¹⁶ Assessed wages rose even more, from \$2,484 per case to \$18,937. Many of the industries the California DOL identified as most likely to have bad actors also top the list in Columbus: construction, restaurants, janitorial work, and residential care homes.

Ohio should equip its wage and hour bureau to fight wage theft through strategic enforcement. An additional \$1 million per year would allow the agency to hire staff and put greater resources toward pro-active deterrence and enforcement.

Other policies Ohio should pass include enforcing the existing law and pursuing treble damages, and strengthening legal protections against wage theft, such as the anonymous reporting of wage theft violations, increasing penalties for violators, bolstering enforcement capacities, and protecting workers from retaliation when violations are reported. Ohio could make it easier for workers to determine whether they are getting paid properly under the law by enacting House Bill 137 pending before the House Commerce and Labor Committee. This legislation would require employers to provide employees with a statement of their earnings and deductions for the pay period.

¹⁴ National Employment Law Project, “Winning Wage Justice: An Advocate’s Guide to State and City Policies to Fight Wage Theft,” January 2011, <https://www.nelp.org/wp-content/uploads/2015/03/WinningWageJustice2011.pdf>

¹⁵ Julie A. Su, California Labor Commissioner Division of Labor Standards Enforcement, “2016-2017 FISCAL YEAR REPORT ON THE EFFECTIVENESS OF THE BUREAU OF FIELD ENFORCEMENT,” https://www.dir.ca.gov/dlse/BOFE_LeqReport2017.pdf

¹⁶ *Id.*

Cities should step up

Ohio cities are beginning to stand up to unscrupulous employers and combat wage theft within their own jurisdictions. Cincinnati took the lead in 2016 when it passed an anti-wage theft ordinance that empowers the city to claw back tax incentives awarded to companies that commit wage and hour violations. Cincinnati has incorporated wage enforcement into its Department of Economic Inclusion and is requiring contractors to post notices about wage enforcement and how to report concerns or possible violations.¹⁷

Brennan Grayson, the director of the Cincinnati Interfaith Worker Justice Center (CIWC), had this to say about the ordinance:

Since passage we have seen increased accountability to workers from the leadership levels of the city, administrators, general contractors, and others. City administration in Cincinnati now meets with the workers and unions at monthly meetings where we talk frankly about wage theft, current cases, and how to expand and build up a culture of compliance that recognizes a workers right to full pay, fair pay, and all that implies. We have had several complaints that have resulted in good outcomes for workers. We have seen that, overall, workers in Cincinnati are recovering wages faster, when they open their cases with the CIWC. After the ordinance cases are opening and closing, with 75% of cases ending with workers paid in full within 120 days.

Other Ohio cities should look to the example set by Cincinnati to protect residents and workers. The toolbox cities can use includes:

- **Procurement.** Cities can prohibit contracts with any business that has a wage and hour violation in the past five years.
- **Licensing.** Cities issue business licenses, including liquor licenses to companies in their jurisdiction. Cities can pull licenses or deny renewals for companies found to have violated wage and hour laws.
- **Tax Enforcement.** Employers that cheat workers of their wages are also committing tax fraud. Cities with an income tax can prosecute them.
- **Tax incentives.** Cities give a wide array of abatements to companies to entice them to open or stay in their communities. Research is shedding new light on how costly these approaches can be. They should be carefully considered if used at all. If cities do give tax incentives, they should be strictly limited to companies that comply with all wage and hour laws, and should mandate that recipients enforce these laws with all contractors and businesses within their developments.

Columbus needs greater wage enforcement

Columbus should follow Cincinnati's lead to end wage theft. Columbus is similar to Cincinnati in that both have heavily used tax abatements and tax incentives, both have made commitments to paying workers on city supported project a livable wage, and both have active worker centers.

¹⁷ See, City of Cincinnati, Office of Economic Inclusion at <https://www.cincinnati-oh.gov/inclusion/wage-oversight-compliance/>.

The U.S. Department of Labor confirmed 13,846 distinct cases of wage theft at 620 companies in the city of Columbus from 2007 through 2016.¹⁸ These comprise only confirmed violations of the federal Fair Labor Standards Act handled by the Department of Labor and do not include state investigations. They certainly represent only a tiny share of all incidents, yet they are helpful in understanding what industries harbor bad actors in the city. The Department found wage theft in 78% of all cases investigated. On average, companies with confirmed cases had 22.3 violations. The median number of violations per company was six. Confirmed violations ranged from one to 795. Companies found liable agreed to pay a median of \$1994 in back wages.

In these data, the top 15 industries were responsible for more than half of wage theft violations. Full-service restaurants alone accounted for 11% of cases. Other key culprits included fast food, home health and child care, janitorial services and temp agencies. Table 1 lists the industries where DOL found the most confirmed cases.

Rank	Industry	Confirmed cases	Share of all cases	Average number of violations per case	Average Weekly Wage
1	Full-service restaurants	68	11.0	18.2	\$316
2	Services to buildings and dwellings (janitors, landscapers, exterminators)	39	6.3	7.6	\$537
3	Travel accommodation (hotel & casino workers)	36	5.8	10.2	\$436
4	Limited service restaurants/fast food	28	4.5	25.8	\$316
5	Home health care	25	4.0	26.7	\$561
6	Child daycare services	21	3.4	13.5	\$405
7	Investigation and security services	20	3.2	26.9	\$535
8	Computer systems design and related services	12	1.9	9.1	\$1,718
9	Employment services (Temp agencies)	12	1.9	51.6	\$574
10	Other Misc store retailers (pet stores, mobile home dealers, art dealers)	10	1.6	14.4	\$490
11	Residential building construction	9	1.5	29.6	\$931
12	Building equipment contractors	9	1.5	8.2	\$1,136
13	Building finishing contractors	9	1.5	27.7	\$942
14	Grocery stores	9	1.5	29.9	\$441
15	Credit intermediation (mortgage & nonmortgage loan brokers,	9	1.5	81.1	\$1,403
16	Nursing care facilities	9	1.5	60.6	\$602
17	Nonresidential building construction	8	1.3	9.9	\$1,297
18	Other specialty trade contractors	8	1.3	12.6	\$1,069

¹⁸ Figure omits one variable reporting 36000 violations. This variable is an extreme outlier believed to be in error.

19	Gas stations	8	1.3	4.8	\$405
20	Cellular/wireless telecoms	8	1.3	6.3	\$1288

Source: Policy Matters Ohio from US Department of Labor Wage and Compliance Action Data 2007-2016, https://enforcedata.dol.gov/views/data_summary.php, statewide wages from Quarterly Census of Employment and Wages 2018 Q3, <https://www.bls.gov/cew/datatoc.htm>.

These industries share more in common than a prevalence for breaking the law when it comes to compensating workers. They also tend to pay very low wages, and to seek special exemptions from the traditional employer-employee relationship designed to protect workers under the Fair Labor Standards Act. The restaurant industry in Ohio and most states continues to pay a lower minimum wage than applies to other businesses, while temp agencies serve as labor intermediaries creating a wedge between what the worker earns and what the company actually using their labor pays. They also hold in common a disproportionate share of workers who are women and people of color.

Many of these same industries topped the list of low-wage employers with most frequent wage and hour violations nationally. In Fiscal Year 2017, food service, retail, construction, healthcare and hotels were the top five culprits, accounting for 14,523 cases and 125,716 affected workers between them.¹⁹ Child care services, janitorial services, and temporary help also made the top 10.

Wage Theft is more prevalent in some industries but it is not isolated to those jobs types. It happens at many different types of workplaces. Table 2 shows the companies with the most violations according to the Department of Labor enforcement data.

Table 2		
Top 20 wage and hour violators according to DOL enforcement data in Columbus, 2007-2016		
Company	Industry	Number of violations
Hollywood Casino Columbus	Casinos (except Casino Hotels)	795
AEP Electric Company	Electric Power Distribution	598
Franklin County Sheriff's Office	Local Police Protection	547
Atrium Living Centers, Inc.	Nursing Care Facilities	381
	All Other Miscellaneous	
	Fabricated Metal Product	
Columbus Steel Castings	Manufacturing	329
Scioto Downs	Casinos (except Casino Hotels)	329
	Mortgage and Nonmortgage Loan	
Apex Mortgage Services, LLC	Brokers	250
Lifestyle Staffing	Temporary Help Services	247
Smith & Wollensky of Ohio	Limited-Service Restaurants	245
Interquest Service, Inc.	Temporary Help Services	228
	Supermarkets and Other Grocery	
La Plaza Tapatia	(except Convenience) Stores	227
	Mortgage and Nonmortgage Loan	
Residential Finance Corporation	Brokers	208
Salo, Inc.	Home Health Care Services	202
Parking Solutions, Inc.	Parking Lots and Garages	197
	Lessors of Residential Buildings	
Bradford @ Easton	and Dwellings	197

¹⁹ US Department of Labor, "Low wage, high violation industries," FY 2017, <https://www.dol.gov/whd/data/datatables.htm#panel1>

Nationwide Realty Investors, Ltd.	Lessors of Other Real Estate Property	190
Ohio State University	Colleges, Universities, and Professional Schools	171
Doctors Hospital	General Medical and Surgical Hospitals	154
Popeye's Chicken and Biscuits	Limited-Service Restaurants	154
Ohio State University Wexner Medical Center	General Medical and Surgical Hospitals	146

Source: Policy Matters Ohio from US Department of Labor Wage and Compliance Action Data 2007-2016, https://enforcedata.dol.gov/views/data_summary.php.

Some of Columbus's biggest companies topped the list of firms with Fair Labor Standards Act violations: Hollywood Casino (795 violations), American Electric Power (598). The Ohio State University had 317 violations between the university and the Wexner Medical Center.

Together these findings suggest wage theft is not an isolated or random problem in some industries, but is more likely to be part of a business model. The federal data also show that wage theft can happen to workers at large well-respected companies and isn't just limited to new business owners or fly-by-night contractors. When unscrupulous businesses get away with it, they rob their workers of earnings they are legally entitled to, put downward pressure on wages in affected industries, and harm businesses that follow the law. An approach of strategic enforcement, combined with robust notice and reporting standards is the best way to address wage theft. Columbus is well positioned to join Cincinnati in tackling this problem.

Conclusion

Wage theft is too big a problem to ignore. It hurts some of the state's poorest residents, who are both most dependent on their earnings to survive, and least likely to be able to assert their rights. It costs cities and the state vital tax revenues. And it creates an underground economy that harms legitimate businesses that follow the law.

Ohio must adequately fund the Bureau of Wage and Hour Administration to substantially increase its staff, and the agency should implement a policy of strategic enforcement demonstrated to increase effectiveness. Enforcement should include a provision of de facto triple damages payable to affected workers, along with significant fees and criminal prosecution including jail time for employers who intentionally or repeatedly flout the law. Such consequences would have a chilling effect on the practice.

Cities can use their powers of procurement, licensing, taxation and any tax incentives to protect their workers and residents against wage theft. Cincinnati has done so already and other Ohio cities should follow suit.

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