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# AN EPIDEMIC OF WAGE THEFT IS COSTING WORKERS HUNDREDS OF MILLIONS OF DOLLARS A YEAR

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**M**illions of Americans struggle to get by on low wages, often without any benefits such as paid sick leave, a pension, or even health insurance. Their difficult lives are made immeasurably harder when they do the work they have been hired to do, but their employers refuse to pay, pay for some hours but not others, or fail to pay overtime premiums when employees' hours exceed 40 in a week.

This failure to pay what workers are legally entitled to can be called wage theft; in essence, it involves employers taking money that belongs to their employees and keeping it for themselves. Amounts that seem small, such as not paying for time spent preparing a work station at the start of a shift, or for cleaning up and closing up at the end of a shift, can add up. When a worker earns only a minimum wage (\$290 for a 40-hour week), shaving a mere half hour a day from the paycheck means a loss of more than \$1,400 a year, including overtime premiums. That could be nearly 10 percent of a minimum-wage employee's annual earnings—the difference between paying the rent and utilities or risking eviction and the loss of gas, water, or electric service.

Survey evidence suggests that wage theft is widespread and costs workers billions of dollars a year, a transfer from low-income employees to business owners that worsens income inequality, hurts workers and their families, and damages

the sense of fairness and justice that a democracy needs to survive. A three-city study of workers in low-wage industries found that in any given week, two-thirds experienced at least one pay-related violation.<sup>1</sup> The researchers estimated that the average loss per worker over the course of a year was \$2,634, out of total earnings of \$17,616. The total annual wage theft from front-line workers in low-wage industries in the three cities approached \$3 billion. If these findings in New York, Chicago, and Los Angeles are generalizable to the rest of the U.S. low-wage workforce of 30 million, wage theft is costing workers more than \$50 billion a year.

It is useful to compare the cost of these wage and hour violations with crimes that are better recognized and greatly more feared, though they are much smaller in their overall dollar impact. All of the robberies, burglaries, larcenies, and motor vehicle thefts in the nation cost their victims less than \$14 billion in 2012, according to the FBI's Uniform Crime Reports.<sup>2</sup> That is well over one-third of the estimated cost of wage theft nationwide.

Looking in more detail, in the United States in 2012, there were 292,074 robberies of all kinds, including bank robberies, residential robberies, convenience store and gas station robberies, and street robberies.<sup>3</sup> The total value of the property taken in those crimes was \$340,850,358. Those are not the robberies that were *solved*; those are all the robberies that were reported to the police, anywhere in the nation.

No one knows precisely how many instances of wage theft occurred in the U.S. during 2012, nor do we know what the victims suffered in total dollars earned but not paid. But we do know that the total amount of money *recovered* for the victims of wage theft who retained private lawyers or complained to federal or state agencies was at least \$933 million—almost three times greater than all the money stolen in robberies that year.

We know this because EPI canvassed the state labor departments and attorneys general,<sup>4</sup> consulted the U.S. Department of Labor's annual budget, and relied on research for NERA Economic Consulting by Denise Martin, Stephanie Planich, and Janeen McIntosh on civil litigation settlements. Here's what we found:

- U.S. DOL recovered \$280 million from wage and hour violators.<sup>5</sup>
- State departments of labor in 44 states recovered \$172 million.
- State attorneys general in 45 states recovered \$14 million.
- Private attorneys recovered \$467 million in wage and hour class action lawsuits.<sup>6</sup>

We have not been able to determine how much more was recovered for wage theft victims by six state departments of labor (Alabama, Arizona, Delaware, Indiana, Louisiana, and Vermont) and five attorneys general (Arizona, Arkansas, Louisiana, New Jersey, and Oklahoma), so the 2012 total is greater than \$933 million.

Obviously, the nearly \$1 billion collected is only the tip of the wage-theft iceberg, since most victims never sue and never complain to the government. It is notable that the number of Fair Labor Standards Act (FLSA) cases filed in federal court each year has been rising rapidly, from 5,302 in 2008 to 7,764 in 2013, according to Federal Judicial Case-load Statistics reported by Seyfarth Shaw LLP.<sup>7</sup> The number of case filings is more than five times the number 20 years ago.

Congress must do much more to control this epidemic of wage theft, and could begin by granting President Obama's request to add 300 investigators to the staff of the Department of Labor's Wage and Hour Division. Ultimately, the

current staff of 1,100 investigators should be doubled, along with the associated staff in the office of the Solicitor of Labor, which prosecutes the division's cases. Congress should also finish the work begun in the House of Representatives and enact the various amendments that would prohibit the award of federal contracts to firms convicted of wage and hour violations. Amendments have been added to four fiscal year 2015 appropriations bills, and similar prohibitions should be added to every appropriations bill Congress takes up.

Finally, as we have pointed out in a report for the Center on Budget and Policy Priorities, the penalties under federal law for even willful and repeat violations of the law are minimal.<sup>8</sup> The maximum civil monetary penalty for failure to pay the minimum wage or the required overtime premium is \$1,100. For giant corporations such as Wal-Mart and Dollar General, maximum civil money penalties per violation should probably be at least \$25,000, while small businesses should be subject to smaller fines—perhaps \$5,000 per violation. Clearly, the fines should be sufficient to deter violations and to make it economically unwise to violate the law.

It is helpful to understand the variety of employer practices that can be considered wage theft and how devastating wage theft can be for workers living from paycheck to paycheck. Following are a just a sample of cases from state prosecutions and settlements finalized in 2012.

### **1. California Attorney General – Siker Car Washes**

In January 2012, California Attorney General Kamala Harris's office reached a \$1 million settlement with a group of eight car washes run by Dipu Haque Sikder that had routinely committed wage theft.

The list of violations by these eight businesses was extensive. Workers were required to wait on standby hours before their shifts began in case additional staffing was necessary, with no additional pay. The car washes frequently paid employees subminimum wages, failed to pay for overtime, and did not allow breaks. Those who quit or were fired never received their final wages. Moreover, workers were often unable to cash their paychecks due to insufficient funds in the company bank account.<sup>9</sup>

### **2. New York Attorney General – Veranda**

Veranda, an upscale Manhattan restaurant, reached a settlement in March 2012 with New York State Attorney General Eric Schneiderman's office over its illegal theft of wages from 25 employees. The restaurant paid employees less than the minimum wage, failed to compensate them for overtime work, and cheated them out of tips.<sup>10</sup>

Two Mexican immigrant busboys, Marco Jacal and Isidro Suarez, were paid no wages at all for their work and had to subsist solely on their share of pooled tips. Then, once a manager began to oversee tip distribution, their meager earnings shrank further. After checking with waitresses, they realized the manager was illegally taking a share for himself. At this point, Jacal and Suarez got in touch with an immigrant advocacy group, Make the Road New York, and subsequently the attorney general's office.<sup>11</sup>

After he was sued, restaurant owner Moutaz Ali<sup>12</sup> requested the working papers of his employees (as an intimidation tactic) and shortly retaliated against the two known whistleblowers — first cutting their hours and then firing them. The case settlement required the restaurant to pay restitution of \$25,000 to each of the two busboys and \$150,000 to the other 23 workers.

### **3. Kentucky Labor Cabinet – McDonalds**

By Kentucky state law, employees must receive a paid 10-minute break for every four hours worked. However, a McDonald's restaurant in Berea, Ky., failed to abide by this. By refusing to pay workers for their break time, the fast-food restaurant was able to keep its employees working later without extra pay. While 10 minutes may seem insignificant, the time—and especially the lost pay, adds up to a meaningful loss of income, especially for low-income workers. Between 2012 and 2013, McDonald's reached agreement with the Kentucky Labor Cabinet to pay \$29,000 in back wages to 203 affected workers.<sup>13</sup>

Underscoring how widespread the problem of wage theft is, Kentucky Labor Cabinet spokesperson Daniel Lowry reported that the state collected \$4.4 million in restitution on wage theft cases in 2013, while comparatively all robberies in the state totaled \$2.5 million.<sup>14</sup>

### **4. California Labor and Workforce Development Agency – Tadros & Youssef Construction**

After receiving a wage complaint from a worker who failed to receive any money for his work, California Labor Commissioner Julie Su's office began investigating contractor Tadros & Youssef Construction's work on the Highland Oaks Elementary School construction project. Su's office discovered that nine other employees earned below the prevailing wage and were not paid for overtime hours on this same project. The resulting settlement forced Tadros & Youssef to pay \$877,876.64 restitution to the 10 workers. The contracting firm is no longer in business.

During this project, Tadros & Youssef often hired workers under a promise to pay them by piece rate, i.e., according to the number of units produced. The contracting firm used this method to cheat workers out of their legally required pay without their knowledge. In her remarks on the case, Commissioner Su emphasized the point, "Piece rate payment should never be used as an end-run around minimum wage and prevailing wage laws. Workers are entitled to at least the hourly floor for every hour worked."<sup>15</sup>

### **5. Illinois Attorney General – Subcontractor of Classic Gutter Co.**

After an investigation by Illinois Attorney General Lisa Madigan's office, Mark Zwirecki, a subcontractor for Classic Gutter Co., was found guilty of 10 counts of forgery in committing wage theft against 10 Polish carpenters working under him on a project to soundproof homes near O'Hare airport.

Zwirecki, a subcontractor and foreman for Classic Gutter Co., deposited the money the company gave him to pay his workers directly into his own bank account. He then provided the employees an undisclosed wage far below the prevailing wage they were legally entitled to. According to the attorney general's office, Zwirecki's ability to speak Polish to the mostly non-English speaking carpenters aided the scheme, through which he stole \$270,753. Zwirecki was sentenced to 12 months of probation and forced to pay a \$10,333 fine on top of \$60,804 in restitution to the workers.<sup>16</sup>

### **6. New York Attorney General – Mystique Boutique**

Under a 2012 settlement with New York Attorney General Eric Schneiderman's office, Mystique Boutique agreed to pay \$925,000 in restitution to workers whom the company had deprived of wages.<sup>17</sup> At the chain of clothing stores,

employees often worked 10- and 11-hour days for six days a week with no overtime pay. According to the Retail Action Project, some Mystique workers were making as little as \$5.15 per hour and many were immigrants.<sup>18</sup>

To make matters worse, once the AG's office began looking into the matter, owner David Cohen tried to forcibly prevent employee cooperation with the investigation. He reportedly threatened several of his workers and even attempted to pay one \$50,000 to provide him with the names of employees speaking to investigators.<sup>19</sup>

## **7. Massachusetts Attorney General – Central Mass Disposal**

Massachusetts Attorney General Martha Coakley's office found that Central Mass Disposal, a company handling waste and recyclable collection in eight communities, was paying its employees below the legally required prevailing wage for government contracts from 2008 to 2010. Central Mass Disposal agreed to pay \$753,624.45 in restitution to 107 employees along with a \$120,000 civil penalty to the commonwealth.<sup>20</sup>

## **8. Oregon Bureau of Labor and Industries – Affordable Safe and Professional Flagging, LLC**

Throughout 2012, the Oregon Bureau of Labor and Industries (BOLI) dealt with repeated wage theft offenses by contractor Affordable Safe and Professional Flagging, LLC. The company routinely paid less than the prevailing wage and failed to pay overtime to employees who conducted traffic control on public construction projects. Over the course of 2012, the company was forced to pay a total of \$107,010.24 in back wages.<sup>21</sup> Due to these numerous violations, the Bureau of Labor and Industries disbarred the company in September 2012 for the next five years—preventing it from receiving any state contracts during this period.<sup>22</sup>

After its disbarment, the firm was allowed to finish its work on the Portland Reservoir Project (it was grandfathered into this contract). Astoundingly, this led to yet more instances of stolen wages as employees' paychecks bounced on several occasions and most received no pay for an entire month.<sup>23</sup> In 2013, the Oregon Bureau of Labor and Industries obtained a settlement of \$113,000 in back wages for 36 employees.<sup>24</sup>

## **9. Utah Labor Commission/Attorney General – Fooptube LLC**

After 95 employees of video game developer Sensory Sweep Studio/Fooptube LLC filed wage claims with the Utah Labor Commission, the case was prosecuted by Attorney General Mark Shurtleff's office. In October 2012, the attorney general achieved the first wage theft criminal conviction in Utah's history. David Rushton, founder, president, and CEO of the company, received a one-year jail sentence and was ordered to eventually pay at least \$1.2 million in back wages to the 95 employees in question.<sup>25</sup>

Rushton's employees frequently received paychecks that bounced because of insufficient funds. Many victims experienced real hardship as a result. Stephen Frost's first house payment almost fell through because his Sensory paycheck bounced. Eventually, because Frost continuously failed to receive wages he had earned, he and his family were forced to move in with relatives and rent out their house.<sup>26</sup>

But Rushton didn't only steal his employees' wages. He also stole \$1 million in employee retirement fund contributions he never deposited. Further, employees' health insurance was canceled because Rushton failed to keep pace with the

company's insurance bill. As a result, an employee was unable to get proper medication for a child who had recently undergone a heart transplant.<sup>27</sup>

## 10. Massachusetts Attorney General – Gymboree

The Gymboree Corporation agreed to a settlement with Massachusetts Attorney General Martha Coakley's office in March 2012 regarding its failure to allow store managers to take meal breaks. According to Massachusetts state law, all employees working more than six hours at a time must be afforded at least a 30-minute meal break in which they are relieved of all duties and free to leave the premises. Gymboree paid a total of \$130,000 in restitution to all current and former managers working between July 2009 and July 2011. Additionally the company was assessed \$360,000 in penalties and agreed to allocate \$13,600 to update company policies.<sup>28</sup>

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