



The Movement to End Wage Theft

*A Report to the
Discount Foundation*

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October 2011

Dear Colleague,

On behalf of the Discount Foundation, we are pleased to share this report on The Movement to End Wage Theft and want to express our gratitude and admiration to all those who made this report possible. To the author, Nik Theodore, whose skills as researcher and writer made the stories of those waging the battle against wage theft come alive. To all the individuals who shared their stories with Nik, whose courage and tenacity is truly building a movement to end wage theft. To our peer review panelists, Annette Bernhardt and Chris Owens of the National Employment Law Project, and Professors Janice Fine of Rutgers University and Dorian Warren of Columbia University whose knowledge of the issue provided invaluable guidance. And, finally many thanks to Sarena Neyman, who did the final editing and design of the report.

There is nothing more fundamental to the notion of economic justice than the premise that an employer must pay his or her employee for time worked. Yet today, millions of people in the United States — most of whom are paid at the bottom of the pay scale — are being cheated out of billions of dollars they have earned. Fearing retaliation, these workers are all too often too economically and politically vulnerable to challenge their employers. And until recently there has been too little meaningful enforcement of wage and hour laws at all levels of government. The Discount Foundation is committed to supporting worker justice organizing to end this insidious crime.

The groups you will read about in this report are on the front lines of this movement. They are first and foremost organizing and mobilizing workers to take action to challenge wage theft. They are raising awareness of the problem among the general public and elected officials; publishing research and attracting media attention. They're drafting new laws and demanding the enforcement of existing laws and regulations; and they are using litigation, consumer boycotts and other direct action aimed at employers who steal workers' wages. In the process they are building powerful coalitions of labor unions and other advocacy groups to amass the political will and power needed to implement reforms. Most remarkable about these organizations is that workers themselves are the leaders of these campaigns.

And while their successes are heartening, this is a movement still in its infancy and in need of much more support. Towards this end, we are asking for your help.

You can start by passing copies of this report onto colleagues, community organizations, unions, civic leaders and others. Link to this document on your website, Facebook page, twitter account and blog if you have one (www.discountfoundation.org/pdf/movement_to_end_wage_theft.pdf). Write about it and talk about it through every available channel. We also encourage you to consider supporting organizations engaged in wage theft campaigns, if you are not already doing so. Visit our new website for information about the Foundation and our grantees.

Sincerely,

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The Movement to End Wage Theft

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Introduction: A Fair Day's Pay

For six years Modesta has worked as a cashier in a retail store in Brooklyn, New York. When she started at the job she was paid \$5 an hour. She worked 60 hours, 6 days a week, but received no overtime pay. Last year she was given a “raise” and now earns \$6.60 an hour — still well below the State minimum wage. Most of her co-workers are paid even less, but she says her employer has been able to continue this practice because the workers are too scared to complain.

Jose was employed as a residential construction worker in Los Angeles who completed a range of tasks on the job including drywall installation, framing, tiling, cement pouring, and stucco finishing. He was employed as part of a small crew of five to eight workers. They began work each day at 7 a.m., stopped for a 15-minute lunch break at noon, after which they resumed work and stayed on the job until 8 or 9 p.m. These were long workdays, lasting between 13 and 14 hours, and Jose was paid just \$60 a day, well below the California minimum wage. His employer also violated the State’s laws pertaining to overtime pay, as well as meal and rest breaks.

Victor is a warehouse worker who is employed through a temporary staffing agency in Chicago. In order to evade legally mandated overtime pay laws, the staffing agency required workers to clock in using two different names. However, Victor is a member of a workers’ rights organization. He and the organization launched a pressure campaign against the agency demanding back wages, and Victor, along with 24 of his co-workers, received more than \$4,400 in unpaid wages.

The experiences of Modesta, Jose, Victor, and their co-workers are not anomalies in today’s job market. Such cases of wage theft — the nonpayment or underpayment of wages by employers — occur with alarming frequency across the low-wage labor market.



Chicago Workers Collaborative members, Brenda Rodriguez (left) and Silvia Perez (right), holding up a copy of a paycheck that bounced from their employer.

Common Wage Theft Scenarios

- Employers fail to pay all or part of a worker's wages.
- Employers do not pay legally required overtime wages.
- Employees are not compensated for work they are required to do before their shifts officially begins or after they end.
- Employers pay less than the minimum wage.

“Wage theft by unscrupulous employers places ethical employers at a competitive disadvantage against those who don’t pay workers and cheat on taxes.”

- Kim Bobo, Founder and Executive Director
Interfaith Worker Justice

Kim Bobo, the Executive Director of Interfaith Worker Justice, has documented hundreds of settlements reached by employers and the United States Department of Labor, with many individual settlements covering hundreds, and sometimes thousands, of workers and with sums totaling millions of dollars.¹ Large, high-profile settlements are a potent reminder both of the extent of employment-law violations perpetrated by employers and of the fact that wage theft is not a problem that is simply confined to marginal businesses.

And while the magnitude of recovered unpaid wages is striking, for every violation that is adjudicated, tens of thousands more workers are quietly losing significant portions of their pay each week, falling through the cracks of an under-resourced government enforcement system. These workers, many of whom earn low wages in the best of times, are faced with unmet needs and rising levels of household debt as a result of illegal employer practices. When combined with low earnings and tenuous job security, wage theft poses serious, every-day challenges to millions of workers and their families.

Powerful inducements exist for workers to accept this mistreatment and to endure workplace hardships individually and silently. Insecure employment arrangements, threats of employer retaliation, insufficient knowledge of employment laws, immigration status, little confidence that government enforcement agencies will safeguard workers’ rights, and plain economic necessity: together these conspire to raise the potential costs of worker activism in defense of employment rights. As a result, employers have the upper hand in low-wage industries — and the problem of wage theft deepens.

In this precarious environment, workers’ rights activists have taken aggressive steps to redress wage theft. Over the past decade, workers’ rights organizations and their allies have launched increasingly sophisticated campaigns that build upon grassroots worker organizing and bottom-up policy advocacy, and are rooted in worker-led attempts to strengthen enforcement of workplace standards. Some of these organizations are industry-specific, including those

arising from the activism of restaurant workers, household workers, day laborers, direct-care workers, and farm workers, while others pursue general low-wage worker organizing and service delivery. Many have entered into national alliances with other like-minded organizations, such as Interfaith Worker Justice, the National Day Laborer Organizing Network, the National Domestic Worker Alliance, National People's Action, the Restaurant Opportunities Centers United, and Jobs with Justice. They have forged strong working relationships with labor unions, immigrant rights coalitions, faith-based groups, community organizations, policy think tanks, and, to a lesser extent, government enforcement agencies. Through these efforts, workers' rights organizations have extended their reach; scaled up their efforts; and won significant organizing, legal, and legislative victories.

This report examines this emergent wage theft movement. It highlights the strategies that have developed to address violations of employment laws. Organizations have led direct-action campaigns against unscrupulous employers; drafted legislation and educated policymakers about the issue; pressed for stronger federal, state and local enforcement of wage and hour laws; and devised innovative strategies for improving working conditions in the low-wage labor market. These activities have propelled the problem of wage theft into public policy debates, and new efforts are underway to strengthen workplace protections. Through their collective efforts, workers' rights organizations are restoring the promise of workplace justice in low-wage industries.

The report is organized as follows. Section 1 examines the prevalence of wage theft in low-wage industries. Section 2 provides a description and assessment of anti-wage theft campaigns and the burgeoning movement to improve conditions through worker organizing, public education, and policy advocacy. Section 3 considers the role of government enforcement. Section 4 reviews the impact of anti-wage theft campaigns, focusing on unpaid wages collected and the scope of policy change. The final section lays out concrete recommendations for the movement's future.



“I worked at Fine Fare supermarket from 7:30a.m. until 9 p.m. with half an hour break, six days a week. They never paid me anything; I only worked for tips. There were five baggers and Fine Fare never paid any of us.”

- Luis Olivo, testifying before the City Council of New York City as part of the successful 2010 campaign to pass the Wage Theft Prevention Act.



Kim Cambra testifies at the House Executive Committee in support of Illinois Wage Theft Law. To her right sits State Representative Lisa Hernandez, the bill chief sponsor. Kim's advocacy was critical to the bill's passage.

1. The Epidemic of Wage Theft in America

Most workplaces in the United States are governed by core employment and labor laws that establish minimum standards for wages, health and safety on the job, fair treatment by employers, and the right to organize. Laws such as those guaranteeing minimum wages and overtime pay provide crucial worker protections, and have formed the bedrock of labor standards and workplace justice since the 1930s. In addition to safeguarding employee pay, these laws establish a level playing field for employers who abide by the law instead of resorting to substandard workplace practices to lower prices, gain a competitive edge, and boost profits.

Despite the importance of these laws to the economy, however, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, a comprehensive study of workplace practices in low-wage industries in Chicago, Los Angeles and New York City, revealed widespread violations of core employment laws. In analyzing survey results from 4,387 workers, researchers found that:²

- 26 percent of workers were paid less than the legal minimum wage (60% of these workers were underpaid by more than \$1 an hour);
- 76 percent of workers who worked overtime were not paid the legally required overtime rate (employees with a violation worked an average of 11 hours per week of unpaid or underpaid overtime);
- 70 percent of workers who performed work outside of their regular shifts did not receive any pay for this work; and
- 30 percent of tipped workers were not paid the tipped minimum wage.

“When the Duraco company started stealing our earned wages, we lost everything. My house was foreclosed on. I heard from some of my co-workers that they’re literally living out of their cars now. We fought for these amendments so this would never happen again.”

- Kim Cambra, Chicago Workers Collaborative leader

The violations documented in *Broken Laws, Unprotected Workers* are not confined to the “underground” or “informal” economy. High violation rates were found in a range of construction, services, and manufacturing industries that are among the largest and fast-growing sectors of urban economies. Violations of employment laws impact millions of workers nationwide, such as janitors, child-care workers, construction laborers, hotel housekeepers, home health aides, and restaurant workers. Wage theft is a *systemic problem* affecting men and women, U.S.-born and foreign-born workers, and older as well as younger workers.

Wage theft places severe financial burdens on low-wage workers, their families, and their communities. *Broken Laws, Unprotected Workers* reported that workers suffering wage theft lost an average of \$2,634 annually, this out of total yearly earnings of \$17,616. It is estimated that workers in low-wage industries in Chicago, Los Angeles and New York City alone lose a staggering \$56.4 million per week as a result of violations of wage and hour laws. These losses also impact all levels of government, since fiscally strained authorities do not receive tax receipts from wage payments or from associated consumer spending.

The extent of wage theft documented in research studies and by government statistics exposes a breakdown of government enforcement. An investigation into employer compliance with wage and hour laws by the U.S. Government Accountability Office found that enforcement actions by the Wage and Hour Division (WHD) of the U.S. Department of Labor decreased from 51,643 in 1998 to 29,584 in 2007, despite an increase in the number of worksites and employees.³ The number of investigators in the WHD decreased by 20 percent during this period, falling to just 732 nationwide in 2007. Furthermore, although the WHD recognized that low-wage workers are the segment of the workforce that is most vulnerable to violations of wage and hour laws, for much of the reporting period, the division failed to effectively identify and target low-wage industries. Even when the data were made available, WHD did not use the information to redirect enforcement resources to high-violation industries.⁴

“I went to New Orleans to help and to be part of history. I did the dirty, hard work that was needed. Yet, I was exploited by contractor after contractor who crammed us into filthy living spaces, provided next to nothing to eat, offered practically no safety precautions or equipment and paid workers late and so much less than even promised.”

- Testimony of Jeffrey Steele before the Domestic Policy Subcommittee of the Oversight and Government Reform Committee



“When I started my job as a janitor...my employer withheld my first month’s pay as a deposit. Then my hours were doubled, but not my pay. I had to accept it while I looked for another job. But I was afraid that if I left, I’d lose this money I’d earned. I stayed on for a year and half while my missing wages added up to at least \$6,000.”

- Joel Coronado Lugo of Casa Latina, testifying before the Seattle City Council

What is perhaps most remarkable about these organizations is that workers themselves are the leaders of these campaigns.

This breakdown in compliance monitoring has had a predictable effect on employer behavior. When the likelihood of detection is remote (or if the amount collected in penalties and damages is too small), employers in low-wage industries have little incentive to comply with the law; the low risk associated with noncompliance renders worker protections ineffective.

2. Wage Theft Campaigns: Organizing to Fight Back

To counteract the erosion of government enforcement, many workers’ rights organizations and their allies have stepped into troubled low-wage labor markets to organize workers and to press for legal and legislative remedies. These organizations intervene in labor markets where low-wage, precarious, and substandard jobs predominate by building a collective voice among workers who have been denied basic protections. In this way, they create a means for monitoring employer practices from *within low-wage industries*, making them crucial sites of organizing and worker representation. Through independent worker organizing, public education, and policy advocacy, workers’ rights organizations strive to ensure that employers abide by legally mandated pay laws and other labor standards, and when workers suffer nonpayment or underpayment of wages, they mobilize workers, communities, and allies to challenge employer practices.

Organizing to Redress Wage Theft

For most organizations, involvement in wage-theft campaigns began as increasing numbers of workers sought help in recovering unpaid wages; what is perhaps most remarkable about these organizations is that workers themselves are the leaders of these campaigns. Casa Latina is a community organization dedicated to improving educational and employment opportunities for Latino immigrants in Seattle. Its Workers Defense Committee is a worker-led organizing, education, and direct-action program that has tackled the problem of wage theft for more

than a decade. In response to the nonpayment of wages for day laborers working in the construction and landscaping industries, and consistent with its emphasis on leadership development and worker governance, Casa Latina recovers unpaid wages through direct worker involvement.

As workers in other industries began to report similar violations, Casa Latina extended its approach, developing strategies to prevent wage theft. This change involved expanding its day labor hiring program, which raises the wage floor and monitors employer practices (the hiring hall dispatched workers for 3,973 jobs in 2009), and founding a domestic worker training and job-placement program, in which 564 jobs were filled. Casa Latina also deepened its partnerships with labor unions, joining the Washington State Labor Council, AFL-CIO to press more effectively for government action in defense of workers' rights.

Many other organizations have followed a similar path, progressively expanding their wage-claim activities to reach greater numbers of workers. Sunflower Community Action in Wichita, Kansas is a multi-issue community organization. In the late 2000s, construction, landscaping, hotel, and janitorial workers began coming to the organization with reports of unpaid wages, including some cases in which employees had worked for extended periods without pay, and other cases in which workers had been laid off without receiving final paychecks. In many cases, affected workers stayed on the job for weeks or even months without pay because they feared that if they complained too loudly they would be fired and would never receive the back pay they were owed.

Having initially been drawn into wage theft cases through its mission to respond to the needs of local residents, Sunflower Community Action made wage theft a programmatic priority, relying on direct-action tactics aimed at employers who refuse to pay workers all or part of their wages. Locally, the organization has capitalized on its community connections and stepped up outreach and education activities to workers, while at the state and national levels it has channeled worker grievances to

In many cases, affected workers stayed on the job for weeks or even months without pay because they feared that if they complained too loudly they would be fired and would never receive the back pay they were owed.

“For over three years, I worked at Shoe Mania 11 hours a day, six days a week. That’s over 65 hours every week! But I was never paid overtime. Whenever I got my paycheck, it would only show that I worked 40 hours per week.”

- Ahmed Dalhatu, of Make the Road New York, former stock worker at Shoe Mania store in New York City.

In a large settlement in 2010, Wichita, Kansas' **Sunflower Community Action**'s activities resulted in more than \$45,000 in unpaid wages being recovered by 19 workers employed at a single company.

In Austin, Texas, a worker had completed a small construction project at a local gas station. The owner made a partial payment to the worker, but additional wages remained outstanding. The Workplace Justice program of the **Workers Defense Project** mailed letters, followed up with phone calls, and filed a claim with state government enforcement officials, none of which resolved the case. Finally, the organization applied public pressure through a demonstration at the gas station, and the wages were paid in full.

enforcement agencies. Sunflower Community Action is one of several signatories to a memorandum of understanding with the U.S. Department of Labor indicating that the Department will participate in public field hearings to learn more about the problem of wage theft.

In Austin, Texas, the Workers Defense Project (WDP) combats wage theft by combining organizing with state and local policy advocacy. Its Workplace Justice program uses worker education, direct action, and litigation to help workers recover unpaid wages. Approximately once a month, worker-leaders engage in a series of escalating pressure tactics to recover wages. While in many cases the amount recovered for individual workers is relatively modest, such awards are significant for the worker, and employers receive the message that wage theft will not be tolerated.

Workers Defense Project is committed to raising standards in the construction industry in Texas, a state that has the dubious distinction of not only having high levels of wage theft and one of the lowest average construction-industry wage rates, but also the highest construction-worker fatality rate in the country.⁶ Conditions in the Texas construction industry are a potent reminder of how standards can deteriorate in the absence of effective enforcement of employment laws. Through its research and organizing, the WDP has found that pay-based and safety-based violations are often intertwined in the workplace — employers who violate pay laws often disregard other laws and worker protections.

In June 2009, three workers who were involved in the construction of a high-rise apartment building in Austin fell to their deaths. Before the accident, workers had complained to the contractor about poor scaffold construction and a faulty lift but were told to use the equipment or quit. Fearing that they would lose their jobs and be denied back pay, the employees continued to work at unsafe heights. Following the accident, the contractor fled the state, leaving workers with significant unpaid wages. Workers Defense Project filed a lien against the property, and turned to public demonstrations as a way to highlight

construction safety issues and to attempt to recover the stolen wages. Approximately \$10,000 was recovered in partial unpaid wages for the surviving workers. Workers Defense Project has followed with a \$150,000 class-action lawsuit against the employer, seeking to fully recover wages for workers employed at this project site and another where the employer had also been under contract.

The wage-theft cases undertaken by Casa Latina, Sunflower Community Action, and Workers Defense Project underscore the lengthy, labor-intensive process of recovering unpaid wages. Even in relatively straightforward cases, often several attempts are needed before employers honor their employment obligations. In more complex cases such as the one involving a fly-by-night contractor, expensive legal action may be required.

Wage-recovery activities are typically undertaken with the dual purpose of ensuring that participants receive the back pay they are owed, and using this experience to engage workers in other workers' rights issues. The Chicago Workers' Collaborative organizes temp workers employed at factories and warehouses. The organization has established three "Contingent Worker Service Centers" as neighborhood-based points of contact from which it can organize workers to combat wage theft in the region's large temporary staffing industry. With its roots in immigrant worker organizing, but with a growing African-American membership, the Collaborative is bridging longstanding linguistic and cultural divisions between U.S.-born and foreign-born workers who are employed by temp agencies so that together they can press for improvements in pay and conditions. Because temp workers are employed at multiple worksites, a neighborhood approach to recovering unpaid wages is a way to reach workers who are dispatched to different worksites by a single staffing agency.

In December 2010, a group of African-American and Latino workers from a temp agency visited one of the Contingent Worker Service Centers to report that the agency had refused to pay them their wages from a previous week. The staffing agency told the employees that because the client firm, a printing company, had cancelled its contract with the agency,



Workers Defense Project protests against wage theft.

the workers would not be paid. The Chicago Workers' Collaborative initially sent a letter to the staffing agency demanding the unpaid wages. When the company ignored the request, pressure tactics were stepped up, and the workers, along with staff and members of the Collaborative, confronted the owner of the staffing agency, who relented and agreed to pay the workers. In total, the staffing agency paid \$13,860 to 42 workers who had been employed at the printing company. Several of these workers are now members of the organization, and they assist other workers in safeguarding their employment rights.



Restaurant Opportunities Center of Michigan members stage a protest in front of Andiamo Restaurant in Dearborn, MI. The organization won significant policy changes at the restaurant which was stealing tips and wages and discriminating against workers of color.

The workplace justice campaign of the Restaurant Opportunities Center of Michigan (ROC-MI) combines litigation and direct action to redress wage theft and to improve working conditions in the restaurant industry. In 2011, ROC-MI won a significant victory against a chain of fine-dining restaurants in the Detroit area where managers were violating several pay laws. The charges included failing to pay overtime to employees who worked more than 40 hours in a week, requiring employees to perform unpaid work “off the clock” before their shifts officially began, and tip stealing by managers. In a forward-looking attempt to recovery back wages and to improve workplace standards, ROC-MI filed suit against the employer and staged weekly actions. Facing escalating pressure, the employer sought to negotiate with the workers. A settlement agreement included recovered wages and tips, as well as several important changes to restaurant policy such as the provision of paid sick leave, new grievance procedures, and reforms to promotion policies.

Engaging with a broad segment of the local workforce, Make the Road New York (MRNY), a large, multi-site political and economic justice organization in New York City, has sought to improve working conditions through a variety of worker and community tactics. These approaches include direct action, such as public protests to garner media, consumer, and community attention; targeted consumer boycotts against exploitative employers; and litigation and the filing of formal complaints with government enforcement agencies to recover unpaid wages and other damages.⁷ By combining these approaches,

MRNY leverages community relationships, financial pressure, and reputational pressure to help vulnerable workers build collective power in the workplace.⁸

In marked contrast to the secrecy that typically accompanies employment relationships in retail, grocery, and other low-wage service industries, MRNY exposes working conditions and uses this information as a source of community-labor solidarity. Because many services industries are customer-facing and have low profit margins, they are susceptible to boycotts and other forms of consumer pressure. Moreover, because community support is highly visible through boycotts and other consumer tactics, at-risk workers gain confidence to challenge exploitative employer practices.

As is the case with other workers' rights organizations, MRNY's organizing and advocacy activities are directed by worker-run committees, and the organization advises workers to file wage-recovery claims with government enforcement agencies. Make the Road New York also works closely with the Retail, Wholesale, and Department Store Union (RWDSU) to conduct enforcement monitoring and to support union organizing drives. Employment-law violations are extremely rare in companies with union representation, so unionizing employees in workplaces with substandard conditions offers them a dual benefit. First, it grants them a voice at work, results in wage increases, and leads to improvements in working conditions. Second, it creates an ongoing mechanism for monitoring labor standards from within the workplace to ensure ongoing employer compliance with employment laws. Make the Road New York has worked with RWDSU to use the leverage gained through wage-theft campaigns to create openings for successful union-organizing drives within the retail sector.

Close working relationships with labor unions are a feature of many wage-theft campaigns, since unions bring crucial resources in terms of industry expertise, financial resources, and political influence. In some cases, novel initiatives



Make the Road New York members unite to fight for wage theft protection.

In 2010, **Make the Road New York** helped workers recover approximately \$1 million in unpaid wages, and the organization brought more than 30 wage theft cases to the New York State Department of Labor.



CLEAN Carwash Campaign members participated in a National Day of Action as part of the Los Angeles Anti-Wage Theft Coalition's efforts to highlight the crisis of wage theft in Los Angeles.

In October 2010, through the intervention of Los Angeles' **Community Labor Environmental Action Network (CLEAN)**, the California Attorney General filed a lawsuit against the owners of a chain of eight carwashes, seeking \$6.6 million in unpaid wages and penalties. Two months earlier, the owners of several other carwashes were sentenced to a year in county jail — and were required to pay workers back wages — for their part in committing wage theft and other abuses.

combine union and worker-center approaches to organizing in large-scale campaigns aimed at multiple employers in an industry. In Los Angeles, the Community Labor Environmental Action Network (CLEAN), a project of the United Steelworkers and a coalition of community groups, is organizing carwash workers. Many people work 50 or more hours a week, sometimes earning only customer tips, a violation of several wage laws. In addition, workers are routinely expected to perform off-the-clock work before their shift begins and after it ends, and they are exposed to hazardous chemicals, with little or no safety equipment or training.⁹

Like MRNY, the CLEAN campaign uses a combination of targeted litigation, consumer boycotts, direct action, and public education to place pressure on carwash owners to abide by employment and labor laws. The Carwash Worker Leadership Brigade places worker governance at the center of CLEAN's organizing, regulatory, and policy campaigns, and worker-leaders make strategic campaign decisions, meet with employers and regulatory agencies, and conduct worker outreach and organizing. Like WDP, CLEAN has a dual focus on wage and health issues, since carwashes often simultaneously violate multiple employment and labor laws. The CLEAN campaign has partnered with Southern California Coalition for Occupational Safety & Health to assist workers in filing complaints to California OSHA, which have resulted in substantial fines on carwashes.

Public Policy Campaigns

The campaigns summarized above reflect a maturation of grassroots organizing to redress wage theft. Innovation in this sector has been spurred by the everyday organizing efforts of these groups, as well as by their analysis of industry conditions and business practices. The core principle of worker-led advocacy has remained central to these campaigns, and the sums recovered are a testament to evolving worker leadership. At the same time, workers' rights organizations and their allies have sought to move beyond resolving individual and company-specific wage theft cases by

extending their advocacy efforts to federal, state and local policy arenas. The challenge here is three-fold:

1. To advocate for more vigorous enforcement of existing laws and to streamline regulatory processes so that wage-theft cases are adjudicated more swiftly;
2. To strengthen penalties for violators, increase damages awarded to workers, and improve wage-collection processes so that workers receive the pay they are owed; and
3. To craft new legislation and regulatory standards so that they pose a credible deterrent to wage theft.

The National Employment Law Project (NELP) has been a key resource in these efforts. Its Just Pay Working Group has convened representatives from unions, worker centers, legal services offices, and government enforcement agencies to strengthen partnerships with the U.S. Department of Labor, and NELP has supported organizing and advocacy by identifying best-practices models for community-agency cooperation, and crafting model language for state and local legislative and regulatory proposals.¹⁰

Across the country, legislation has been drafted, proposed, and enacted to strengthen wage-theft laws.¹¹ In Miami-Dade County, for example, the South Florida Wage Theft Task Force, a coalition of labor unions, immigrant-rights organizations, and faith-based groups successfully pressed for the passage of a wage-theft ordinance. The new law, the first of its kind in the country at the county level, creates a process for receiving and adjudicating wage claims, places the burden of proof on employers to demonstrate that wages have been paid, and stipulates that affected workers will receive damages equal to double the wages owed when an employer is found guilty of wage theft. The Miami-Dade County law is a model for other coalitions in Florida,



Members of the South Florida Wage Theft Task Force pose with a copy of the Miami-Dade County Wage Theft Ordinance they helped pass.



Governor Pat Quinn raising Just Pay for All T-shirt at the bill-signing ceremony for an amendment to the Illinois Wage Payment and Collections Act.

and replication efforts are underway in Palm Beach County and Tampa. This legislation also is being studied by policymakers in other states. Across the country, policy advocates are learning from successful wage-theft legislation as they tailor bills to address local conditions.

In New York, MRNY successfully championed the Wage Theft Protection Act which strengthens penalties on violators. The new law increases the amount that can be recovered in damages, above the lost wages themselves, from 25 percent to 100 percent; increases criminal

penalties for employers who fail to pay the minimum wage; and protects workers who speak out against violations from employer retaliation.

The Chicago Workers Collaborative has allied with three other workers' rights organizations to form the Just Pay For All Coalition. Just Pay for All has an impressive track record in helping to pass pro-worker legislation. Most recently, through alliance building with unions and community groups, the coalition successfully spearheaded an amendment to the Illinois Wage Payment and Collections Act that significantly increases civil and criminal penalties on employers who fail to pay their workers.

In New York, Domestic Workers United, an organization of housekeepers, nannies, and elder caregivers, along with its allies in the New York Domestic Workers Justice Coalition, helped pass the nation's first Domestic Worker Bill of Rights in 2010. Among the law's many provisions are rules establishing overtime pay, as well as requirements that employers notify employees in writing of their rate of pay; provide documentation of wages, hours, and deductions; and pay employees their full salary on a weekly basis within seven days of the end of the workweek. These requirements remedy some of the historic problems in employment law governing household workers, and they enhance transparency and accountability in employment arrangements, making it more difficult for employers to violate minimum wage and other pay laws.

In Seattle, Casa Latina was instrumental in advocating for a municipal wage-theft ordinance that was signed into law in May 2011. The ordinance makes wage theft a gross misdemeanor, and it stipulates that the city can refuse to issue a new business license or revoke an existing one if an employer is convicted of the crime. This law provides Seattle workers with an additional avenue for recovering unpaid wages.

Casa Latina also is a member of the Washington State Joint Legislative Task Force on the Underground Economy. In 2008 and 2009, the Task Force drafted several bills that were signed into law and issued a series of recommendations to expand the authority of state agencies to enforce workplace laws, particularly around the misclassification of independent contractors and violations of prevailing wage laws. In FY 2010, state agencies identified 1,677 unregistered businesses that were assessed more than \$38 million in unpaid taxes, premiums, interest, and penalties; agencies identified more than 11,600 unreported or misclassified workers; penalties were increased on employers who file false reports; and large-scale public education efforts were put in place to raise awareness of employment fraud.¹²

These figures reveal an additional dimension to the crime of wage theft that has received insufficient attention: employers who violate wage and hour regulations often are in violation of a range of other laws. They may be failing to pay taxes as they attempt to operate beyond the reach of enforcement authorities. Addressing the problem of wage theft is one way for cash-strapped governments to improve their fiscal position by supporting workplace justice.



Civil disobedience action protesting wage theft organized by UNITE HERE and CLUE-California (Clergy and Laity United for Economic Justice) at Spa Resort Casino in Palm Springs, CA.

3. Meeting the Enforcement Challenge

Workers' rights organizations have made important strides in recovering stolen wages and in strengthening wage-theft laws. However, given that government enforcement of workplace regulations in low-wage industries is inadequate, new laws alone are not sufficient to stem the tide of wage theft. Meeting the enforcement challenge will require government agencies to redouble their efforts by more effectively targeting high-violation sectors and engaging in greater cooperation with workers' rights organizations.¹³

David Weil explains that effective enforcement of workplace laws influences employer practices in two ways.¹⁴ First, by redressing past violations of wage and hour laws, enforcement actions improve employer compliance while also compensating workers for unpaid wages. Second, investigations deter other employers from breaking the law. As the probability of investigation increases — and with it the risk of being apprehended for violating wage and hour laws — incentive structures change and inducements for compliance are reinforced. Weil argues, however, that, though important, “a focus on back wage recovery ... is no longer sufficient for a goal of sustainable improvement” in compliance with wage and hour laws.¹⁵ Scaling up enforcement efforts so that they perform a stronger deterrence function will require that government agencies enter into strategic partnerships with workers' rights organizations.

The interventions of workers' rights organizations have primarily impacted the first of the two dimensions noted by Weil: improving compliance by individual employers. However, some organizations have engaged in strategic enforcement activities, while many others have been involved in work that can be regarded as the precursor to strategic enforcement. For example, MRNY targets high-violation segments of the economy where wage and



Fuerza Laboral members stage protest in front of the Quiche Bakery in Providencen, RI. Workers were being paid about \$500 per week and working 80-90 hours.

hour violations are standard business practice. The organization, along with RWDSU, has partnered with the New York Department of Labor (NYSDOL) in targeted-enforcement efforts. MRNY and union organizers engaged in employer identification and worker outreach, and the NYSDOL carried out investigations. Modeled after neighborhood watches that are designed to reduce street crime, this program — New York Wage Watch — targeted commercial districts for workplace sweeps, sending investigators into worksites to check for violations, and educating employers, workers, and neighborhood residents about employment laws. Such geographically targeted and industry-specific enforcement initiatives are capable of netting large sums in unpaid wages, while supporting the longer-term goals of improving compliance and strengthening deterrence.¹⁶ In one case, a group of upscale food stores was ordered to pay 550 workers \$1.5 million in overtime wages, minimum wage payments, and stolen customer tips.¹⁷

Workers Defense Project, too, has worked with regional offices of WHD to identify suspected violators. It also has won the criminal enforcement of wage theft by local police departments, and it has entered into a formal partnership with federal OSHA investigators to carry out targeted investigations of the Texas construction industry. The CLEAN campaign also is explicitly industry-focused, and it has brought a range of workplace violations to the attention of government enforcement agencies, resulting in several lawsuits being filed against carwashes by the California Attorney General.

Through innovative organizing initiatives, workers' rights groups have demonstrated the ability to reach deep into segments of local economies where workplace violations are rampant. Through their community connections they have been able to access and mobilize workers in the defense of workplace rights. Through partnerships with labor unions and advocacy



Members of Casa Latina meet with Secretary of Labor Hilda Solis in Spokane, WA

“I’ll be blunt: Anyone who views back wages and fines for pay violations as the cost of doing business is going to have big problems with my Department.”

- Hilda Solis, Secretary of Labor, speaking to the National Employment Lawyers Association.



This team of 30+ Citizens for Community Improvement (CCI) members visited the homes of two unscrupulous employers who owed their workers more than \$15,000. Over the past 15 months, CCI members have collected more than \$100,000 in unpaid wages.

groups, they have been able to move significant legislation at the state and local levels. And through strategic litigation, research, and organizing, they have demonstrated their nuanced understanding of the various industries in which they intervene.

But as impressive as these efforts have been, effectively addressing wage theft ultimately will require stepped-up government enforcement. In many places, collaboration between government agencies and workers' rights organizations has begun, and several national networks (Interfaith Worker Justice, the National Day Laborer Organizing Network, the National Domestic

Worker Alliance, National People's Action, and the Restaurant Opportunities Centers United) are establishing working relationships with the U.S. Department of Labor, state enforcement agencies, and local officials. These efforts need to be deepened and replicated elsewhere so that enforcement agencies are better able to strategically target resources to high-violation industries, and so that the deterrence effect of enforcement — the *prevention of wage theft* — becomes entrenched in industry business practices.

4. The Mounting Impact of a Movement on the Rise

Recovered wages are an important component of community-based wage theft campaigns: they return to low-wage workers at least a portion of what they are owed; they provide them with a measure of workplace justice; and they send a signal to employers that wage theft will not be tolerated. Furthermore, because these wage-recovery efforts are rooted in independent worker organizing, they form the basis for other types of worker-led employment rights advocacy. Discount Foundation grantees and their allies have been among the leading organizations that have been “scaling up” wage theft campaigns by trying to change employer behavior through organizing, litigation,

and policy advocacy. The impacts of this work have been notable. Millions of dollars in unpaid wages have been recovered, and new laws have been enacted in a number of states and localities, while additional state and local legislative initiatives are underway.

At the federal level, there is a renewed commitment to enforcing wage and hour laws by the U.S. Department of Labor. Three hundred new investigators have been added to the Wage and Hour Division, and the agency has moved to strengthen relationships with workers' rights groups across the country. Between January 2009 and July 2011, employers agreed to pay \$313 million in back wages to 517,000 workers as a result of agency investigations of violations of the Fair Labor Standards Act.¹⁸ The results of state-level enforcement are more difficult to measure because agencies do not keep uniform statistics. However, a survey of state enforcement agencies has found that most saw increases in back wages collected between 2006 and 2010.¹⁹

Still, collection levels pale in comparison to the scope of the problem. As the fight to end wage theft has moved to state capitals and city halls, workers' rights organizations have been leaders in developing legislative proposals to strengthen enforcement of wage and hour laws. Since 2007, new state and municipal legislation has been signed into law in at least a dozen states, and proposals are being developed in at least 15 others.²⁰ These local- and state-level policy changes provide a more robust set of protections that can benefit workers across the labor market, as well as reduce the influence of low-road employer practices on the competitive conditions in high-violation industries.

One of the achievements of workers' rights groups has been their ability to propel the term "wage theft" into policy debates, thereby reshaping the public debate around workers' rights. Interfaith Worker Justice, for example, has called for an annual national day of action against wage theft, which has raised awareness and increased media coverage of the problem. The network and its local affiliates have launched numerous wage theft campaigns that have



Casa Latina members protest wage theft in front of the Regal Cinemas in Seattle.

Since 2007, new state and municipal legislation has been signed into law in at least a dozen states, and proposals are being developed in at least 15 others.



Restaurant Opportunities Center member participating in a march at the organization's 2010 annual convening.

combined effective public outreach with wage-recovery efforts. Likewise, other national networks are framing the issue in these terms.

A review of major newspapers and print sources reveals that the term “wage theft” did not appear at all in the press until 2005. However, in the span of just six years, news stories using this frame have increased from eight in 2005 to nearly 200 in 2010.²¹ This framing has proven to be a potent concept that has contributed to the political salience of “wage theft” as a policy problem. So too has it resonated in local communities where workers have come forward in large numbers to challenge employers who flagrantly violate employment laws. This policy, media, and organizing work holds the promise of significantly altering the terms of the debate over labor standards in the United States, elevating worker justice issues and endowing them with renewed content and legitimacy. These efforts are among the most significant recent achievements in the field of workers’ rights, and they hold the promise of raising standards across the labor market and finally reversing the decades-long erosion of job quality that has undermined the economic security of millions of low-income families.

5. The Road Ahead

Despite the movement’s recent victories, the fight against wage theft is still very much in its infancy, having addressed a mere fraction of a rampant epidemic. Workers’ rights organizations have recovered millions of dollars in unpaid wages each year and have made significant inroads in identifying, redressing, and deterring wage theft — but much work remains to be done.

As this movement matures, workers’ rights organizations and government enforcement agencies will need to focus their efforts in the following areas:

Identifying wage theft. Through their ongoing contact with workers, grassroots organizations are the most important source of information on wage theft in low-wage industries.

They are well positioned to collect worker testimony, monitor employer practices, and identify the various ways employers evade workplace laws. Many of these organizations also have initiated research studies to more systematically document industry conditions. All of these sources of information are crucial for crafting effective enforcement strategies, as well as for drafting new policies and carrying out litigation against offenders. Government enforcement agencies also have an important role to play in documenting wage theft. Agencies should target inspections to high-violation industries, using their policing powers to directly investigate employer practices. Geographically targeted programs, like Wage Watch in New York, and industry-targeted initiatives, like those of the CLEAN campaign in Los Angeles, should serve as models for innovative enforcement strategies that expand the reach of regulatory agencies.²²



Make the Road New York members celebrate the signing of the Wage Theft Prevention Act.

Enforcement efforts would also benefit from better tracking of violations and recovery amounts. The U.S. Department of Labor effectively tracks the results of its investigations, but at the state and local levels collection practices could be improved. Systematic data collection would provide benchmarks for monitoring industry practices, and it would be useful for managing and documenting enforcement efforts. Likewise, further research on business practices in particular industries and in specific geographical areas would help in identifying wage theft, as well as in crafting legislation and improved enforcement procedures.

Redressing wage theft. For more than a decade, grassroots organizations have stepped into the void created by inadequate government enforcement of wage and hour laws, providing needed assistance to workers trying to recover unpaid wages. These organizations respond to reports of wage theft and mobilize resources in the wage-recovery processes. More problematically, government agencies also have adopted a reactive stance to wage recovery by primarily responding to individual wage claims. To increase the effectiveness of wage-



Restaurant Opportunities Center of Michigan raises public awareness of wage theft practices in a protest in front of Andiamo Restaurant in Dearborn, MI.

recovery efforts, agencies should (1) enter into partnerships with workers' rights organizations to receive and process multiple complaints against individual violators, and (2) *proactively* investigate repeat offenders and businesses in high-violation industries. In addition, there needs to be better coordination of enforcement activities and information sharing between the U.S. Department of Labor, its regional offices, and state enforcement agencies. Moving from reactive to proactive enforcement is necessary if the deterrence effect of enforcement is to be strengthened.

Detering wage theft. The primary responsibility for preventing wage theft lies with government enforcement agencies. As has been discussed, efficiencies in enforcement can be realized by formalizing partnerships with workers' rights groups, and by proactively carrying out targeted investigations. But a significant expansion of enforcement capacity is required if deterrence is to be enhanced. At all levels of government, however, fiscal pressures render substantial new budget allocations politically untenable. So to meet the enforcement challenge, agencies need to pursue other sources of revenue. Policymakers should revise wage theft statutes to increase penalties for violators of workplace laws. A portion of these penalties should be earmarked for funding future enforcement efforts. Such an approach offers two benefits. First, increased penalties enhance the deterrence effects of enforcement efforts since they raise the costs associated with violating workplace laws. Second, they provide for expanded enforcement capacity, which complements the deterrence effects of the penalties themselves, while also mitigating the fiscal demands of strengthening enforcement.

Conclusion

The organizations featured in this report are part of an emerging national movement to eradicate wage theft. This is only the first chapter of a far-reaching reform agenda whose success will depend on:

- Implementing broader outreach efforts, such as neighborhood surveys and wage-theft hotlines, to reach larger numbers of affected workers;
- Allying with labor unions to develop increasingly ambitious organizing initiatives that target high-violation industries;
- Removing exclusions in employment and labor laws that prevent workers in some occupations, such as taxi drivers and household workers, from fully being covered by workplace protections;
- Expanding their communications capacity so that the organizations are able to engage the media and ensure that problem of wage theft remains in public policy debates;
- Partnering with government enforcement agencies to improve workplace investigations;
- Crafting wage theft legislation and enforcement procedures that expand coverage, improve enforcement and collection procedures, and strengthen penalties; and, above all,
- Continuing to organize workers in low-wage industries who endure substandard conditions.

Through these combined efforts, the wage theft movement will finally restore the promise of workplace justice in low-wage industries.

[Increased penalties] provide for expanded enforcement capacity, which complements the deterrence effects of the penalties themselves, while also mitigating the fiscal demands of strengthening enforcement.

NOTES

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About the Discount Foundation

THE DISCOUNT FOUNDATION is a small private foundation concerned with large social and economic problems. Discount's primary goal is to make economic opportunity, the "American Dream" for generations of the poor, including immigrants, a reality for all. President Franklin Roosevelt in 1937, proposing the first national minimum wage law, sought to "end starvation wages" by guaranteeing America's "men and women a fair day's pay for a fair day's work." Nevertheless, today, almost 35% of all Americans, many working at one or more jobs, remain poor.

Since its formation in 1977, Discount has supported community organizing groups working to empower low-income and poor urban residents to improve their communities, living conditions and economic opportunities. In the mid-1990s, the Foundation initiated its Making Work Pay program focus, funding efforts to increase wages for the working poor and to build their political power, with a strong focus on living and minimum wage organizing and campaigns affect both public policy and private market forces.

In 2009, building on our experience and awareness of exciting, new opportunities in developing the power of the working poor to improve their economic status, the foundation decided to focus on Organizing for Worker Justice.

The Foundation believes that worker organizing represents a crucial avenue for low-wage workers to achieve greater economic justice, including a living wage and decent, safe and humane working conditions. Our commitment is to support collective action on the part of workers through community and faith-based organizations, especially those working in collaboration with unions and other types of worker organizations. Such community-labor alliances have proven that they can build sufficient power to secure major economic and other benefits for the poor, including immigrants, low-wage workers, their families and their communities.



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