City of Seattle
Department of Finance and Administrative Services

Wage Theft Characteristics: Strategies for Targeted Enforcement

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This report was conducted by FAS-CPCS to identify priorities for on-site wage monitoring on City of Seattle contracts.

Purpose and Scope

In recent years, wage theft has been recognized as a growing problem for American workers, especially those working in "blue collar" jobs and in low-wage industries. Of particular concern is the noticeable increase in reports of wage theft in the construction industry. Wage theft can take a variety of forms, which may be difficult to detect if regulators are not vigilant, including illegal deductions, "shorting" of hours, mandatory overtime, denial of earned benefits, paying employees below the mandatory minimum wage and employer retaliation against employees who issue complaints about unfair treatment in the workplace. It is the purpose of this report to detail the various types of wage theft, to look at the prevalence of each kind and the cost to both workers and to society, and to examine the common characteristics of wage theft both of employers and employees so that public agencies can use this information to determine which workers are most vulnerable to wage theft and where it is most common. Particular emphasis will be placed on the construction industry, with the intent that regulators and monitoring agencies may use this information to target enforcement efforts on those workers and sectors of the construction industry that have shown the greatest vulnerability to non-payment of due wages by employers and thus may be subject to compliance review.

Legal Background

There is no single all-encompassing definition of wage theft, but rather it is a cluster of actions that employers may use to deny workers their right to full compensation for work performed. Wage theft most commonly takes the form of one of the following illegal actions by employers: (1) Workers are not paid the legally required minimum wage; (2) Workers are not paid the prevailing wage (in cases where the Davis-Bacon Act applies); (3) Workers are not paid for all hours worked; (4) Workers are not paid the legally required overtime rate for employees who work more than 40 hours in one week; (5) Workers are not paid at all by employers; (6) Workers are misclassified by employers as independent contractors to avoid paying full compensation; (7) Workers do not receive their final paycheck. All types of wage theft are illegal under local, state and federal law, regardless of the form that it takes.

The relevant pieces of legislation here include the Fair Labor Standards Act of 1938 (FLSA), which establishes that employers must pay workers no less than the federally mandated minimum wage and must pay at least time-and-one-half wages for any employee who works over 40 hours in one work week. In addition, the Davis-Bacon Act of 1931 (amended in 2002) requires employers to pay their contractors or subcontractors the relevant prevailing wage rate for projects with federal funding. At the local level, there are additional laws strengthening the enforcement mechanisms against theft of wages. In 2009, the Washington State Legislature passed House Bill 3145, which amended RCW 49.48.082 to include penalties for perpetrators of wage theft of at least ten thousand dollars or ten percent of the total amount of unpaid wages, whichever is greater, plus interest accrued. Locally, Section 12A.08.060 of the Seattle municipal code was amended in 2011 to provide a legal definition for "wage theft" as failure to complete a promised payment to employees after services rendered, with the intent to avoid payment.

Prevalence of Wage Theft

Wage theft is, by definition, illegal, and as we have seen, mechanisms do exist for wage enforcement at all levels of government. However, there is growing evidence that non-payment of wages for services rendered has been rising rapidly in the U.S. over the last decade. The most comprehensive research on wage theft in the U.S. was conducted by the National Employment Law Project (NELP) and published in 2009. This study surveyed workers in low-wage workers in the three largest American cities (New York City, Los Angeles and Chicago). Among its findings, the study reported that over two-thirds (68 percent) of surveyed workers had experienced some form of wage theft during the previous work week. One-fourth of surveyed workers had been paid less than the mandatory minimum wage in the previous work week. Three-fourths of surveyed workers who had worked over forty hours in the previous work week did not receive overtime pay as mandated by the FLSA. Seventy percent of workers who worked additional hours beyond their shifts did not receive any compensation for this extra time. Forty-three percent of workers who complained about working conditions experienced illegal retaliation from their employer during the previous work week.

Cost of Wage Theft

When it occurs, wage theft is not trivial in its impact on workers or on society at large. Among workers in the NELP study who reported minimum wage violations, fully sixty percent of workers were underpaid by at least one dollar per hour. Among those workers who reported overtime violations, the amount of unpaid overtime was averaged at eleven hours a week. Half of workers who experienced an injury on the job were victims of illegal employer retaliation when the injury was reported and half of injured workers were forced to pay for medical costs themselves or through their personal health insurance (only six percent of surveyed workers had on-the-job medical expenses paid by workers' compensation insurance).

Among those workers who experienced wage theft, the average loss of income per worker was $51 (out of $339 of average weekly income). For a full-time worker, this amounts to an average annual loss of $2,634 out of $17,616, or 15 percent of total annual earnings. The NELP study estimates that over one million workers in the three cities surveyed experienced some form of wage theft in any given work week. This amounts to a total loss for low-wage workers of over $56.4 million every week because of denial of due wages and benefits by employers. This would amount to a loss of almost three billion dollars annually for these three metropolitan areas alone. In addition to this, at the national level, it is estimated that at least $19 billion is collectively stolen from U.S. workers every year just from non-payment of overtime wages.

Wage theft is not only a detriment to workers but also to governments through revenue lost to income taxes, workers' compensation taxes and social security deductions. Although no research has been conducted on total revenue lost nationally, a Massachusetts study found that from 2001-2003, $152 million of tax revenue was lost to that state because of worker misclassification alone and $82 to $142 million was lost in uncollected unemployment insurance taxes.

Characteristics of Wage Theft

The total cost of wage theft on workers and taxpayers is difficult to quantify, because illegal non-payment of due wages or benefits takes a variety of forms that can be concealed by unscrupulous employers. For regulators, it is often difficult to assess which areas are most vulnerable to this illegal exploitation because data compiled by the federal and various state Wage and Hour Divisions (WHDs) rely on self-reporting by agencies and on official complaints lodged by workers. As we have seen however, a substantial portion of the low-wage workforce fears retaliation by employers if they report wage violations, and such fears are not unfounded: 43% of surveyed workers who reported a wage or working condition complaint experienced some form of illegal retaliation from their superiors.

I. Industry Characteristics

The construction industry as a whole is routinely cited as one of the most vulnerable areas of employment for wage and hour violations. Kimberley Bobo, one of the nation's leading experts on the problem of wage theft (if not the foremost expert), states that workers' centers (which collect data on wage theft and other workplace abuses) routinely deal with complaints from the construction industry, and that this sector is notorious for some of the worst abuses, such as employee misclassification and total non-payment of wages.

According to the NELP survey (the only national data available), workers in "general construction" (including residential, commercial and public works) had a minimum wage violation rate of 10.5 percent, an overtime violation rate of 66.1 percent, an off-the-clock violation rate of 65.5 percent and a meal break violation rate of 56.7 percent.

On the state level, the Oregon Department of Labor's Wage and Hour Division reports that while construction made up only four percent of Oregon's workforce, it accounted for 18 percent of total wage and hour claims between July 2010 and June 2011. This accounts for 0.3 percent of the industry's workforce in that state. A large number of wage claims involved specialty trades like drywall installers who often subcontract work to smaller firms.

A New York study conducted in 2007 found that the most egregious violations of wage and hour laws were concentrated in residential construction, with over 20 percent of workers being paid "off the books," and another 16 percent being misclassified as independent contractors. It is estimated that as many as 50,000 construction workers in New York City are misclassified as independent contractors or are paid "off the books," while another study from Cornell found this to be numbered at 45,000 workers (paying workers "off the books" involves workers being paid in cash, without proper documentation of hours worked/ wages paid).

A survey from Austin, Texas found that 20 percent of construction workers were denied payment altogether, that half of construction workers were not paid due overtime for hours worked, that 76 percent had no health insurance policy and 76 percent had no sick leave.

II. Employer Characteristics

Wage and hour violations do not only vary by industry, but by also by common attributes of the companies that commit them. One very common indicator is payment type. There is a demonstrable correlation between wage and hour violations and payment types other than hourly wages (such as “piece rates” or payment based on production benchmarks). Workers surveyed in the NELP study who were paid an hourly rate had much lower rates of violations (15 percent) than those paid an irregular or non-hourly rate (46 percent). Payment by “piece rate” was also associated with a greater number of wage and hour violations.

Violation rates also varied according to the method by which employees were paid. Workers paid by company check experienced half the rate of violations compared to those paid in cash. Among those paid in cash, 93 percent of workers were not provided an itemized statement of earnings and deductions, which is required by law. Overall, workers paid an hourly rate and by company check had a violation rate one-fourth (12 percent) of those workers who were not paid an hourly rate and were also paid in cash (48 percent). Payment type and method are therefore strong indicators of the potential for wage theft among employers.

Company size has also been strongly associated with wage and hour violations. According to the NELP data, workers at companies with less than 100 employees experienced a minimum wage violation rate nearly double (29 percent) that of workers at companies with over 100 employees (15 percent). This association also holds for meal break violations, where three-quarters of workers at larger companies (as defined above) experienced a meal break violation compared to 64 percent of workers at smaller companies. This association also has implications for more serious issues such as worker safety. The New York State Occupational Safety and Health Administration found that in 2007 there were 22 construction fatalities, half of which occurred among workers at small construction firms.

Other than payment type, payment method and company size, certain other characteristics of an employer can be correlated with minimum wage violation rates. Among companies where employers offered health insurance to workers in the previous year, 12.9 percent of workers experienced a minimum wage violation rate, compared to 28.9 percent of workers in companies that did not offer their workers health insurance in the same period. Similarly, workers at companies that provided sick leave and paid vacation to employees experienced much lower rates of minimum wage violations (12.1 percent) compared to workers at firms that did not provide these benefits (27.9 percent). Finally, workers at companies who were offered a raise by their employers in the previous twelve months had much lower rates of minimum wage violations (13.7 percent) than workers who were not offered a raise in the same period (31.8 percent). These same indicators also correlated to overtime violation and off-the-clock violation rates, though the difference was much less compared to minimum wage violations. Meal break violations barely correlated at all to whether or not these benefits were offered to employees and the correlations between them are not statistically significant.

III. Employee Characteristics

The risk of wage theft can also be determined by the characteristics of the workers themselves. The gender, ethnicity, education level and immigration status of an employee are all strong indicators that these employees may be targeted for wage and hour violations by employers. Male workers experienced noticeably lower violation rates than female workers did (19.5 percent versus 30.2 percent). White workers were much less likely to experience a violation (7.8 percent) than Latina or Latino workers (32.8 percent), Asians (15.1 percent) and African Americans (19.1 percent). Workers without a high school diploma or GED were more likely to experience a violation (32.9 percent) than their counterparts who have a high school level education (23.1 percent) or than those who had some college or greater education experience (18.8 percent).

Employees that were not born in the U.S. were almost twice as likely to experience a violation (31.1 percent) than their U.S.-born counterparts (15.6 percent). Unauthorized immigrants had one of the highest reported rates of wage and hour violations (37.6). Authorized immigrants, while noticeably better off, still experienced above average rates of violations (25.7 percent). Violations between the sexes among U.S.-born workers did not vary considerably (14.9 percent for men; 16.1 percent for women), but among foreign-born workers a significant difference emerged between genders (21.9 percent for men; 37.4 percent for women). English proficiency does seem to play a role here, with fluent speakers experiencing a noticeably lower violation rate (23.7 percent) than that of their non-fluent counterparts (32.6 percent). The highest violation rates were experienced by foreign-born women (37.4 percent) and foreign-born workers with less than a high school diploma or GED in education (37.2). Two factors which did not have statistically significant associations with higher violation rates were employee age and number of years living in the U.S. The differences in demographics we have considered are associated with incidents of minimum wage violations, but do not correlate strongly with other types of wage theft, such as overtime, meal break or off-the-clock violations.

Conclusion

Wage theft is not a single, monolithic phenomenon of workplace exploitation. Instead, it is a range of behaviors that employers engage in order to avoid paying employees their due compensation for work performed. It may take the form of paying workers less than the legal minimum wage, of denying them meal breaks or overtime pay, of misclassifying workers as independent contractors, or of illegally deducting money from their paychecks (with the risk of employer retaliation against employees that report such actions). Employees are generally too intimidated to complain about unfair working conditions or may be ignorant of their legal rights. All industries are affected by this problem, which has been increasing in recent years at the same time that enforcement by public agencies has been declining. Limited resources can be maximized in the fight against disenfranchisement of workers by focusing on those employers that are more likely to exploit workers and those employees most likely to be exploited. Women, minorities and foreign-born workers are the most vulnerable to some form of wage theft, while smaller companies, those that do not provide benefits or pay their employees a non-hourly rate or by cash are more likely to engage in this practice. Within the construction industry, residential construction and specialty trades that utilize subcontractors are the most common offenders.

Appendix

TABLE 1: Bureau of Labor Statistics Household Data on Employed Persons by Occupation, Gender, Race and Ethnicity[1]

Occupation	Women	African American	Asian	Hispanic
Assemblers & Fabricators	38.4%	15.8%	6.9%	19.3%
Carpenters	1.6%	4.2%	1.9%	29.0%
Carpet/Tile Inst.	2.2%	8.8%	0.4%	37.8%
Cement/Concrete/Terrazzo	2.7%	5.8%	3.1%	53.3%
Drywall/Ceiling/Tapers	0.3%	2.7%	0.0%	62.0%
Electricians	1.8%	6.0%	2.3%	14.8%
Constr./Bldg. Inspectors	7.8%	5.5%	2.1%	7.7%
General Maint. & Repair	2.2%	8.4%	3.2%	19.4%
Helpers	4.5%	12.1%	1.3%	38.4%
Heating/AC Mechanics	1.6%	7.1%	3.2%	16.2%
Highway Maint. Workers	1.5%	11.0%	0.1%	12.4%
Iron/Steel Workers	2.8%	6.5%	0.0%	15.8%
Laborers	2.9%	8.4%	2.0%	41.2%
Machinists	3.8%	4.5%	4.9%	11.7%
Masons	0.1%	5.8%	0.3%	43.2%
Metal and Plastic Workers	19.5%	14.4%	6.6%	26.0%
Mining Machine Operators	0.3%	3.8%	0.0%	17.2%
Operating/Prod. Supervisors	19.5%	9.4%	5.8%	13.9%
Operating Engineers	1.3%	6.0%	0.2%	17.1%
Other Extraction Workers	4.5%	5.6%	1.0%	26.2%
Painters/Maintenance	5.5%	5.5%	2.0%	42.6%
Plumbers/Pipe/Steamfitters	1.3%	6.6%	1.5%	20.9%
Power-line Installers/Repair	2.4%	7.8%	0.3%	7.9%
Precision Inst./Equip. Repair	16.0%	9.1%	1.1%	13.3%
Roofers	1.5%	7.0%	0.5%	45.1%
Sheet Metal Workers	4.6%	3.2%	1.7%	12.1%
Telecom. Repair & Installers	4.8%	11.2%	1.9%	15.7%
Vehicle/Equip. Service Tech.	1.0%	5.4%	2.0%	17.3%
Welding/Soldering/Brazing	4.8%	8.7%	2.6%	23.0%

[1] Bureau of Labor Statistics (2012)

TABLE 2: Immigrants and Workers without a High School Diploma in the Top 15 Most Prevalent Construction Occupations[2]

Occupation	Total	No High School Diploma	Immigrants
Construction Laborers	1,740,573	33%	35%
Carpenters	1,239,047	24%	26%
First-Line Supervisors	752,924	15%	13%
Electricians	545,263	7%	14%
Painters, Construction & Maint.	544,877	35%	43%
Plumbers/Pipe/Steamfitters	428,850	19%	17%
Misc. Constr. Equip Operators	285,692	22%	11%
Roofers	252,671	43%	39%
Brick/Block/Stone Masons	161,978	36%	35%
Drywall/Ceiling/Tapers	157,257	44%	46%
Carpet/Floor/Tile Inst. & Finish.	157,246	35%	43%
Highway Maint. Workers	98,058	17%	8%
Cement/Concrete/Terrazzo	72,926	39%	29%
Construction Helpers	67,832	35%	36%
Sheet Metal Workers	62,725	17%	12%

TABLE 3: Immigrants and Workers without a High School Diploma in the Top 15 Most Prevalent Non-Construction Trades in the Construction Industry[3]

Occupation	Total	No High School Diploma	Immigrants
Construction Managers	641,842	7%	11%
Misc. Managers	282,409	8%	11%
Heating/AC & Refrig. Mech./Inst.	274,107	13%	12%
Secretaries/Admin. Assistants	204,329	5%	6%
Driver/Sales & Truck Drivers	174,580	26%	12%
Welding/Soldering/Brazing	98,452	23%	19%
Chief Executives	90,599	4%	10%
Bookkeeping, Accounting, Audit	87,969	4%	8%
Cost Estimators	83,200	3%	7%
Sales Representatives	80,354	3%	6%
Civil Engineers	73,619	0%	18%
Heavy Vehicle Equip. Tech/Mech.	67,946	17%	13%
Accountants & Auditors	57,728	0%	8%
Office Clerks, General	46,315	5%	10%
First-Line Supervisors	36,928	5%	6%

[2] National Association of Home Builders (2013)
[3] *Ibid*.

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