

Combatting Wage Theft
with the **Maryland Paystub**
Transparency Act *of* **2016**

ACKNOWLEDGEMENTS



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The Center for Popular Democracy works to create equity, opportunity and a dynamic democracy in partnership with high-impact base-building organizations, organizing alliances, and progressive unions. CPD strengthens our collective capacity to envision and win an innovative pro-worker, pro-immigrant, racial and economic justice agenda.

Executive Summary

Wage theft, or the illegal nonpayment of earned wages and benefits, affects millions of workers across the country and amounts to an estimated \$50 billion in lost wages annually.¹ The Center for Popular Democracy estimates that in Maryland alone, 580,000 workers are cheated out of a cumulative \$875 million in gross wages each year.² Wage theft is pervasive in numerous sectors of the economy and affects workers across the income spectrum, though it hurts low-wage workers most acutely.³

In states with weak paystub reporting requirements, unscrupulous employers perpetrate wage theft by masking illegal conduct on paystubs. Maryland's paystub requirements are exceptionally weak compared to other states, requiring employers to report only total gross pay and deductions.⁴ As a result of Maryland's outdated paystub requirements, some employers commit wage theft with impunity, creating an illegal competitive advantage and an uneven playing field for law-abiding competitors.

Maryland's legislature now has the opportunity to take a simple yet effective step to reduce wage theft by strengthening paycheck transparency. The Maryland Paystub Transparency Act of 2016 requires employers to include crucial information on the paystubs they distribute to employees: pay rate (hourly, overtime, attendance, bonus, and/or piece rate), allowances, deductions, hours worked, and basic identifying information for the employer. Since employers are already required to maintain such information, simply sharing it with their employees requires a minimal shift in practice, striking a significant blow against wage theft at virtually no cost. The Maryland Paystub Transparency Act of 2016 will help employees understand whether they have been paid correctly, deter deceptive payroll practices, and make employers more accountable to workers.

1 Brady Meixell and Ross Eisenbrey, "An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year," September 11, 2014, <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>

2 We based our methodology on the work in "Working Without Laws" (Bernhardt et al) that reached vulnerable workers who often are missed in standard surveys, such as unauthorized immigrants and those paid in cash. (January 2016)

3 Annette Bernhardt et al, "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Project, 2009, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

4 MD Code Ann. Lab & Empl. Art. § 3-504(a)(2).

Background

In recent years, elected officials and civic leaders in cities and states across the country have begun to turn meaningful attention to the widespread issue of wage theft—the illegal nonpayment of earned wages and benefits. Wage theft takes numerous forms, all of which systematically deny workers their hard-earned wages, including: failure to pay minimum wage or overtime, illegal deductions from pay, requirement of work off the clock, and misclassification of employees as independent contractors.⁵ Wage theft is pervasive across numerous sectors of the economy, from large corporations to small businesses.⁶ It affects workers across the income spectrum, but hurts low-wage workers—who are disproportionately immigrants and people of color—most acutely.⁷ Wage theft also negatively affects the broader community by impoverishing those most likely to spend money on goods or services purchased in the local economy and increasing reliance on our publicly-funded safety net.

Millions of workers experience wage theft each year. The National Employment Law Project’s 2009 study of wage theft in three major cities, still the gold standard of wage theft research, found that total annual wages stolen from front-line workers in low-wage industries approached \$3 billion.⁸ Generalizing these findings to the rest of the population, the Economic Policy Institute estimates that wage theft costs America’s low-wage workers more than \$50 billion each year.⁹ The Center for Popular Democracy estimates that **in Maryland alone, 580,000 workers are cheated out of a cumulative \$875 million in gross wages each year.**¹⁰

Maryland’s legislature has the opportunity to take a simple yet effective step to reduce wage theft by strengthening paycheck transparency. In states with weak requirements, unscrupulous employers perpetrate wage theft by masking illegal conduct on paystubs. Maryland’s paystub transparency requirements are dismally lax, requiring that employers report only gross earnings and deductions from pay. Many other states additionally require employers to report net pay, wage rates, hours worked at each rate, allowances, dates covered by the paycheck, and employer contact information. Making this information transparent helps employees understand whether they have been paid correctly, deters deceptive payroll practices, and makes employers more accountable to workers.

National momentum is now building to rectify the lack of information in many workers’ paystubs. The Paystub Disclosure Act, introduced this year in Congress, would provide a uniform federal paystub requirement to help identify and prosecute wage theft violations.¹¹ Yet with Congressional action unlikely, state leadership is needed.

Maryland legislators now have the opportunity to enact the Paystub Transparency Act of 2016, which requires employers to include crucial information on the paystubs they distribute to employees to help deter and identify wage theft: pay rate (hourly, overtime, attendance, bonus, and/or piece rate), allowances, deductions, hours worked, and basic identifying information for the employer. Since employers are already required to maintain such information, simply sharing it with their employees requires a minimal shift in practice. The proposed Maryland legislation will:

- Increase compliance with employment laws;
- Alleviate misunderstandings between workers and employers;
- Facilitate easier identification of true wage violations; and
- Protect law-abiding employers from competing with bottom-feeding companies that profit from breaking the law.

5 Aditi Sen, “By a Thousand Cuts: The Complex Face of Wage Theft in New York,” The Center for Popular Democracy, November 2015, v

6 *Ibid.*

7 Annette Bernhardt et al, “Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities,” National Employment Law Project, 2009, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.

8 *Ibid.*

9 Brady Meixell and Ross Eisenbrey, “An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year,” September 11, 2014, <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>

10 We based our methodology on the work in “Working Without Laws” (Bernhardt et al) that reached vulnerable workers who often are missed in standard surveys, such as unauthorized immigrants and those paid in cash. (January 2016)

11 Hon. Robert C. “Bobby” Scott, “Fact Sheet: H.R. 4376, the Pay Stub Disclosure Act, Committee on Education and Workforce Democrats, January 1, 2016, http://democrats.edworkforce.house.gov/sites/democrats.edworkforce.house.gov/files/2016-01-13%20Pay%20Stub%20Disclosure_Fact%20Sheet.pdf.

Maryland’s paystub law lags far behind other states

Maryland’s paystub requirements are exceptionally weak compared to other states, requiring employers to report only total gross pay and deductions.¹² The lack of information required in paystubs aids law-breaking employers in committing wage theft. For example, a Maryland employer can lump together total compensation on a paystub, making it impossible for a nonexempt worker to decipher her hourly wage rate or even whether she was paid on an hourly basis. And because Maryland employers are not required to provide their legal name, physical address or working phone number, even workers who can prove they are owed unpaid wages may be unable to present their claim to the employer or obtain relief.

As a result of Maryland’s outdated paystub requirements, some employers defraud their employees with impunity, creating an illegal competitive advantage and an uneven playing field for law-abiding competitors.

“I work long hours in construction, where I am paid by the hour as a drywaller. On one project, I worked well over 40 hours a week—but my paychecks didn’t seem to include my overtime pay. It was impossible for me to tell if I was being paid my correct rate, though, because my paystubs never showed my regular or overtime hours. They often just stated my total earnings as a lump sum, without detailing the hours worked. Even when I went to an attorney, they could not determine exactly how much overtime I was due.”

—Fredys, Construction Worker

¹² MD Code Ann. Lab & Empl. Art. § 3-504(a)(2).

COMPARISON OF PAYSTUB REQUIREMENTS

Many states—including many states with weaker worker protections than Maryland—have paystub requirements that go beyond Maryland’s and more effectively encourage compliance and deter wage theft.

State	Gross wages	Deductions	Hours worked	Rate(s)of pay	Net pay	Employer information	Dates in pay period
Alaska	✓	✓	✓	✓	✓		✓
California	✓	✓	✓	✓	✓	✓	✓
Colorado	✓	✓			✓	✓	✓
Delaware	✓	✓	✓				✓
Hawaii	✓	✓	✓	✓	✓	✓	✓
Massachusetts		✓	✓	✓		✓	
Maryland	✓	✓					
Maine	✓	✓	✓				✓
Minnesota	✓	✓	✓	✓	✓	✓	✓
New Mexico	✓	✓	✓			✓	
Nevada	✓	✓	✓		✓		
New York	✓	✓	✓	✓	✓	✓	✓
Pennsylvania	✓	✓	✓	✓	✓		
Texas	✓	✓	✓	✓	✓		
Vermont	✓	✓	✓	✓			
Washington	✓	✓	✓	✓			✓

Sources: Alaska Admin. Code tit. 8, § 15.160, subd. (h)., Cal. Lab. Code § 226, subd. (a)., Colo. Rev. Stat. Ann. § 8-4-103, subd. (4)., Del. Code Ann. tit. 19, § 1108., Haw. Rev. Stat. Ann. § 387-6, subd. (c)., Mass. Gen. Laws Ann. ch. 149, § 148. Requires employer name but not address or phone number., Me. Rev. Stat. tit. 26, § 665., Minn. Stat. Ann. § 181.032, subd. (b). Requires employer’s legal name and operating name (if different) but not address or phone number., N.M. Stat. Ann. § 50-4-2, subd. (B). Requires paystubs to identify the employer; does not specify address and phone., Nev. Rev. Stat. Ann. § 608.115., N.Y. Lab. Law § 195, subd. (3)., Pa. Code § 231.36., Tex. Labor Code Ann. § 62.003, subd. (b)., Vt. Admin. Code 13-1-101:6., Wash. Admin. Code 296-126-040.

Stronger Requirements under the Maryland Paystub Transparency Act of 2016

Maryland law already requires employers to provide employees with an initial compensation statement upon hiring and a paystub each pay period.¹³ The 2016 Paystub Transparency Act would not require more frequent communication, but would require employers to provide employees with additional crucial information about how the employer calculated the wages in each paycheck. Employers must already generate this information in order to pay their employees the correct compensation, but are not currently required to share it with employees. The Act, which would bring Maryland up to the standard set by states like New York, California and Hawaii, would have the following components:

NOTICE AT TIME OF HIRING

When employees have full information about their compensation at the time of hiring, they can ensure that subsequent paystubs adhere to the hiring agreement.

CURRENT LAW: Employers have an existing obligation under current Maryland law to inform employees within a week of hiring of their pay rate, pay days, and any leave benefits, and update employees at least a week in advance of any changes.¹⁴

PAYSTUB TRANSPARENCY: The Paystub Transparency Act would provide employees additional information in this initial notice:

- pay basis (hourly, salaried, piece rate, commission, etc.);
- any allowances the employer plans to claim for meals, tips or lodging as an offset against the minimum wage; and
- the employer's identity and contact information (address, telephone, and names under which it conducts business).¹⁵

Employers already generate this information in order to initiate payroll for a new hire. This amendment simply requires sharing that information with employees.

¹³ Md Code Ann., Lab. & Empl. 3-504(a).

¹⁴ Md. Code Ann., Lab. & Empl. § 3-504(a)(1) and (a)(3) (pay increases are exempt from the one week notice requirement).

¹⁵ See N.Y. Lab. Law § 195(1)(a).

PAYSTUB INFORMATION

Disclosing the full information used by the employer to compute wages owed during a pay period allows the employee to easily discern whether they have been paid properly. For employers who comply with existing federal and state law, this does not require capturing any new information.

CURRENT LAW: Existing Maryland law requires employers to provide employees with paystubs each pay period disclosing gross earnings and deductions.¹⁶

PAYSTUB TRANSPARENCY: The Paystub Transparency Act would require paystubs to include:

- employee’s name;
- the dates of the pay period and date of payment;
- the employer’s name, address and phone number;
- rate(s) of pay and whether by hour, shift, piece, salary, commission, etc., including regular and overtime rate if applicable;
- allowances claimed;
- number of pieces or hours worked by nonexempt employees, and number of regular and overtime hours; and
- net wages.¹⁷

This information is already in the possession of all law-abiding employers.

“Providing information like hours worked, straight time and overtime rates, and the dates of the pay period isn’t burdensome for our company. We already have to submit that data to my payroll company in order to generate paychecks, and I don’t have to do anything extra to make sure it shows up on paystubs. I don’t see why any employer who’s trying to comply with the law would object to sharing paycheck information with their employees.”

—Annette Bonilla, SPHR, Vice President, Environmental Science Associates, San Francisco

¹⁶ Md. Code Ann., Lab. & Empl. § 3-504(a)(2).

¹⁷ See Cal. Lab. Code § 226(a) [requires disclosure of gross and net wages; total hours worked by the employee if paid hourly; the number of units and any applicable piece rate if the employee is paid on a piece-rate basis; all deductions; the dates of the pay period; the name of the employee and last four digits of his or her social security number or employee identification number; the name and address of the employer; and all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate]; Haw. Rev. Stat. § 387-6(c) [requires disclosure of total hours worked; overtime hours; straight-time and overtime compensation; gross and net wages; amount and purpose of each deduction; dates of payment and pay period.] N.Y. Lab. Law § 195(3) [requires disclosure of the dates of the pay period; name of employee; name, address, and phone of the employer; rate or rates of pay and pay basis; gross and net wages; deductions; allowances; for hourly employees, the regular and overtime rates and hours worked at each rate; for all employees paid a piece rate, the rate or rates of pay and number of pieces completed at each rate.]

EXPLANATION OF WAGES

An explanation of wages helps employers and employees resolve errors or disputes on an informal basis, reducing the burden on the Department of Labor to investigate possible violations and avoiding costly litigation.

CURRENT LAW: Maryland employees currently have no mechanism to request clarification from their employers if they suspect they have not been paid correctly. This lack of a specific mechanism means that employees may seek to address suspected underpayments by filing an administrative complaint.

PAYSTUB TRANSPARENCY: Under the Paystub Transparency Act, employees would be entitled, upon written request, to an explanation for how their employer calculated their wages.¹⁸ This would enable employees to obtain necessary clarification and informally resolve disputes without filing a complaint.

RECORD KEEPING

Wage and hour records are critical to ensuring that employees can ascertain whether they have received full compensation and that employers are complying with their legal obligations.

CURRENT LAW: Maryland and federal law already require that employers keep, for three years, records of employees' name, address, occupation, pay rate, hours worked each workday and workweek, basis of pay, total regular wages earned per week, total overtime wages earned per week, deductions, dates of each pay period worked, and total wages paid each period.¹⁹

PAYSTUB TRANSPARENCY: The Paystub Transparency Act would maintain the existing three-year retention requirement and require that it be disclosed in paystubs. Many states require employers to keep records for longer periods.²⁰

“Giving workers the basic information they need to understand their wages at a glance is critical to surfacing any disagreements and concerns. Sometimes workers are concerned about their wages, and a conversation about their paystub can alleviate their concerns. And sometimes well-intentioned employers are actually violating wage and hour laws, and when workers see that clearly in a paystub or pay statement, they are able to bring it to the employer's attention and avoid a long-term issue. The explanation of wages facilitates an informal dialogue that frees our advocates to focus on the cases where they are most needed.”

—Deborah Axt, Co-Executive Director, Make the Road New York

¹⁸ See N.Y. Lab. Law § 195(3); see also Cal. Lab. Code § 226(b)-(c) [right to access records upon request].

¹⁹ Md Code Ann. Lab & Empl. § 3-424; 29 C.F.R. § 516.2.

²⁰ See N.Y. Lab. Law § 195(4) [six years]; Haw. Code R. 12-20-8 [six years]; Cal. Code Regs. tit. 8, § 13631 [four years].

ENFORCEMENT

Existing federal and state law seeks to deter wage theft by authorizing employees to sue when they are denied wages they have earned. However, when employers fail to maintain the records that show the computation of wages, it is often impossible to reconstruct the full amount owed, and employees may never fully recover their wages. For this reason, in some states, the failure to disclose wage information in a paystub is presumed to cause harm to employees and entitles workers to damages.²¹

CURRENT LAW: Under existing Maryland wage laws, employees have a private right of action to sue for failure to pay wages and can collect up to three times the amount of any unpaid wages and the costs of bringing suit.²² However, there is no enforcement provision for Maryland's paystub requirement.

PAYSTUB TRANSPARENCY: The Paystub Transparency Act would provide a modest enforcement mechanism. It would not create a new private right of action, but it would allow employees who sue for unpaid wages to also seek additional penalties if their employer fails to maintain or provides incomplete or misleading records and paystubs. The penalties are capped at \$100 for each week that the employer fails to maintain payroll records, up to a maximum of \$2,500.

21 California law entitles workers to recover up to \$4,000 in liquidated damages when the employer fails to provide paystubs or omits certain required information, regardless of whether wages were unlawfully withheld. Cal. Lab. Code § 226(e).

22 Md Code Ann. Lab & Empl. § 3-507.2; 29 U.S.C. 216(b).

Conclusion

The Maryland Paystub Transparency Act of 2016 will encourage compliance through increased transparency, enable employers and employees to informally resolve disputes early and easily, and expose unscrupulous employers who illegally cheat employees and their competitors. It will strike a blow against wage theft at virtually no cost. The proposed legislation requires only minimal shifts in practice that will result in significant impacts for workers, including deterring deceptive payroll practices and increasing compliance with Maryland's wage laws.



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