

BY A THOUSAND CUTS: The Complex Face of Wage Theft in New York





Acknowledgements

This report was prepared by the Center for Popular Democracy. It was written by Aditi Sen and reviewed by Deborah Axt, Kate Hamaji and Connie Razza.

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

An estimated 2.1 million New Yorkers are victims of wage theft annually, cheated out of a cumulative \$3.2 billion in wages and benefits they are owed.¹ In recent years—at least as far back as the passage of the New York Wage Theft Prevention Act of 2010, through 2015, when a series of New York Times articles explored the shocking extent of wage theft and other workplace abuses in the nail salon industry—mainstream elected officials and the press alike have turned meaningful attention to the problem of wage theft in New York State and nationwide. The question is what remains to be done. This brief study does not attempt to answer that question fully, but begins the inquiry by delving into the shape that wage theft takes in New York City and statewide. Case studies in this report focus on particular employers that low-wage worker advocates have identified as illustrating broader problems in sectors where wage theft is prevalent.

Though this study is merely an entry point to a much broader and deeper analysis, our results point to some common-sense first steps in improving wage theft enforcement in New York City, New York State, and beyond.

Recommendations include the following:

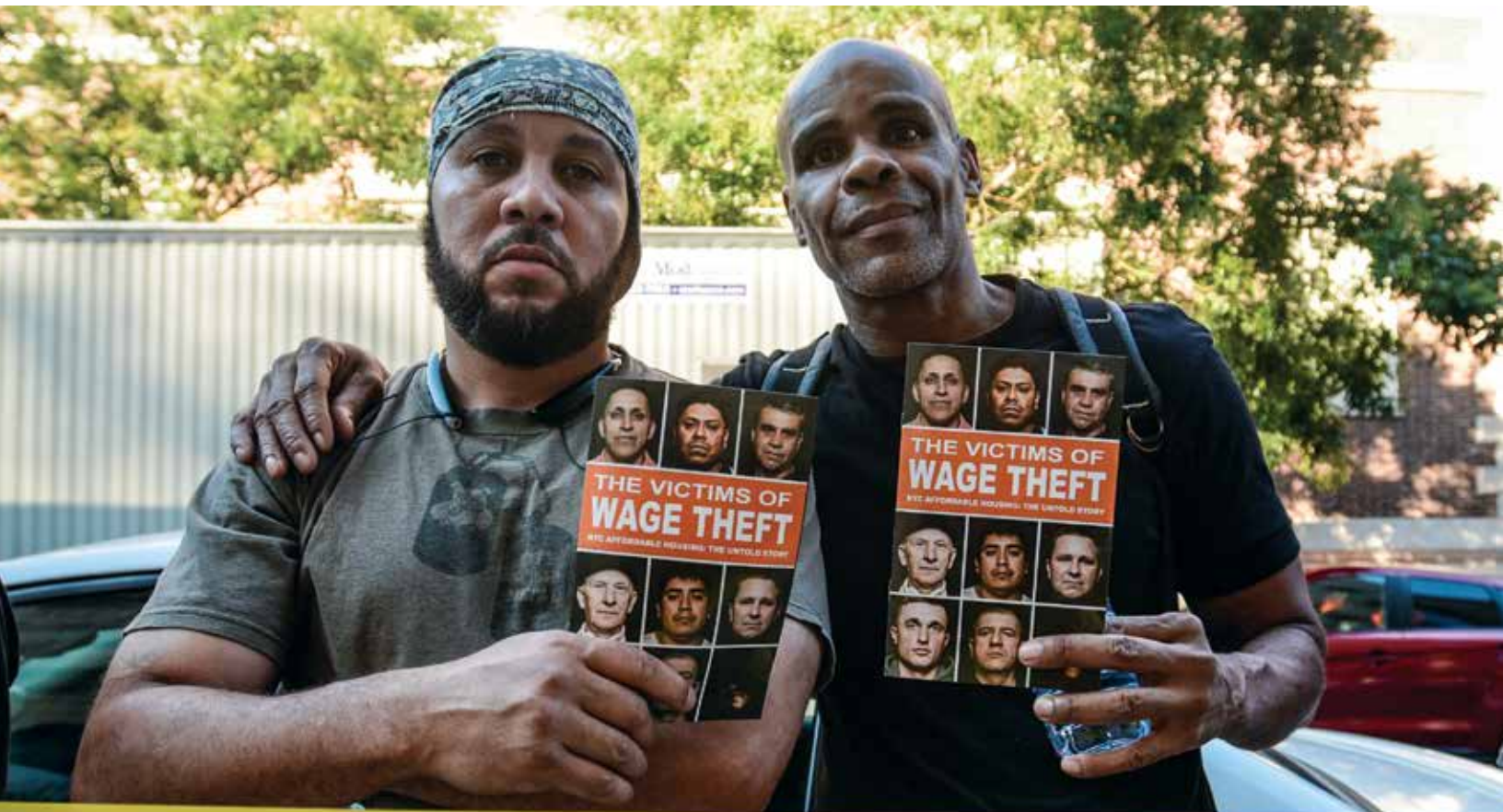
- City, state and federal government should invest in rigorous social science and economic research to evaluate what types of education, enforcement, penalties, and damages are most successful in encouraging workers and others to blow the whistle on wage theft, compensating directly impacted workers, and deterring and reducing wage theft.
- Our legislative and regulatory approach to penalizing wage theft and retaliation should be reevaluated to take into account the impact that wage theft and retaliation have not only on the directly impacted workers but also on competing employers, entire geographic areas, sectors, and the economy.
- Outreach, education, and enforcement efforts need to be tailored to address the specific situations of certain sectors, ethnic groups, and communities.
 - Government should partner with, and resource, community-based partners who have established trust in hard-to-reach communities of workers and employers.
 - Government should partner with community and labor organizations with expertise in specific sectors and types of wage theft, to assist in bringing forward adequate and accurate testimony and evidence to evaluate compliance in that sector or type of employer.
 - Government inspectors and investigators should receive regular training in sector-specific practices in order to rigorously evaluate testimony and facts presented by employees and employers for reasonability.
- Government enforcement needs to explore substantial regulatory, legislative and strategic changes to enable collection of unpaid wages, damages and penalties.
 - Pilot projects should aggressively test the use of bonds in exploitative industries, the ability of courts and the Department of Labor (DOL) to freeze assets pre-judgment, and wage liens.
 - Public procurement rules should prohibit convicted wage thieves from bidding on public contracts or dispositions at the federal, state and local level, or from receiving public subsidy, with permanent removal from bidding or eligibility lists in cases of egregious wage theft.

Background: Improvements to wage theft law in recent years

With the passage of the Wage Theft Prevention Act in 2010, New York became the state with the strongest protections against wage theft in the country.² This law increased damages, improved protections against retaliation for workers who report violations, and included stronger tools for enforcement. In December 2014, Governor Cuomo signed additional legislation strengthening numerous protections against labor law violations, requiring increased employer transparency and accountability, and easing some duplicative record-keeping requirements of law-abiding employers.³ These new provisions in the law went into effect on February 27, 2015.

Despite having good laws on the books, advocates report that wage theft remains endemic in New York.⁴ We continue to lack consistently reliable data that captures the extent of wage theft. Most workers remain afraid to come forward.⁵ Only some identified cases are pursued, even fewer are adjudicated, and the fundamental challenges of enforcement and implementation of penalty collection and judgment enforcement remain unsolved.⁶ Even with strong wage theft protection laws, there is very little deterrent against wage theft. Effective enforcement of this chronic issue requires the state and its enforcement agencies commit significantly increased resources.

This study is designed to shed light on the extent that wage theft in key industries continues to go unremedied, and to understand the forms that wage theft takes in high violation industries, in order to begin to assess how to combat it.



WAGE THEFT

WAGE

Methodology

This report is based on analysis of the following primary and secondary sources: expert interviews, worker complaints and affidavits, reports of investigative findings,⁷ fact sheets produced by labor unions, and press releases. The profiled companies are based in New York City and throughout the state.

Findings:

1) Available indicators suggest that rampant wage theft continues in New York City and State

The case studies conducted as part of this study (described in detail later in this report) suggest that wage theft occurs in the form of major wage nonpayment or nonpayment of overtime, but also accumulates in many ways particular to a sector or job classification. Often, wage theft occurs in ways that are difficult to detect, prove, and eradicate. Thus “by a thousand cuts” to their paychecks—a few minutes worked off-the-clock each day; a five-percent “deduction” that employers take out of each tip; a wage that falls below the legal minimum; a uniform that employees must pay to launder each week—many employers are systematically robbing their workers. Advocates report that the same workers may experience multiple violations, all of which may go undetected, and many of which are unreported.⁸

The incremental nature of the way that some wage theft occurs belies a profound and widespread impact not only on the affected workers, but on the state’s economy as a whole. Each year, employers cheat an estimated 2.1 million New Yorkers out of a cumulative \$3.2 billion in wages and benefits they are owed.⁹ Remarkably, this theft goes largely unchecked, hurting the lowest-paid workers the most.¹⁰ According to a December 2014 U.S. Department of Labor (USDOL) analysis of Survey of Income and Program Participation (SIPP) data, minimum wage violations alone amount to more than \$1 billion per year stolen from New York’s workers.¹¹ Yet in 2013, only 12,700 workers received back pay for all types of wage theft combined, and the total amount of money returned was only \$23 million for the full year—or roughly 2 percent of the total \$1 billion stolen per year—through the settlement of more than 6,700 cases.¹²

2) Wage theft comes in many forms

In addition to the primary and secondary source research conducted to inform the above overview analysis, the authors studied 11 cases of wage theft that worker advocates identified as representative of the forms that wage theft takes in particular New York industries. Following is a list of several typical scenarios, culled from the detailed case studies that follow:

Violating minimum wage laws

The most direct form of wage theft arises when employers do not pay the appropriate wage rate for “straight time,” or the number of hours employees actually work. Many low-wage jobs pay daily or weekly rates without regard for the hours workers work in a week. As a result, wages end up well below the minimum hourly rate. Based on SIPP data, the USDOL estimates that workers in New York State lose up to \$20 million a week in minimum wage violations alone—money that low-road employers keep for themselves.¹³

Violating prevailing wage provisions

Wage theft also occurs in industries where standards have traditionally been high, thanks to hard-fought victories by union members over the last 80 years. Projects that the public subsidizes

over a certain dollar amount are often required to pay a higher, family-sustaining prevailing wage to workers in order to ensure that public spending creates good jobs that help bolster communities. However, there is inadequate enforcement of prevailing wage law and many employers that receive taxpayer money illegally cheat their workers and pocket the difference.

Violating tipped-wage laws

Workers in several service-sector industries earn a baseline “tipped” minimum wage rate that presumes that the amount of tips they actually receive makes up the difference towards reaching the minimum wage. When workers’ tips do not make up the difference to the full minimum hourly rate, employers are legally required to pay the remainder. Low-road employers routinely break this law by paying only tips or commissions, or by stealing tips. As a result, workers earn below the legally required minimum wage.

In other situations, employers outright steal a share of workers’ tips or pool tips across workers and supervisors, which is illegal.

Some workers, particularly in sales, are paid on the basis of commission. Laws dictate what percentage of such an employee’s time can be assigned to duties in which they would not be able to earn commission and require that their wages reach the legal minimum wage rates. Low-road employers easily break such laws without consequence.

Violating overtime rules

Workers who work long hours are also frequently cheated out of overtime pay. Eligible workers must be paid at 1.5 times their usual rate after they have already worked 40 hours in a single workweek. But employers routinely do not pay the premium wage rate for those hours; too often, they do not compensate their workers for extra time worked at all. According to a 2010 National Employment Law Project (NELP) study, in New York City, 77 percent of surveyed low-wage workers who worked overtime in the previous week reported that they had not been paid the correct amount.¹⁴

Requiring work off the clock

Commonly, workers are asked to engage in work-related activities before or after their official shift. If they are working off the clock (that is, their work is not recorded as work time), they are not getting paid for that time worked.

Violating meal-break requirements

Workers are eligible for meal breaks if they work a minimum number of consecutive hours in a shift. Employers often require employees to work through their meal break or cut into break time, but do not compensate them for this additional time worked. This, too, is wage theft.

3) Unscrupulous employers use numerous tactics to steal workers’ wages

Unscrupulous employers often resort to numerous illegal practices in order to perpetuate wage theft and avoid discovery.

Engaging in intimidation, retaliation, and other worker harassment

Not only do workers face huge losses on their pay, but advocates report that employers often threaten them, retaliate against them, or actually fire them for trying to enforce their rights. Undocumented immigrants face heightened threats that their employer will retaliate by alerting immigration authorities about their status.¹⁵

Falsifying records

Record-keeping often plays a significant role in pursuing and proving wage theft violations. Advocates report that law-breaking companies regularly create fake payroll records in order to cover up their wage theft practices.¹⁶ These can range in scale from simply rounding down workers' hours to the nearest hour to paying workers in cash and leaving them off the books entirely. Such practices also mean employers are not paying their share of required federal payroll and state taxes.

Under New York State law, employers must provide their workers with a notice of their wage rate at the time of hiring and any time their wage rate changes, as well as paystubs that delineate their wage rates and any deductions taken from their pay. Case studies indicate that some workers do not receive appropriate (or any) documentation when they are hired or paid.

Taking illegal deductions

Many unscrupulous employers actually make illegal deductions to workers' wages, such as taking money out of a paycheck for breakage or uniform cleaning. These costs are the responsibility of employers under the law.

Misclassifying employees

Not all employees are protected under various labor law standards—certain types of workers, including most higher-income salaried workers and those workers classified as having sufficiently administrative, professional, or managerial responsibilities—are not covered by minimum wage and overtime laws. In order to avoid paying them the wages they are owed, employers frequently misclassify their workers as exempt from these laws, when in fact they are entitled to these basic protections.

Employers also often misclassify their employees as independent contractors in order to avoid paying payroll taxes on their workforce. The IRS estimates that employers misclassify millions of employees each year, avoiding on average nearly \$4,000 in federal employment taxes per misclassified worker.¹⁷

Wagering on inadequate enforcement resources

Employers who steal wages are gambling that inadequate resources will be dedicated to detecting the theft and enforcing the law. When violators are found, they sometimes double-down on this wager. According to advocates, in some cases, employers that have already been found in violation of wage and hour laws by government agencies or courts have changed the name of their business, hidden or fraudulently transferred assets, or taken other steps in order to avoid paying workers their due wages—even once a court or the Department of Labor has ordered them to do so.¹⁸

Some of the worst wage theft violators are repeat offenders who knowingly continue to break the law even after they have been caught. In the past five years alone, the USDOL has found nearly 400 cases of wage theft in New York State where the employer is a repeat violator.¹⁹



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Case Studies



Vegas Auto Spa • Car Wash

Brooklyn, NY

In October 2014, eight car wash workers at Vegas Auto Spa filed a lawsuit against the corporate and individual employers alleging unpaid wages. The claims alleged that they were paid well below minimum wage, some as little as \$4.50 an hour.²⁰ They also alleged that they were never paid the premium overtime rate, despite consistently working over 40 hours per week, some as many as 91 hours a week.²¹ Despite these extreme working conditions, several of the workers had worked at the car wash on Seventh Avenue in Park Slope, Brooklyn for many years.²²

In 2014, the workers went on strike for five months in the bitter cold of winter to gain a union contract. This landmark union contract guaranteed wages above the minimum, paid time off for workers, holiday bonuses, commission for detail workers, and other increased protections for the next two years.²³

In April 2015, after community and national labor leaders and several city council members were arrested in a large protest,²⁴ the workers finally resolved the dispute over their claims for unpaid wages.²⁵



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Not paying overtime

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Illegal deductions

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Avoiding successor liability

Repeat violators

Impunity



Bank of America • Financial Services

Nationwide

In 2013, Bank of America agreed to pay as much as \$73 million to about 185,000 eligible current and former employees in banking centers and call centers nationwide, settling a wage theft case brought in federal court in Kansas.²⁶ The settlement combined 12 separate class action lawsuits that had been filed in various jurisdictions across the country.²⁷ According to the complaint, Bank of America had allegedly violated state and federal wage and hour laws by not paying their workers the correct rate, not paying overtime, making employees work through meal and rest breaks, and not paying out the correct amount of vacation time.²⁸ Workers claimed that this wage theft often arose when Bank of America asked employees to falsely record their work hours in the centralized timekeeping system, or when supervisors illegally falsified those recorded hours, demonstrating the central role that document keeping can play in the practice of wage theft.²⁹

Despite claims that Bank of America has violated wage and hour laws across the country, the company continues to routinely collect millions of dollars in tax breaks and subsidies. New York State and New York City have honored millions of dollars worth of subsidies over the past decade, Bank of America millions in taxpayer subsidies over the past decade, including a \$50 million subsidy initiated in 2004 for Bank of America to build an office tower in Manhattan.³⁰

Many of Bank of America’s employees are vulnerable low-wage workers, earning on average \$11 an hour, and statewide, 40 percent of Bank of America’s tellers rely on public assistance.³¹



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Hai Liang Bakery, Inc. • Food Manufacturing

Brooklyn, NY

Eight current and former employees of Hai Liang Bakery, Inc., in Brooklyn who are members of Make the Road New York, sued their employer in federal court for wage theft violations. The complaint reports that the employees were not paid the required minimum or overtime wages for their work. The workers state that they each worked over 60 hours per week on average without earning overtime and were paid as little as \$4.55 per hour.³² This would mean that over the course of the year, each worker was cheated out of more than \$10,500.

As soon as the complaint was filed in federal court, workers state that the bakery fired workers in retaliation for participating in the lawsuit. After the workers pushed back with help from their lawyers, Hai Liang Bakery reluctantly rehired

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them but at a reduced number of hours and, consequently, a reduced gross rate of pay.³³

NY Insulation ■ Asbestos Removal Contractor

Long Island, NY

In 2008,³⁴ workers filed a class action lawsuit in New York State Supreme Court against NY Insulation, Inc. and related companies (Nicks Insulation Corp, AAH Construction Corp., Ariel Montoya, Inc., New York Insulation & Environmental Services, Inc., LCH Corp., Total Construction Corp., Anthony Cardinale, Laura Ilishaev, Nova Casualty Company, Westchester Fire Insurance Company, and John Doe Bonding Companies) reporting that they had been cheated out of their lawful wage rates, overtime and benefits as employees of NY Insulation on several public works projects, including but not limited to projects with the New York City Housing Authority (NYCHA).³⁵ The lawsuit covered hundreds of workers³⁶ who worked for the company between 2002 and 2008.³⁷

While this lawsuit was ongoing, an investigation by the District Attorney of Nassau County's Labor Unit revealed that NY Insulation had failed to pay their workers state prevailing wages or benefits for a public works contract to perform insulation work at Wheatley High School in 2009. The company had covered up its wage theft by submitting falsified certified payroll records that listed only a fraction of the workers active on the job. In 2012, the employer pled guilty to falsifying documents and paid nearly \$45,000 in back pay and fines. As a result of this conviction, the company was debarred from bidding on or being awarded any public works contracts in the State of New York for five years, effective until 2017.³⁸

An investigation by the New York City Comptroller revealed that NY Insulation performed roof



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and masonry repair work at Douglaston Pumping Station and plastering and painting work at various public schools between 2007 and 2009.³⁹ The company failed to pay prevailing wages and supplements, underpaying workers \$71,000 and owing \$52,000 in interest. The lawsuit reached a settlement by 2015 and NY Insulation's debarment was extended until 2020.⁴⁰

The class action lawsuit finally reached settlement in 2013, with workers winning approximately \$900,000 in restitution.⁴¹

In addition to the company's record of repeated wage theft, workers also brought attention to NY Insulation's long history of health and safety violations. The company conducts asbestos work, which carries severe risks for both workers' and the public's health. Between 2006 and 2012 alone, the company and its affiliates were cited 110 separate times by the New York State Department of Labor for unsafe handling of asbestos.⁴² Workers report that they were not provided with appropriate protective equipment like gloves and they were denied access to proper decontamination stations before leaving the worksite. Workers were forced to improperly bag asbestos debris, thereby potentially exposing the public to the toxic substances. They were also required to conduct dry asbestos removal, even though contractors are required to wet asbestos before removing it in order to lessen that chance that harmful asbestos fibers can be released into the air.⁴³



Larino Masonry • Construction

Multiple locations, New York City, NY

In November 2014, Larino Masonry, a New Jersey-based construction company, pleaded guilty to violating prevailing wage law over the past five years. They agreed to pay \$2.9 million dollars in back wages to 228 laborers and mechanics for failing to pay them the wages, overtime, and benefits required while serving as a subcontractor on federally-subsidized projects, on four separate construction projects across multiple boroughs in New York City for the past five years. In an attempt to get away with this illegal behavior, Larino Masonry submitted falsified payroll records on these projects and in some cases paid workers at a lower rate for a different job classification.

As a result of flouting the law, Larino Masonry was banned from bidding on federal contracts for three years.⁴⁴

However, despite this ban and their widespread violations of wage and hour law, the company remains eligible to work on city-subsidized projects initiated by the New York City Department of Housing Preservation and Development (HPD).⁴⁵

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PrimeFlight • Passenger Services Contracting

New York, NY

In October 2014, over 1,000 current and former tipped employees of PrimeFlight, a passenger services contractor at LaGuardia Airport, won a \$605,500 settlement for the wage-and-hour lawsuit they filed on behalf of all tipped employees of the company in New York State. In the complaint, one former employee reported that he and other workers were not paid time and a half for overtime hours. He also reported that his employer made illegal deductions from their paychecks through a tip credit that was applied to their wages without the required notice. The complaint also stated that each week, the workers were forced to report that they earned \$60 in tips regardless of whether they actually earned that much, and that workers were illegally required to pay for their uniform maintenance in violation of the law.

Even though the company knew that their practices were against the law, they continued to illegally steal wages from their workers. In 2009, PrimeFlight agreed to pay \$750,000 to over 400 employees in a settlement of a class action lawsuit brought in Massachusetts federal court by skycaps who provided services to US Airways. In that case, employees alleged that instead of paying them the required minimum wage, the company illegally took a tip credit on the skycaps' wages and made employees cover the difference between assessed bag fees and the fees actually collected from their tips.⁴⁶



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Five Star Carting ▪ Sanitation

Brooklyn, NY

A worker who was employed by Five Star Carting in the winter of 2013-2014 to pick up demolition debris on his route reported multiple instances of wage theft. He stated that he regularly worked 13-hour shifts at a rate of \$10 per hour, but was never paid for all of the hours he worked in a week. A few weeks after he started, he reported, he was moved to a route picking up trash and cardboard, his wage rate dropped to \$8.20 per hour, and he was not paid for all of the hours he worked. Two months into the job, the company made a final change: he and other immigrant workers were paid \$100 per work day regardless of the number of hours they worked and they were paid in cash instead of by check. The worker explained that the trucks they used were in dangerous condition with mangled steps; doors that would not close properly; and without heating or air-conditioning.⁴⁷

In 2014, a class action lawsuit was filed in the Eastern District of New York, stating that for over four years, laborers and foremen employed by the company were not paid for all hours that they worked; were not paid time-and-a-half for overtime hour; were not paid prevailing wages on public projects; and did not receive wage notices.⁴⁸ The company deducted between two and four hours of work from the plaintiff's check for lunch breaks that he never took.⁴⁹

These cases once again illustrate how work in sanitation, a particularly dangerous industry, is typified not only by wage theft, but also by other violations, including egregious and unlawful health and safety risks.

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- Impunity

KS Contracting Corp. ▪ Construction

Multiple locations, New York City, NY

KS Contracting Corporation is currently under investigation by the New York City Comptroller⁵⁰ for multiple violations of prevailing wage law after workers reported numerous labor law violations on the public works projects where they were employed.⁵¹

Under New York State law, workers on public works projects are entitled to be paid the federal prevailing wage rates for their work.⁵² Instead, most employees earned only approximately \$100 to \$150 a day, far below the legal prevailing wage rates for laborers, carpenters, cement masons, and operating engineers. Furthermore, workers were asked to sign prevailing wage payment affidavits that falsely stated that they had received prevailing wage pay and did not want to file any complaint against the company. Several workers asserted that these forms had been forged by the employer.⁵³

In addition to falsifying worker affidavits, KS Contracting Corp's certified payroll records also

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indicate fraudulent documentation. Employees have stated that they often worked several more hours per week—and have paystubs documenting those hours worked—than were recorded in KS Contracting Corp.’s certified payroll records. The employer submitted these falsified payroll records to a City agency--a felony offense. The records the employer reported claimed that one employee who worked and received compensation for regular work for several weeks throughout the year was only recorded to have worked two weeks during the same period.⁵⁴

Workers at KS Contracting Corp. reported that the company and at least one of its subcontractors had established an elaborate system of unlawful “kickback” wages, where workers were given paychecks at prevailing wage rates, which they then signed and returned to their boss without cashing, but were then actually paid at a significantly lower daily rate off the books, in cash, meaning that no payroll taxes were collected from the employer.⁵⁵

Coachmaster • Livery Service

Endicott and Norwich, NY

In June 2014, Coachmaster, a limo service located in Broome County, New York was forced to pay \$20,000 back to its employees for illegally skimming a share of passenger tips that were intended for the drivers. The company was also forced to pay \$20,000 in civil penalties for these labor law violations.⁵⁶

For six years, Coachmaster had been urging customers to tip in advance through an online reservation system instead of paying the driver directly at the end of the ride. They even suggested a 15 percent gratuity. But unbeknownst to their drivers or customers, Coachmaster contrived to steal nearly a third of every tip collected through the computerized system instead of passing it along to the workers it was meant for and that they were legally entitled to receive.⁵⁷

Drivers were ultimately awarded \$20,000 in restitution for the portion of tips that the limo service stole from them.⁵⁸



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Domino's • Fast Food

New York, NY

In December 2013, workers at a Washington Heights Domino's pizza storefront complained that they were unlawfully paid tipped wages, or \$5.65 per hour, instead of the full minimum wage they were owed for time they spent working in the kitchen.⁵⁹ Under New York State law, it is illegal to pay workers the lower tipped wage if, like kitchen workers, they do not earn tips.

After workers complained about these illegal labor practices to their employer, their boss retaliated by firing them. The New York State Attorney General intervened, ordering that all 25 workers be reinstated.⁶⁰ The Attorney General is conducting an ongoing investigation into the claims the workers brought forward.

Statewide

A few months later, the State Attorney General announced that Domino's franchise owners across the state would have to pay an additional \$450,000 to 750 minimum-wage workers employed by 23 different Domino's restaurants from Erie County to Nassau County. Six different franchise owners admitted that for six years, they had engaged in systematic wage theft violations that ran the gamut of illegal practices.⁶¹

The violations included:

- Paying delivery workers as little as \$5 an hour, which would cost a worker doing tipped work 40 hours a week roughly \$1,300 in a year;
- Failing to reimburse delivery workers for their job-related car or bike maintenance expenses; and
- Failing to provide bike delivery workers with the required protective equipment.⁶²

Some restaurants completely flaunted overtime laws by not paying workers the overtime rate; others cheated workers out of overtime hours that they worked, by not tallying up all of the hours they worked across multiple Domino's locations when calculating overtime; or did not pay tipped workers the correct overtime rate.⁶³

In other cases, Domino's did not give workers an additional hour's pay for shifts that were longer than 10 hours, as required under state law for spread-of-hours. Some stores also violated workers' rights by calling them for a longer shift, and then sending them home early without paying them the minimum of three hours' pay as required under state law for reporting time.⁶⁴

These widespread abuses—across multiple Domino's restaurants run by several different franchise owners—demonstrate that the violation of workers' rights is not simply the actions of a few bad franchisees, but a result of company procedures.

Because of the pervasive nature of these labor law violations, the penalties were not limited to back-pay awards, but also included requirements that franchisees establish complaint



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procedures, provide bilingual worker handbooks, train supervisors on labor law, post employees' rights in the workplace, and submit quarterly reports to the Attorney General's office for the next two to three years. In addition, the locations with the most egregious violations will have to submit to unannounced inspections after hiring an independent monitor.⁶⁵

The settlement also included new, sustainable measures designed to ensure that workers have a better chance of being paid fairly on the job, and serve to limit the risk that they will see repeat violations going forward. The Attorney General continues to investigate other Domino's locations across the state.⁶⁶

Raymour & Flanigan • Furniture retail

Statewide

In July 2014, retail sales workers and other commissioned employees of Raymour & Flanigan filed a class action lawsuit against their employer in federal court. The plaintiffs allege that the company, which has over 40 stores across the state, has systematically misclassified its employees as exempt from federal protections for six years in order to avoid paying them overtime. Workers also allege that Raymour & Flanigan fails to pay commission-based employees adequately for hours they are assigned to work where they cannot earn a commission.⁶⁷

Furthermore, workers claim the company cheats them out of commission by illegally applying customer discounts, gift cards, etc. to the sales price on which commission is earned. Finally, the employer fails to provide adequate documentation, including commission statements, wage notices and wage statements.⁶⁸

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Analysis

Wage theft is pervasive throughout New York City and state and persists in different forms across numerous sectors of the economy. The above examples, though not proven to be representative of broader trends, suggest that wage theft can be systematic, repeated, willful, and ongoing. It can take different shapes and forms depending on the industry. Low-road employers that violate wage and hour laws also frequently violate other laws that are designed not only to protect workers' livelihoods, but their health and safety on the job.

For a single worker, wage theft violations can have a profound impact—sometimes illegally reducing his or her income by nearly 50 percent, as illustrated in the Vegas Auto Spa example. For families and communities, wage theft can become the difference between saving for the future and not making ends meet.

The case studies also indicate that wage theft can be an integral part of companies' business strategies—not the result of actions taken by isolated, unscrupulous individuals. Too often, companies with track records of cheating workers are awarded lucrative contracts—either by seeking work in a new state or because of insufficient cross-reporting among government agencies or inadequate penalties at the city and state level. Because the legal recourse for workers is so drawn out, there is very little incentive for employers to alter their practices even when they are caught. To dissuade low-road employers, wage theft must be aggressively prosecuted and should result in potential fines and penalties that outweigh gains made by stealing workers' wages.

Recommendations

To more effectively combat wage theft across a myriad of sectors throughout the city and state, we suggest:

- 1) **City, state and federal government should invest in rigorous social science and economic research to evaluate what types of education and enforcement efforts, and what types of penalties and damages are most successful in encouraging workers and others to blow the whistle on wage theft, compensating directly impacted workers, and deterring and reducing wage theft.**
- 2) **Our legislative and regulatory approach to penalizing wage theft and retaliation should be reevaluated to take into account the impact that wage theft and retaliation have not only on the directly impacted workers but also on competing employers, entire geographic areas, sectors, and the economy.**
- 3) **Outreach, education and enforcement efforts need to be tailored to address the specific situations of certain sectors, ethnic groups, and communities.**
 - Government should partner with, and resource, community-based partners who have established trust in hard-to-reach communities of workers and employers.
 - Government should partner with community and labor organizations with expertise in specific sectors and types of wage theft, to assist in bringing forward adequate and accurate testimony and evidence to evaluate compliance in that sector or type of employer.
 - Government inspectors and investigators should receive regular training in sector-specific practices in order to rigorously evaluate testimony and facts presented by employees and employers for reasonability.
- 4) **Government enforcement needs to explore substantial regulatory, legislative and strategic changes to enable collection of unpaid wages, damages and penalties.**
 - Pilot projects should aggressively test the use of bonds in exploitative industries, the ability of courts and the DOL to freeze assets pre-judgment, and wage liens.
 - Public procurement rules should prohibit convicted wage thieves from bidding on public contracts or dispositions at the federal, state and local level, or from receiving public subsidy, with permanent removal from bidding or eligibility lists in cases of egregious wage theft.

With this robust approach to wage theft research, outreach and education efforts, and enforcement, we can do much to improve the lives of over 2.1 million New Yorkers who currently endure a steady whittling away of their incomes, livelihoods and well-being by wage thieves. Anything less is condoning the theft of billions of dollars each year from the most vulnerable members of our communities.

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