



Wage Theft Crisis Demands Strong Enforcement, Effective Regulations and Meaningful Partnerships

**Testimony of
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Last year over Labor Day weekend, staff members of the Interfaith Worker Justice affiliated workers center in Syracuse, New York, got a call from an emergency room worker concerning NY State fair workers who had cooking burns, bed bug and flea bites, and were malnourished, because their employer wasn't giving them enough money for food.

Community leaders went to the hospital and then convened community and religious leaders in a fair poultry barn to hear the workers' stories. They were working 16 to 18 hours a day, but not being paid for it. They were housed in subhuman conditions and despite serving food for long hours, they were hungry.

These community leaders immediately called a DOL supervisor who quickly assigned staff to pursue this case. This past spring, the employer was fined \$50,000 and told to repay the workers \$115,000 in back wages.

Then *this* summer, the DOL and community and religious leaders collaborated to make sure that similar abuses didn't occur at the state fair by reaching out ahead of time to the fair leadership and regularly reaching out to workers about their rights during the season.

Enforcing the Fair Labor Standards Act and curbing and deterring wage theft are critical tasks for the Department of Labor. Wage theft is a national crime epidemic. Billions of dollars are stolen regularly from workers. The recent update of my book, *Wage Theft in America: Why Millions of Working Americans are not Getting Paid and What We can Do about It*, documents the pervasive nature of the problem and why we must collectively make sure the Fair Labor Standards Act is enforced and the crisis of wage theft addressed.

Stopping and deterring wage theft is possible and makes sense. Stopping wage theft puts hard-earned dollars back into the hands of working families – reducing the need to visit soup kitchens, shelters or to work extra jobs when parents should be at home with kids. Stopping wage theft supports ethical employers by leveling the playing field, making sure that unscrupulous employers don't prosper by stealing wages from workers. Stopping wage theft supports state and federal treasuries by ensuring employers pay their fair share of employer taxes, workers' compensation, unemployment insurance and other payroll related costs. And finally, stopping wage theft is a clear and direct way to stimulate the economy. If you put money back into the hands of working families, they will spend it in their communities.

The Department of Labor's Wage and Hour Division has begun laying important ground work, but needs to do much more to end wage theft. Unfortunately, wage theft is a not a small problem of a few isolated employers who don't understand the law. In large and significant sectors of the economy, such as residential construction, retail, restaurants, janitorial services, poultry and meatpacking, landscaping, farm labor and fair workers, wage theft is a normal practice for many employers.

What exactly is wage theft? Wage theft is when an employer illegally underpays workers for their work. It is not paying workers the minimum wage, not paying overtime premiums when required by law, stealing workers tips, withholding a final paycheck, not paying workers at all, billing the government for prevailing wages but only paying workers a portion, or committing payroll fraud by lying about having employees by calling them independent contractors.

In 2008, the Center for Urban Economic Development, UIC, National Employment Law Project and the UCLA Institute for Research on Labor and Employment released results from the

largest survey ever of low-wage workers – 4387 workers in the three largest U.S. cities, New York, Los Angeles and Chicago. The results were shocking. In the survey sample, 26 percent of low-wage workers were paid less than the minimum wage and 76 percent of those who worked more than 40 hours were not paid legally required overtime. The report estimated that low-wage workers are short-changed more than \$2600 annually due to wage and hour violations.¹

I believe that the situation has gotten worse rather than better since 2008, given how vulnerable many workers are in this economic environment. Interfaith Worker Justice supports a network of 26 workers centers. Last year the centers saw more than 16,000 low-wage workers and 88 percent of them were victims of wage theft.²

This is the context from which I come to the question of Examining Regulatory and Enforcement Action under the Fair Labor Standards Act (FLSA).

First, let me review a few of the areas in which the Wage and Hour Division has laid strong ground work for strengthening enforcement, regulation and partnerships over the last two-plus years. The We Can Help program has made it clear that the agency wants to help all workers and is committed to informing people of their rights and of DOL's services. The creation of worker focused phone applications will help reach younger workers. Putting information on the DOL website about employers who steal wages offers needed information to workers and consumers. The industries that have been targeted for investigations are ones that everyone working with low-wage workers knows routinely violate the law. The Bridge to Justice program is an excellent example of a private-public partnership whereby workers whose claims cannot be pursued by DOL can get an 800 number and call a local ABA-approved bar association to find an attorney who may be able to assist them. The hiring and training of 250 new investigators and the commitment to strengthening partnerships with community organizations that have direct connections with workers is all for the good. The collaboration with the Internal Revenue Service (IRS) and state agencies to share data and jointly investigate employers who commit payroll fraud adds significant potential deterrent to such fraud. And, the IRS plan to allow businesses to voluntarily come forward and reclassify employees without IRS penalties is a common sense, business-friendly approach to a widespread problem. These are all important approaches and lay the groundwork for even stronger work.

But, these steps are not nearly enough to stop and deter wage theft. Let me recommend five more things the Education & the Workforce Committee, the Department of Labor and its Wage and Hour Division should do to strengthen regulatory, enforcement and partnership actions.

1) **Engage ethical business leaders in sectors rife with wage theft.** In the new 2011 version of my book, *Wage Theft in America*, I've added a new chapter on ethical employers who work in sectors like residential construction and restaurants. These employers are paying their workers fairly and legally. Consider Stan Marek of Marek Construction in Houston Texas. His company is routinely undercut by employers who mis-classify workers as independent contractors, thus cheating workers and taxpayers of about 30 percent of payroll costs. Ethical employers, like Stan Marek, believe there needs to be stronger and more consistent enforcement to level the playing field.³ This committee should hold a hearing on how ethical employers are undercut by those who commit wage theft.

2) **Increase the penalties for violating the law.** If employers know that their chances of being caught engaging in wage theft are slim and that if they are caught they will only have to

pay the back wages they should have paid in the first place, there is little incentive to follow the law. And with only one Wage and Hour investigators for every 135,000 workers, very few employers who commit wage theft are actually investigated.

Years ago, I messed up on my payroll taxes. It was an honest mistake, but the IRS didn't care. It slapped a heavy penalty on the mistake. Believe me, I've been extremely careful and never paid another IRS fine. Most of us fear the IRS. Few employers fear the Department of Labor, but workers and ethical employers would be better off if they did. The Wage and Hour Division should continue to expand its efforts to create meaningful and significant consequences for those who violate wage laws – not only because it punishes those who steal wages, but more importantly because it deters others from knowingly stealing wages or from being careless in calculating workers' wages.

In my book I list many ways to increase the costs of violating the law.⁴ The Wage and Hour Division has begun implementing many of them. The Division should continue these initiatives, but this Committee should look at other ways to increase the costs of violating the law as a means of making sure workers are paid fairly and unlawful activity is deterred.

3) **Put more cops on the job with a confirmed leader.** Wage theft is a national crisis and there are only 1000 cops on the job. This committee should lead the way in advocating for more resources to recover unpaid wages. This is a cost effective way to increase money in the hands of workers, support ethical businesses, increase monies to public treasuries and stimulate the economy. What better way to stimulate the economy than making sure workers receive all their wages?

And in addition to making sure the Wage and Hour Division has adequate staff, this Committee should insist that the White House proposes a permanent Wage and Hour Administrator and that Congress not delay the nomination with frivolous objections or partisan divisiveness. Ms. Leppink is doing an excellent job as an Acting Administrator, but a Division as critical to workers as the Wage and Hour Division, deserves a permanent, confirmed leader.

4) **Get the proposed regulations out the door.** There are a lot of proposed regulations being talked about, but many haven't yet seen the light of day. Interfaith Worker Justice is particularly excited about the proposed regulation around transparency and paystubs. This could help workers know exactly what they are being paid for and would encourage employers to think twice before cheating them.

Let's look at all the regulations, debate them and move on. There are regulations everyone should be able to agree with. Others may be more controversial, but let's get them out the door for review.

5) **Expand and deepen community partnerships.** When police officers want to change criminal behavior, they engage the community in identifying law breakers and putting in place structures to change the environment. Community policing is an effective tool that police officers use. Community partnerships with workers centers, congregations and ethical business groups should be deepened and expanded to broaden the reach and effectiveness of the Wage and Hour Division. The story of the state fair workers demonstrates this. Together they not only stopped wage theft and recovered pay for workers, but they put in place a community plan to make sure it didn't happen again. Community partnerships work and deserve more serious support from the Department and this Committee.

Stopping wage theft is good for workers, good for ethical businesses who aren't placed at

a competitive disadvantage by those who cheat workers, good for public treasuries by ensuring employers are paying their share of taxes and good for stimulating the economy. Stopping wage theft is the right thing to do and I thank the Committee for addressing this important issue.

1. Center for Urban Economic Development, UIC, National Employment Law Project, UCLA Institute for Research on Labor and Employment, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, 2008. Download a copy free at www.unprotectedworkers.org.

2. Interfaith Worker Justice, *Workers Center Census, 2011*. For more information about IWJ-affiliated workers centers, visit www.iwj.org.

3. Kim Bobo, *Wage Theft in America: Why Millions of Working Americans are Not Getting Paid and What We Can Do about It* (New York: The New Press), 2011, page 117.

4. *Ibid.*, pages 172-182.