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## End Wage Theft - Stop the Billion Dollar Swindle: The Case for Real Enforcement of New York State's Wage & Hour Laws

Make the Road New York

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# End Wage Theft - Stop the Billion Dollar Swindle: The Case for Real Enforcement of New York State's Wage & Hour Laws

## Abstract

[Excerpt] In 2010, the National Employment Law Project found that nearly \$1 billion was stolen from low-wage workers every year in New York City alone. Despite the strongest laws on the books, all evidence indicates that rampant wage theft continues in our state.

- Wage theft harms taxpayers across the state: employers who fail to pay minimum wage or overtime are also notorious for failing to pay taxes, workers' compensation insurance, or unemployment insurance.
- Law-abiding employers cannot compete when the competitor down the street is undercutting them by stealing workers' wages.
- When we fail to make wage and hour protections REAL by enforcing the laws on the books, we are SUBSIDIZING bottom-feeder employers. Responsible employers deserve a fair playing field.

## Keywords

wage theft, National Employment Law Project, worker rights, Make the Road NY, New York State

## Comments

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# End Wage Theft

## Stop the Billion Dollar Swindle: The Case for Real Enforcement of New York State's Wage & Hour Laws

### THE CONTEXT: RAMPANT NONCOMPLIANCE WITH WORKPLACE LAWS

In 2010, the National Employment Law Project found that nearly **\$1 billion was stolen from low-wage workers** every year in New York City alone.<sup>1</sup> Despite the strongest laws on the books, all evidence indicates that rampant wage theft continues in our state.

- Wage theft harms taxpayers across the state: employers who fail to pay minimum wage or overtime are also notorious for failing to pay taxes, workers' compensation insurance, or unemployment insurance.
- Law-abiding employers cannot compete when the competitor down the street is undercutting them by stealing workers' wages.
- When we fail to make wage and hour protections REAL by enforcing the laws on the books, we are SUBSIDIZING bottom-feeder employers. Responsible employers deserve a fair playing field.

### THE PROBLEM: INADEQUATE RESOURCES FOR ENFORCEMENT

The vast majority of low wage workers lack the resources and connections to hire private attorneys. The New York State Department of Labor ("NYDOL") is the one agency with broad enforcement jurisdiction and authority to enforce minimum wage, overtime, prevailing wage, and other basic labor protections – and is the agency that most low wage workers MUST turn to for enforcement of minimum wage and overtime laws. But for decades, as the workforce has been growing<sup>2</sup>, the **NYDOL has been bleeding resources**, losing the investigators and judges necessary to hold wage thieves responsible for wage theft.

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<sup>1</sup> WORKING WITHOUT LAWS: A SURVEY OF EMPLOYMENT AND LABOR LAW VIOLATIONS IN NEW YORK CITY, Annette Bernhardt, Diana Polson and James DeFilipis, 2010.

<sup>2</sup> See "U.S. LABOR FORCE TRENDS", Marlene A. Lee and Mark Mather, *Population Bulletin*, Vol. 63, No. 2, June 2008: 3.

The **NYDOL lacks the necessary resources** to tackle wage theft in our state.

- Unofficial reports from the NYDOL indicate that the agency has far ***fewer investigators*** now, measured per capita, than it did decades ago – and that as senior investigators retire, the agency is not always given the budget to fill these key vacancies.<sup>3</sup>
- There is a growing ***backlog of complaints for investigation***. The number of open cases at the Division of Labor Standards, which enforces wage and hour laws statewide, has doubled since 2007. Currently, the Division of Labor Standards has more than 15,000 open cases. As a result of the back log of cases, workers report they must wait *well over a year* before the NYDOL even begins an investigation of their unpaid wage claims.
- Many investigations can last several years. And workers report that even after they receive a NYDOL decision in their favor, they must wait *at least* another year before a hearing of the employer’s appeal at the Industrial Board of Appeals (“IBA”) because there are ***too few administrative law judges*** to hear cases. These delays provide ample time for employers to go out of business, sell their business, or simply disappear, which jeopardize workers’ chances of ever collecting their stolen wages.
- **While the New York Labor Law has some of strongest enforcement provisions in the country, the NYDOL is unable to enforce workers’ rights fully.** The law provides that employers are accountable for *six* years of unpaid wages; however the NYDOL’s investigations only cover a three year period – half of the time provided for under the statute of limitations. The result is an unequal system where vulnerable workers who turn to the NYDOL are highly likely to recover less of their unpaid wages than if their cases were handled by the State Attorney General or through the court system.
- The NYDOL has NOT received any meaningful increase in investigative resources to respond to wage theft in the Hurricane Sandy rebuilding.

## THE OPPORTUNITY: STRONG NEW TOOLS FOR ENFORCEMENT

The benefits of REAL enforcement are clear: workers, law-abiding employers, and taxpayers across the State will benefit. And *now* is the critical moment:

- In 2010, New York became the state with the strongest anti-wage theft protections in the country<sup>4</sup> with the implementation of the ***Wage Theft Prevention Act***. Increased damages, improved protections against retaliation for workers who report violations, and stronger tools for enforcement ensure that additional enforcement resources to the NYDOL will translate into enhanced legal compliance on the ground, more money in working communities, and more tax revenue for the State.
- New York cannot afford to wait. As we emerge from the recession and rebuild after Sandy, we *must* ensure that our renewed economy is driven by decent employers, not those who undercut good businesses by stealing workers’ wages.

<sup>3</sup> STRENGTHENING LABOR STANDARDS ENFORCEMENT THROUGH PARTNERSHIP WITH WORKERS’ ORGANIZATIONS, Janice Fine and Jennifer Gordon, Politics and Society, 38 Pol. & Soc’y 552, 557 (2010).

<sup>4</sup> CRACKING DOWN ON WAGE THEFT, Tim Judson & Cristina Francisco-McGuire,( 2012).

## THE SOLUTION: INCREASED DEDICATED FUNDING

We call on Albany to dedicate the resources necessary to ensure effective, efficient, strategic enforcement of the State's workplace protection laws, including:

- **Hire an additional 200 investigators** to return staffing to the levels held by the NYDOL over three decades ago;<sup>5</sup>
- **Reduce the backlog** to ensure that investigations commence within six months of filing a claim and are completed within one year;
- **Hire additional staff for the Industrial Board of Appeals (IBA)** to hear and resolve appeals within six months of filing;
- And increase resources to **collect wages, damages, and fines** found due by the NYDOL.

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<sup>5</sup> Fine and Gordon, STRENGTHENING LABOR STANDARDS ENFORCEMENT THROUGH PARTNERSHIP WITH WORKERS' ORGANIZATIONS, 552, 557.