

May 2012

# Houston, We Have a Wage Theft Problem

*The Impact of Wage Theft on Our City and the Local Solutions Necessary to Stop It*



**Houston Interfaith  
Worker Justice Center**



## Executive Summary

In the city of Houston, second only to New York City in the number of Fortune 500 headquarters, which as an independent nation would rank as the world's 30th largest economy, all of its residents should be able to prosper. However, as wage theft is becoming a defining trend of low-wage industries in the 21st century, Houston workers and businesses are being hard-hit with the dire consequences of this labor abuse. The repercussions of wage theft are city-wide and affect business owners, consumers, and workers alike.

This report explores the effects of wage theft on the individual, community, and local economy within the context of the city of Houston. It also provides an assessment of the current system charged with dealing with wage theft cases, and its many limitations in effectively providing solutions. Lastly, it analyzes the impacts of both of these variables in order to present policy recommendations for the City of Houston that will bring down wage theft and make the city a just and prosperous place to work. The Report highlights the following findings:

### Wage theft is a community problem

- ▲ Wage theft becomes a problem to the community as a whole because of: (1) the sheer prevalence and pervasiveness of wage theft; and (2) the individuals' connection to the broader community undoubtedly has collateral effects on their families, the public, the taxpayer, the local economy and even other businesses.
- ▲ An estimated \$753.2 million dollars are lost every year due to wage theft among low-wage workers. The consequences of this loss further depress working family incomes, resulting in decreased community investment and spending and limited economic growth.
- ▲ Over 100 wage and hour violations occur in Houston every single week, a conservative figure that still demonstrates the pervasiveness of wage theft in the city. Although it is prevalent in the Houston construction and restaurant industries, it affects all types of industries, especially low-wage work.

### The system charged with wage enforcement is failing

- ▲ Across the board, agencies and institutions - including the Department of Labor's Wage and Hour Division, the Texas Workforce Commission, the courts, and community organizations - face many limitations, including understaffing, financial barriers (for both institutions and workers), and lack of enforcement and jurisdiction.
- ▲ As a result, many workers are left unprotected, either through exclusions from the law or financial barriers to reporting and pursuing wage theft cases.
- ▲ Weak employer enforcement and near non-existent consequences for violations make wage theft recovery increasingly difficult and also fail to deter future wage theft occurrences.

### Houston has many opportunities to bring down wage theft through community & policy action

- ▲ Throughout the nation, communities have been resisting wage theft by implementing creative community actions and successfully pushing comprehensive policy solutions at the local and state levels.
- ▲ Houston can capitalize on successful models nationwide, as well as on its own local innovation, to create better wage theft prevention and recovery mechanisms based on the needs of the region's industries and workers.
- ▲ The city can take action by facilitating wage claims and resolutions through an administrative hearing process, increase employer consequences to improve wage theft recovery and prevention, and strengthen worker protections against retaliation for reporting wage claims within the city.



## About the Authors

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**The Houston Interfaith Worker Justice Center** (HIWJ, and also referred to as the Worker Center) is a non-profit organization founded in October 2006 as a space for workers in low-paying jobs to learn about their workplace rights and organize to improve conditions on the job. HIWJ's role is to offer tools to support for workers' individual cases and their collective organizing processes. HIWJ also partners with fifty-five other worker centers across the U.S. through Interfaith Worker Justice's National Worker Center Network and the National Domestic Workers' Alliance. For more information, visit [www.hiwj.org](http://www.hiwj.org).

**The Down with Wage Theft Coalition** formed in late 2011 to address the issue of wage theft in Houston. Currently 29 organizations and responsible businesses have signed on. For more information, visit [www.downwithwagetheft.org](http://www.downwithwagetheft.org)

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Error!



## Introduction

On December 3, 2011 during a busy Saturday night dinner rush, 5 waiters – along with the general manager- walked off their shifts at a popular Montrose eatery over allegations of thousands of dollars in unpaid wages<sup>1</sup>. The workers took to social media and local press outlets to expose the ongoing wage violations at the restaurant, including of course their thousands of dollars in unpaid tips. Their employer not only failed to pay their total earned tips, but as tipped staff earning \$2.13 per hour, the absence of earned tips to make up the difference also created minimum wage violations<sup>2</sup>. The workers also reported being paid in personal checks, which means no payroll taxes were deducted from their earnings, also resulting in tax fraud.

Following the initial walk out, with increased community support and media interest, the Houston Interfaith Worker Justice Center helped two of the waiters stage a protest and picket outside the restaurant to demand their unpaid wages and call attention to the pervasive problem of wage theft among low-wage workers, especially in restaurants. While the attention around this case has dissipated over the past 6 months, the plight of the workers to recover their wages and demand respect for their work continues, along with thousands of other workers in the Houston area who are affected by wage theft.

While the workers' courage to stand up against their employer and demand their wages was extraordinary, what is even more astounding is how common this type of workplace abuse is among workers in Houston. Unfortunately, unlike the Ruggles case, many of these abuses are silenced by employer threats, fear of retaliation, economic insecurity, or simply lack of information on worker's rights. This particular case presents a valuable opportunity to begin exploring some of the dimensions of wage theft in our city, and set the context for a call to action from our community and our city law makers to bring down wage theft in Houston.

<sup>1</sup> Katherine Shilcutt, "Ruggles Waitstaff Stages Walkout, Alleging Non-Payment of Tips," *The Houston Press*, December 5, 2011.

[http://blogs.houstonpress.com/eating/2011/12/ruggles\\_waitstaff\\_stages\\_walk-phi](http://blogs.houstonpress.com/eating/2011/12/ruggles_waitstaff_stages_walk-phi)

<sup>2</sup> Currently, Federal minimum wage is \$7.25 per hour. However, the tipped minimum wage (under which most restaurant wait staff work) is actually \$2.13 per hour. The stipulation is that with the addition of tips, these type of workers will earn at least \$7.25 per hour. When the addition of tips does not add up to at least \$7.25, employers are obligated to pay workers the difference.

## What is wage theft and what laws does it break?

*Commonly, wage theft is a violation of the Federal Labor Standards Act (FLSA) which provides a federal minimum wage (\$7.25/hour) and requires employers to pay time and a half for overtime worked over 40 hours a week.*

*Wage theft also occurs when employers make illegal deductions from your paycheck or steal tips, when they make you work off the clock, or withhold payment after being terminated.*

*Wage theft can also include violation of tax laws, through the misclassification of employees as independent contractors, which excludes employers from having to pay overtime or benefits, as well as their share of payroll taxes, passing on the burden to the worker. In the most egregious cases, wage theft occurs when an employer simply refuses to pay any wages to a worker for any amount of hours worked.*



## Wage Theft is a Community Problem

Often people think wage theft is a problem that affects individuals and minority groups, but wage theft quickly becomes much more than that. The recurrence of more and more individual cases of wage theft transforms this problem into a social issue that affects the whole community.

Wage theft always involves individuals, and individuals are more likely to be directly affected by wage theft if they belong to vulnerable populations. For example, women, immigrants, people of color and/or people with limited English proficiency are disproportionately affected by wage theft<sup>3</sup>. It is important to note that although under federal law, all workers, regardless of immigration status, are entitled to their due wages for work performed, the growing stigmatization of immigrant communities in the U.S. has resulted in an increased vulnerability for immigrant workers.

However, wage theft quickly goes beyond individuals or vulnerable groups and becomes a problem to the community as a whole because of two main reasons: (1) the sheer prevalence and pervasiveness of wage theft; and (2) the individuals' connection to the broader community undoubtedly has collateral effects on their families, the public, the taxpayer, the local economy and even other businesses.

Wage theft is a recurring problem. A seminal 2009 study of nearly 4,500 low-wage workers found that more than two-thirds experienced at least one pay-related violation in their previous work week, including a quarter of workers who were paid less than minimum wage, and three quarters who were not paid overtime wages owed to them<sup>4</sup>.

Wage theft is also pervasive; it goes beyond affecting vulnerable populations. The industry and the type of job is generally a much better predictor of violations than the workers' demographic characteristics. According to *Broken Laws, Unprotected Workers*, wage violations are most common in the personal and repair services, in private households, and in construction. To a lesser extent building services and grounds workers, factory and packaging workers, security guards and general



Source: *Broken Laws, Unprotected Workers* (National Employment Law Project, 2009)

<sup>3</sup> 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.unprotectedworkers.org>

<sup>4</sup> Ibid.



Yenny Rivero worked at a small Houston candy shop, making and packing sweets, filling orders, and dealing with customers. Things were going well, until her employer started getting behind with her paychecks. At first, they were a couple of weeks late, but eventually she would get paid. After a while, checks were not only late, but they were also incomplete. The employer continued with excuses about not having enough money, having landlord issues, etcetera and kept reassuring Yenny that she would eventually get paid. Shortly after Easter of 2011, one of the busiest and most profitable times for the candy shop, Yenny decided to leave her job when instead of allowing her employer to continue taking her money. At this point, her employer had withheld \$11,000 accumulated from the systematic wage deductions over her employment.

Yeni reported her case to the DOL's Wage & Hour division, but was told that there was nothing they could do. Because the candy shop had only 3 employees and grossed less than \$500,000 a year, Yenny was excluded from receiving the help she so desperately needed to recover her wages. \$11,000 in the hole and unsure where to turn for help, Yenny was faced with yet another shock. Her husband, Paramaconi who was working as a maintenance and repair man, was terminated from his job and his employer also refused to pay him for his last week of work.

The couple came to the Worker Center in September 2011 to seek help on both of their wage theft cases. As they sat in a crowded room listening to a worker's rights presentation, with their young son in tow, they discovered many of their own experiences were common for most of the people around them. Working mothers and fathers, trying to provide for their families yet deprived of their hard-earned wages and left with withering hope. However, the couple has grown stronger in their fight to recover their wages and win justice for their family. They have faced many challenges, both financial and emotional, and due to the many limitations they've encountered with the system, they hope to make real changes so that other families like theirs are not faced with the same despair.

construction workers were found to be common victims of wage theft<sup>5</sup>. Furthermore, these workers are connected to their families and to the whole community.

## Impact on Working Families

Wage theft is particularly egregious in that it disproportionately affects workers in low-wage jobs who may already be struggling with poverty. The same study found that wage theft caused a significant loss in income, since 60% of the workers in this group were underpaid by more than \$1 an hour. Based on their findings, assuming a full-time, full-year work schedule, low-wage workers lose an average of \$2,634 annually due to workplace violations, out of total earnings of \$17,616<sup>6</sup>.

In "The Resilience and Strength of Low Income Families," Orthner et al. examine indicators of family strength among low-income households with children. Not surprisingly, they find that employment is a major factor affecting family strength. Specifically for low-income families, unemployment, underemployment, or employment at low wages increases the likelihood for hardship in various aspects of family life<sup>7</sup>. Wage theft has direct links to low-wage employment and underemployment, because it reduces the value of hours worked and the overall income earned. As previously noted, retaliation from wage theft reporting can result in unemployment, increasing the potential hardships for low-income families who experience wage theft.

These numbers are not merely statistics but rather paint a picture of hardship that is consistent with the experience of Houston Interfaith Worker Justice's membership. Workers report desperation not knowing how they will be able to provide for their families' needs and often quietly ask for

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> Orthner, D. K., Jones-Sanpei, H., & Williamson, S. (2004). The resilience and strengths of low-income families. *Family Relations* 53, Special Issue on Low-Income and Working-Poor Families, pp. 159-167.



social service referrals for rent assistance and local food banks that they have never had to lean on, and prefer not to but find no other option. The families of cheated workers, whether they are security guards, waiters, or day laborers, depend on the income they bring home. So when wages are withheld, the whole family suffers.

## Impact on the Public, the Tax-payer, and our Local Economy

Wage theft not only decreases the individual earnings of low-wage workers, it also adversely impacts their communities and local economies in which they participate. First, Houston loses workers' investment in the local economy and employers' payroll taxes. Moreover, public safety nets are overburdened with families destabilized by wage theft.

When employers withhold wages from workers, it impoverishes the community and commonly furthers inequality. Since low-income families are more likely to spend their earnings on basic necessities like food, clothing, and housing and circulate these expenditures through the local economy, their loss of wages negatively affects local jobs and businesses<sup>8</sup>. The staggering rates of violations of wage and hour laws around the country translate into millions of dollars lost for local economies. Findings from *Broken Laws, Unprotected Workers* conclude that an astounding \$56.4 million is lost every week due to wage theft in each of the major cities surveyed<sup>9</sup>.

Houston faces a very similar picture. The Department of Labor's Wage and Hour Division, charged with enforcing the Fair Labor Standards Act and other federal labor laws, reports that employers in the city of Houston had 19,798 wage and hour violations since FY2008<sup>10</sup>. This amounts to over 100 wage and hour violations every single week in the Houston area. Not surprisingly, the industries with the most violations have been construction (17%) and full service restaurants (16%)<sup>11</sup>. Since FY 2008, employers have agreed to pay out \$18,235,720.30 in back wages to Houston workers and \$1,661,630.50 more have been recovered through civil monetary penalties<sup>12</sup>. Since 2007, HIWJ has documented more than \$3.3 million in stolen wages and has been able to recover upwards of \$700,000 through negotiations, legal actions, and public campaigns<sup>13</sup>.

While these figures are alarming on their own, they represent only one segment of the monetary scope of wage theft in Houston. As we discuss in the following section, workers have other avenues for reporting wage claims aside from the DOL's Wage & Hour Division. Among them are civil claims through Small Claims Courts, which does not have records of types of cases or amounts reported, and

<sup>8</sup> Ruth Milkman et al., "Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low Wage Workers," *Institute for Research on Labor and Employment – UCLA*, 2010.

<sup>9</sup> The study conducted surveys among 4,500 low-wage workers in the three largest cities in the U.S., New York City, Los Angeles, and Chicago. Houston is the next city on this list, ranked 4<sup>th</sup> largest in the country. Source: 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.unprotectedworkers.org>

<sup>10</sup> U.S. Department of Labor. *Wage and Hour Compliance Action Data*. Retrieved from [http://ogesdw.dol.gov/raw\\_data\\_summary.php](http://ogesdw.dol.gov/raw_data_summary.php)

<sup>11</sup> Ibid. (Total Construction cases comprise highway, street, and bridge construction combined with commercial/institutional construction)

<sup>12</sup> Ibid.

<sup>13</sup> Houston Interfaith Worker Justice Data collected from self-reported wage theft cases



FLSA law suits, which also do not provide an accurate reporting of monetary amounts for claims<sup>14</sup>. In the Houston region alone, it is estimated that low-wage workers are cheated out of \$753.2 million dollars each year.<sup>15</sup>

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The improper classification of employees as independent contractors, or payroll tax fraud, is also a common and growing problem in many industries. It robs government coffers of billions of dollars annually. In a 2009 report, the IRS estimated that as a result of misclassification, employment taxes were underreported by \$54 billion.<sup>16</sup> Payroll tax fraud is usually an attempt on behalf of the employer not only to get out of tax-paying responsibilities, but also to stiff workers by paying a daily rate or a piecemeal rate that calculates out under minimum wage and that does not compensate for overtime.

As mentioned above, when a worker's wages are stolen, families who would normally not need to access publicly-funded social services like food stamps, the Harris County Gold Card or Federal Medicaid for healthcare, local food banks, and unemployment, are left with limited options. All of these services, crucial safety nets, have a cost to our tax-base. Bringing wage theft to its rightful end and ensuring all are paid according to minimum wage and overtime laws will also ensure that workers have a dependable source of income to cover the basic human needs of their families and will ease the burden on our tax dollars.

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<sup>14</sup> The Texas Workforce Commission, the state agency charged with enforcing the Texas Payday Law, also processes wage claims. As of the printing of this report, current wage claim figures were not available from the Texas Workforce Commission

<sup>15</sup> Author's analysis; calculations based on the U.S. Bureau of Labor Statistics March 2012 labor force estimates for the Houston-Metropolitan Area, using Bernhardt et al. methodology for wage violation incidence rates.

<sup>16</sup> "Billions in Revenue Lost Due to Misclassification and Payroll Fraud," American Rights at Work, undated.

([http://www.americanrightsatwork.org/dmdocuments/ARAWReports/misclassificationfactsheetfinal\\_logo.pdf](http://www.americanrightsatwork.org/dmdocuments/ARAWReports/misclassificationfactsheetfinal_logo.pdf))





## Impact on Responsible Businesses

Responsible businesses are also negatively impacted when wage theft occurs. Wage theft creates an unfair advantage; businesses that pay fair wages cannot compete against employers who cut costs by stealing their workers' pay. When workers are underpaid or not paid at all, productivity decreases and results in lower quality products and services. Wage theft not only steals from the worker, but can destroy community businesses, as working families cannot spend wages they haven't received.

Responsible businesses in Houston have stepped up to denounce this practice and collaborate with community organizations to take action. However, they are the exception rather than the rule. Industry standards continue to be low and reinforce the status quo. Cracking down on wage theft is a great tool for business development and should be used as a way to advance economic growth.

## Why Wage Theft Continues

While this report focuses on the effects of wage theft and the limitations of the current system, exploring *why* many workers are experiencing wage theft is also important in developing effective and comprehensive solutions to this problem.

Wage theft is a very complex issue with multiple causes. First, there are contextual factors that encourage wage theft, including globalization, workers' dependency on work, reduced numbers of good jobs, unemployment and disguised unemployment, immigration issues, and cultural values such as capitalism, racism and sexism<sup>17</sup>. These contextual factors increase pressure to accept sub-

### *Does wage theft affect fair business?*

"That goes without saying. It's very hard to be competitive, this is a tough market. You know, we've seen the market divide by two in the last 3 years, there's a lot of people trying to get work, people from the home building industry which really hit hard times coming into our industry so people are taking work a lot cheaper, and those companies that do have hourly workforces, that do pay some sort of benefits, they obviously can't compete. It's very difficult to compete ..."

"That just hurts everybody in the long run. And it's something that we as an industry are and should be very concerned about, because it is our industry."

**Jerry Nevlud, President of the  
Associated General Contractors –  
Houston Chapter**



<sup>17</sup> Kim Bobo, *Wage Theft in America: Why millions of working American are not getting paid and what we can do about it*, The New Press, December 2008.



minimum wages and unpaid overtime in the face of high unemployment.

Second, there is ideology reflected on business practices that continue to prompt wage theft: the ideology of the expansion at all costs, the preoccupation with short-term profits versus long-term profitability, the spread of understaffing policies, and weak labor protection systems within business, which disregard the humanity of workers. These ideas and practices worsen particularly in economic downturns with the associated focus on cutting costs.<sup>18</sup>

Third, forces working against wage theft are lacking: weak unions and workers associations, weak labor laws, even weaker enforcement and meaningless consequences, and few community pressures fail to protect workers from the global context and the greedy business practices. Wage violations are also linked to outdated and problematic federal labor and immigration laws. For example, some occupations and industries, such as domestic work and farm labor, are either partly or completely excluded from labor laws<sup>19</sup>.

## The Regional Context

Texas has a wide reputation as a pro-business state; its low tax burden, low living costs, and a handful of business-friendly government programs have all served Texas fairly well as it aims to attract business and weather the current economic crisis. Largely undervalued real estate and the lack of a personal income tax have also fomented large population growth, giving Texas a labor force of almost 12 million in June 2009 (Department of Labor).

The tax climate also favors big business. The sales tax in Texas is 6.25% (8.25% for certain localities), one of the lowest in the U.S., as compared to 9.6% nationally. Overall, Texas has no personal income tax, no state tax on property used for pollution control, no state tax on goods in transit and no state tax on machinery and equipment utilized in manufacturing.<sup>20</sup> With this record, the Tax Foundation ranks Texas 9<sup>th</sup> in its overall State Business Tax Climate Index<sup>21</sup>.

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<sup>18</sup> 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.unprotectedworkers.org>

<sup>19</sup> Ibid.

<sup>20</sup> "Texas Economic Development: Texas Advantage." [TexasWideOpenForBusiness](http://www.texaswideopenforbusiness.com/texas-advantage/). <<http://www.texaswideopenforbusiness.com/texas-advantage/>>

<sup>21</sup> 2012 State Business Tax Climate Index, Tax Foundation Background Paper No. 62, *Tax Foundation*, January 2012. <http://www.taxfoundation.org/news/show/22658.html>



On the other hand, Texas' workforce is protected only by the most minimal workplace laws. While workers have a right to protections like minimum wage and overtime pay under the federal Fair Labor Standards Act, businesses are not required to provide even *unpaid* holidays, sick days, breaks (only to go to the bathroom, but not to drink water or eat), or vacations under federal or state labor law. Texas is also the *only* state that does not have mandatory workers compensation. This means that workers may not be covered for health costs or wage replacement resulting from on-the-job injuries.

While many news outlets have highlighted that Texas is responsible for 40% of jobs added in the U.S. in the past two years, few have pointed out the fact that Texas' poverty rate grew faster than the national average in 2010, and even fewer have asked why.<sup>22</sup> Approximately one in ten of Texas' hourly workforce is paid at minimum wage, earning it the title of highest percentage of minimum-wage hourly workers in the nation, tied only with Mississippi.<sup>23</sup>

Unions have consistently been the best vehicle for workers to win long-term labor protections above minimal legal protections and have raised the bar for all workers in many industries. Yet as a "right to work" state, (like 21 other states, mostly in the South), even though a union represents all workers of a given company, workers are not required to pay union dues. Indeed, only 4.5% of Texas's workforce is unionized, compared to 12.4% of the national workforce<sup>24</sup>.

Much like its state, Houston as a city has almost always been wary of any limits put on the economic rights and activities of its business community. As Robert Fisher (1990) puts it, "the ideological thrust in



*"Since I started working at this restaurant Ruggles, we've never been getting paid as far as on time for what we've supposed to be paid. Most of what we're paid comes very sporadically. Sometimes I only get a check for 400 dollars a month when I've made well over 1000-2000 that month. And it's been going on for a while, while we have our bills to get paid our electricity bills, things are getting cut off on us, our chef walks around and he goes on trips, takes care of himself, buys his kids gifts. And then when we ask for our money we're told that they don't have it or that if they were to pay us they wouldn't be able to keep the restaurant open, and if they're not able to keep the restaurant open then we don't get paid either way. And we get those types of excuses and we've been going through this for some time.*

*I was a server, I was supposed to get paid 2.13 hour to wait tables plus tips. As far as my job goes, not only did I wait tables, we did a lot of labor work, we would set up rooms, we would hang signs, hang Christmas lights, I steamed clean carpets, I mean, I did a lot of things besides waiting tables that we weren't paid for.*

*Tonight for instance, we're doing this, and I should be studying for finals, not worrying about where my money is or paying my bills, I'm supposed to go home and do schoolwork sometimes and I can't do it because I didn't pay this bill or I'm behind on this, and while I'm trying to read a book or focus, I can't do it because I'm focused on omg are my lights gonna still be on next week, or where am I gonna get this money from or who am I gonna ask for it. I wasn't able to focus on school so much, it's affected my grades. Even just going to work, or just being upset at the fact that the chef would flaunt, and still buy himself gifts while I didn't have money, just the thought of that would anger me while I was trying to do work.*

*Out of the people I work with, I'm the one that was in the least amount of trouble. There's people out there that are owed 3 times more than I am in this particular situation, they are behind on their bills much more than I am, they actually have families. Other people on staff have family, have wives, they have people they have to take care of, and they are owed 3 times 4 times more than I am owed."*

- Jeremy Villarreal

<sup>22</sup> Luhby, Tami. "Poverty Grows in Rick Perry's Texas" *CNN Money*. Sept. 18, 2011. Available at [http://money.cnn.com/2011/09/18/news/economy/poverty\\_perry\\_texas/index.htm](http://money.cnn.com/2011/09/18/news/economy/poverty_perry_texas/index.htm)

<sup>23</sup> Ibid.

<sup>24</sup> Greater Houston Partnership Research. "Unions." *Economy at a Glance: Houston Facts and Figures*. (13<sup>th</sup> March 2008). <http://www.houston.org/facts-figures/index.html>



Houston in the twentieth century has been anti-government, anti-regulation, anti-planning, anti-taxes, anti-anything that seemed to represent, in fact or fantasy, an expansion of the public sector<sup>25</sup>. In fact, proud Houstonians often point to no zoning, low tax, and low-regulation format when describing the strengths of their city

## Thou shalt not steal

*Wage theft is not only a violation of state and federal law, but also has various grave moral implications. It exalts the greed for profit with little regard to the negative consequences on people, be it workers, taxpayers and/or other community members.*

*Wage theft is stealing from workers what they have rightfully earned with their time and effort, most often an act of deceit that betrays the pact made between employer and employee. Furthermore, wage theft most commonly occurs through the exploitation of the most vulnerable in our society.*



Interfaith leaders from Sikh, Catholic, Jewish, Muslim and Evangelical Christian traditions pose after speaking at the Rothko Chapel's *Labor in the Pulpit*, on the *Minbar*, in the *Bimah* program on Wage Theft (August 2011)

*"No one would question the injustice of wage theft. But it is an injustice that survives only because we allow its presence in our community. It thrives in Houston to the extent we choose to ignore it, to the extent we choose not to act.*

*Only when moral leaders choose to advocate against this crime, only when people begin standing in solidarity with the victims of stolen wages, only when we believe that injustice does not have to be reality can we begin to make a difference in our community.*

*What people don't understand is that wage theft is actually theft from the entire community. Injustice anywhere hurts everyone, not just the immediate victims. We urge all faith leaders, all people of moral integrity, to call for justice with patience and passion until we can all agree our world is a world of justice and dignity for all our citizens!"*

**- Rev. Martin Troyer, Pastor, Houston Mennonite Church and Blogger "The Peace Pastor" on the Houston Chronicle**

Union density in Houston is low in comparison to other major U.S. metropolitan areas. According to the Greater Houston Partnership, a politically active alliance of business leaders, almost its entire workforce is non-union because no financial institutions, hospitals, or corporate office staff are covered under collective bargaining agreements. Major local work stoppages are rarely even reported<sup>26</sup>. In fact, "the National Labor Relations Board downgraded the regional office in Houston to status of field office and transferred operations to Fort Worth."<sup>27</sup> This reality, along with minimal state worker protections, is the part of the answer to why wage theft abuses in Houston (and particularly towards low-wage workers) occur as frequently as they do.

<sup>25</sup> Fisher, Robert. "The Urban Sunbelt in Comparative Perspective: Houston in Context." *Essays on Sunbelt Cities and Recent Urban America*. Ed. R. Fairbanks and K. Underwood. College Station, TX: Texas A&M University Press, 1990. 38-58

<sup>26</sup> Greater Houston Partnership Research. "Unions." <http://www.houston.org/pdf/research/10JW001.pdf>

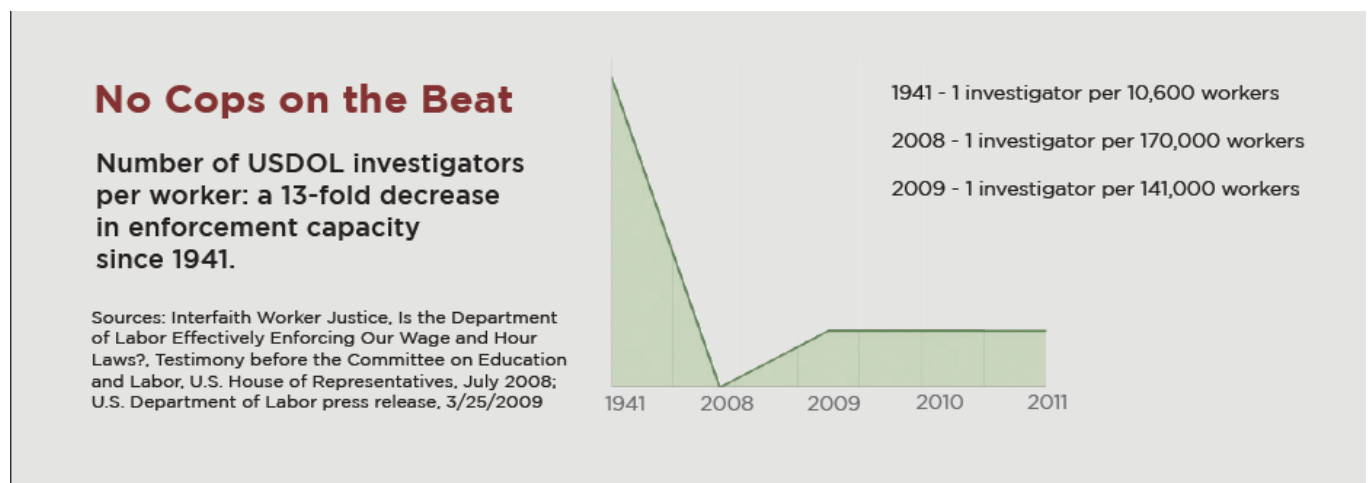
<sup>27</sup> Ibid.



## Why is the Current System Failing Workers?

Workers face many barriers when they attempt to recover their wages or change bad working conditions. While there are agencies currently charged with enforcing labor law, both at the federal and state levels, and civil avenues for workers seeking to recover their wages, they face many limitations both due to their lack of capacity and resources and their exclusions of some of the most vulnerable and likely victims of wage theft.

Many workers never make complaints about these violations, fearing retaliation if they speak up. This fear is well-founded – according to one major study, 43% of workers who raised complaints faced employer retaliation such as termination or suspension, cuts in wages or hours, and threats to call immigration authorities.<sup>28</sup> Given that the overwhelming majority of all wage and hour investigations are reactive, it is essential that workers have the ability to report these sorts of cases, without having to bargain the risks of asserting their basic workplace rights.



Public enforcement of wage and hour laws cannot keep up with violations. On the federal level, the U.S. Department of Labor has only 1,000 investigators for the more than 7 million workplaces nationwide.<sup>29</sup> Moreover, the DOL can only investigate wage and hour violations in workplaces of employers who are involved in interstate commerce and are grossing over \$500,000 annually.<sup>30</sup> A GAO report released in March 2009 found that the Wage and Hour Division mishandled nine of ten cases brought to it by agents playing the role of mistreated workers. For example, when an

<sup>28</sup> Amy Traub and Andrew Friedman, "Workers Deserved to be Paid," Albany Times Union, April 5, 2010, available at <http://www.drummajorinstitute.org/library/article.php?ID=7387>

<sup>29</sup> U.S. Dept. of Labor, *FY 2012: Congressional Budget Justification: Wage and Hour Division*, at 20-23, <http://www.dol.gov/dol/budget/2012/PDF/CBJ-2012-V2-03.pdf> (accessed on May 13, 2011) (showing increased funding for enforcement in 2010, 2011, and proposed increases for 2012).

<sup>30</sup> 29 U.S.C. § 206,207



undercover agent repeatedly called the Division posing as a dishwasher who had not been paid overtime for 19 weeks, the calls were never returned<sup>31</sup>.

On the state level, the Texas Workforce Commission is the only agency charged with enforcing the Texas Payday Law. Currently, there are only 24 investigators in the state, working out of Austin, to handle the thousands of wage claims the agency gets every year from across the state. As a result of this policy and lack of resources, the TWC has not conducted a field investigation since 1993.<sup>32</sup> This results in a minimum of a six-month wait for investigators to start working on a given wage claim. Fines are also infrequently applied and the employer's full debt to the worker is infrequently recovered.

A third recourse for workers is filing a suit, either criminally through an attorney or in a civil procedure with Small Claims court. Although a typical wage theft case of \$800 may be an entire month's rent, utilities, and food for a low-wage worker and their family, that amount hardly provides a high enough profit margin for an attorney to take on the case in court, even with liquidated damages and attorney's fees upon favorable judgment. If this same worker chooses to file in Small Claims Court without an attorney, he or she faces an upfront cost of \$104 just to file a small claims petition. Even with a favorable judgment, there is no guarantee that the worker will actually recover the stolen wages. A writ of execution and abstract of judgment will cost the worker an additional \$135<sup>33</sup>. That amounts to a total of \$239, not including travel costs and work hours lost to attend court and follow up with this process.

For many workers already living in poverty, the investment of time and resources filling out forms, driving to the Worker Center or the Small Claims Court, becomes too burdensome. Many workers prefer to get a new job to help their families recuperate the loss from the previous unpaid wages. Landlords, bills, and hungry mouths can only wait so long. So for many, justice deferred is justice denied.

## The Fight for Recovery

When workers choose to come forward to report a case of wage theft, there are various reasons motivating them to speak out. Some are tired of the abuse, others want to make sure their employer is brought to justice, and some want to make sure other workers don't have to go through the same experience. Whatever the reason, one of the most important motivations for a worker is to recover his or her stolen wages. However, in this often long-winded and arduous journey, victory takes on many forms that do not always result in wage recovery.

As previously discussed, wage theft has a widespread economic impact in the city of Houston, and wage recovery is one of the first steps in ameliorating these negative effects. Again, the limitations of

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<sup>31</sup> Greenhouse, Steven, "Labor Agency is Failing Workers, Report Says," *New York Times*, March 24, 2009.

<sup>32</sup> Julien Ross, *A Fair Day's Pay: The Problem of Unpaid Workers in Central Texas*, 10 *TEX.HISPANIC J.L. & POLICY* 117, 154 (2004).

<sup>33</sup> Harris County Justice of the Peace Courts website, <http://www.jp.hctx.net/info/CombinedCivilCourtCosts.pdf>, accessed 02/07/2012



## ***Wage theft at a local floral shop***

*Carol\*, has years of experience working in the floral industry but at her last job at D'Elegance Florist she was never paid \$7,602.70 of her earned wages.*

*After TWC completed her case, the investigation concluded that she was owed \$7,602.70 for back pay and overtime violations. However, what seemed like an initial victory proved to be a frustrating ordeal for Carol when she was met with the harsh reality of many workers in her situation.*

*The owner of the shop, Melissa Bates, not only refused to pay but also astutely changed her bank account creating a moving target for the Texas Workforce Commission. The TWC was only able to recover \$985.07 out of the total amount owed to her. After almost a year of the initial wage theft incident, Carol still has not been able to collect the more than \$6,000 remaining on her case.*

*Carol lost her home and her car because of this theft of wages, and now finds herself staying with her mother and her daughter, switching off so as not to overburden one or the other.*

*\*Name changed at workers' request*

the current system are highlighted when it comes to recovering lost wages. Carol's case is a prime example of the enforcement limitations.

Often, the agencies charged with dealing with wage theft cases are able to conduct an investigation or issue an order, but lack the sufficient enforcement mechanisms to actually recover the workers' wages. Unscrupulous employers can utilize many tactics to avoid payment even after "conviction" by closing bank accounts or businesses and reopening under a new name, transferring their assets to a family member or under a different name, or filing for bankruptcy.

While in many cases it is possible to pursue collection, an understaffed agency with limited resources is unlikely to continue an investigation or collection process past the initial rejection. In turn, this leaves the affected worker with only part of their due wages, or worse, a favorable court judgment or TWC order – simply a victory on paper. And as Carol [*refer to text box to the left*], and many other workers in her situation, will tell you, that piece of paper will not pay their rent, make their car payment, or help put food on the table.

Restitution is also needed to ameliorate the economic loss of wage theft. The wage theft effects on workers and their families go beyond the original withheld amount. Trying to recover wages can be expensive: calls and/or visits to the employer, travel to worker centers, agencies, or courts, notarizing documents, court fees, legal assistance, all require a substantial financial and time investment from the worker. Moreover, low-wage workers who are struggling to make ends meet and go through wage theft must pay fines from late bills, or even have to relocate when unable to pay rent. Restorative justice is aimed toward repairing the damage done to victims and the community while also providing a disincentive to employers from further engagement in wage theft in the community.



## Community Resistance and Transformative Action

The rising wave of concern among workers has resulted in an increase of grassroots advocacy organizations and worker centers. These community groups have been popping up across the United States to create safe spaces where workers can not only learn more about their workplace rights, but also organize to improve working conditions<sup>34</sup>. In partnership with community, faith, and labor groups and the responsible business community, workers have been standing up to denounce wage theft and recover their wages. More importantly, these community coalitions have been engaged in building worker power to pressure unscrupulous employers and governments to improve working conditions.

In 1998, the state of Massachusetts became the first to pass a comprehensive bill to crack down on wage theft, provisions of which still set the bar today<sup>35</sup>. Many other states have followed suit, with the most recent being the passage of the New York's Wage Theft Prevention Act in December 2010. The WTPA, which resulted from a campaign by the community organizing group Make the Road New York with backing from a progressive coalition, includes transparency and record-keeping requirements, increased damages, and strengthened protections against retaliation.<sup>36</sup>

Communities are also addressing wage theft on the local level, giving rise to ordinances and policies that reflect the specific limitations of their systems and the local impacts on their communities. San



Justice Bus Action, November 2011

Francisco, for example, has essentially developed a local department of labor to oversee reporting and investigation of wage theft, and increased protections against retaliation. Seattle has also taken a preventive approach by linking wage theft violations to the suspension and revocation of city licenses and permits. Perhaps the most sweeping municipal wage theft legislation in the nation came from Miami-Dade County in 2010. The ordinance puts forth an innovative mechanism for enforcement, which entitles workers to double liquidated damages and makes employers liable for the administrative costs. Just in its first year,

662 cases have been processed and over \$1,760,177 in unpaid wages have been recovered by the county.<sup>37</sup>

<sup>34</sup> Over 100 worker centers have been formed between 2000-2006 across the U.S. Source: Janice Fine, *Worker Centers: Organizing Communities at the Edge of the Dream*, (EPI/Cornell University Press, 2008).

<sup>35</sup> Tim Judson & Christian Francisco-McGuire, "Cracking Down on Wage Theft: State Strategies for Protecting Workers and Recovering Revenues," *Progressives States Network*, April 2012. <http://www.progressivestates.org/sync/pdfs/PSN.CrackingDownonWageTheft.pdf>

<sup>36</sup> Josh Eidelson, "New York Named National Leader in Fight Against Wage Theft," *In These Times*, April 23, 2012.

[http://inthesetimes.com/working/entry/13084/new\\_york\\_wage\\_theft\\_labor\\_progressive\\_states\\_network\\_make\\_the\\_road/](http://inthesetimes.com/working/entry/13084/new_york_wage_theft_labor_progressive_states_network_make_the_road/)

<sup>37</sup> Tim Judson & Christian Francisco-McGuire, "Cracking Down on Wage Theft: State Strategies for Protecting Workers and Recovering Revenues," *Progressives States Network*, April 2012. <http://www.progressivestates.org/sync/pdfs/PSN.CrackingDownonWageTheft.pdf>





Every one of these policy victories has come as a result of workers, organizations, and communities coming together to stand against wage theft. Through dedicated community education, coalition-building, and worker power, wage theft campaigns across the country have not only succeeded in advancing policies, but also in creating transformative movements in their communities.

The Houston Interfaith Worker Justice Center, with the support of a broad coalition of groups committed to social and economic justice, has been committed to resisting wage theft in the city of Houston. The Worker Center has taken the first step by creating a safe space where workers can report their cases of wage theft and by working side by side with the workers in their process of wage recovery, the center has also experienced many of the limitations and failures of the current system. The Worker Center has documented over \$3.3 million in unpaid wages in the Houston area throughout the past 5 years and has helped recover over \$700,000 through negotiations, civil or criminal lawsuits, agencies, or public campaigns.

Given the extreme difficulty and limitations of the system, the Worker Center has found that in addition to letters, phone calls, mediations with employers and filings with government agencies, direct action is an important and effective strategy in recovering unpaid wages. Direct action is a general term used to refer to visits, delegations, vigils or protests. HIWJ uses such tactics with the support and involvement of community members and faith leaders when other means of recovering wages have failed. By taking the time to visit, HIWJ lets employers who steal wages know that the community cares about business ethics and justice, and is willing to take action. Large companies and small businesses alike depend on a clean positive image. Direct actions seek to get an unwilling employer's attention, hold the company's image to the fire of truth and ensure the resolution of the wage claim becomes a top priority.

Also, in response to the wage theft crisis, a broad and diverse coalition was formed in the fall of 2011 currently encompassing 29 community, faith, & labor organizations and responsible businesses. Aside from working directly with affected workers to make wage claims and recover unpaid wages, the coalition engages all Houston workers, community members, and responsible businesses in education, outreach, and advocacy opportunities. As the Houston community comes together to resist wage theft, the need for creative community response and comprehensive public policy becomes ever more urgent.

## Why Houston? Why Now?

Cities have always been considered "Laboratories for Innovation" when it comes to addressing the tough policy concerns of its citizens. Houston can also be at the forefront of the nation by advancing public policy innovations in protecting the rights of workers and developing our economy. The economy, jobs, and poverty continue to be viewed as the biggest problems facing people in Houston today<sup>38</sup>. The city of Houston has responded and taken many measures to ensure that these problems

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<sup>38</sup> "Key Findings From the 30<sup>th</sup> Year of Houston Surveys", *The Kinder Institute*, April 2011. <http://has.rice.edu/keyfindings2011.aspx>



are being addressed through our local policies. For instance, a landmark ordinance of Mayor Annise Parker's administration has been the Hire Houston First initiative. As Mayor Parker put it, "Jobs and projects funded by our tax dollars should go to Houston workers and families first."<sup>39</sup>

As the city moves forward with more policies to protect the interests of its residents and spur economic prosperity, it should greatly consider enacting ways that protect Houston workers and businesses from the effects of wage theft. After all, the ultimate economic stimulus for a worker is a paycheck, which will be invested in local businesses to further enrich our city.

Houston continues to be a national and international leader in innovation and economic development, recently leading the nation in job creation and becoming the most diverse region in the country<sup>40</sup>. Houston is the city of the future, but with this great honor also comes great responsibility. Leading sociologist Stephen Klineberg, in his 30th Houston Area Survey findings, said it best. "To prosper in the high-technology, knowledge-based, global economy of the twenty-first century, [Houston] will need to nurture a far more educated workforce and fashion policies that can reduce the growing inequalities and prevent the rise of a new urban underclass".<sup>41</sup>

## Local Solutions for a Local Problem

The city of Houston can, and should, take action to eliminate wage theft by enacting an ethical, pragmatic, and profitable approach to handle current wage claims and prevent wage theft from occurring. Through public policy, the city of Houston can ensure that Houston workers are getting their hard-earned wages and are able to support their families and invest in their communities. Likewise, it can also level the playing field, and ensure that responsible businesses can thrive in our city.

### *Policy Recommendations:*

- **Worker Protections** - First and foremost, workers need to be protected from retaliation so they can come forward to report wage theft. As previously noted, the majority of wage and hour investigations are reactive, which means that without an environment in which workers feel safe denouncing wage theft and pursuing their due wages, wage theft will continue to permeate our city and destroy our working families and community businesses.
- **Administrative Hearing Process to Facilitate Wage Claims** - This process would allow all workers, especially those who fall outside of DOL jurisdiction or do not have the means to file in Small Claims Court, to place a wage complaint, have a fair hearing with their employer, and receive restitution and damages for outstanding wages if a wage violation is found.

<sup>39</sup> Re-Elect Mayor Annise Parker Website, <http://www.anniseparker.com/story/071811/hire-houston-first>

<sup>40</sup> <http://www.chron.com/news/houston-texas/article/Houston-region-is-now-the-most-diverse-in-the-U-S-3382354.php>

<sup>41</sup> Ibid.



- **Ensuring Wage Recovery for Workers** – One of the biggest challenges for workers is actually recovering their wages after they have experienced wage theft. The city, through suspension, revocation, or refusal to issue permits, licenses, or contracts to businesses, can create pressure for individuals who have been found guilty of wage theft to effectively provide due compensation to the workers they have cheated.
- **Prevent Future Cases of Wage Theft** – The consequences for wage theft must not only be restorative, but also corrective, in order to create a disincentive from future violations. In addition to being ordered to compensate affected workers for their back wages and tying the payment to the issuance or suspension of certain City licenses and permits, the policy should also order employers to pay damages above what was originally owed. This not accounts for the additional investment and hardship that workers have endured due to the wage theft violation, but creates a deterrent for employers to become repeat offenders.
- **Create Good Jobs** – While Houston has been a leader in job creation since the recession, the quality of jobs is just as important as the quantity. Our city needs good, living wage jobs, with benefits that allow workers to support their families and invest in their communities. Low-wage jobs perpetuate poverty and further exacerbate both the prevalence and effects of wage theft in our city. By ensuring that tax-payer money goes to fund sustainable jobs that invest in our communities, the city can help eliminate wage theft and improve the economic outlook for Houston working families.

### *Community Recommendations:*

However, policy action cannot alone provide a sustainable solution to wage theft. The Houston community, as much as it is also affected by wage theft, must take action to not only advocate for policy changes, but create an environment where these policy changes can effect actual change.

- **Creative community response** – There is a continued need for workers and their communities to continue holding employers and government officials accountable. Denouncing wage theft cases, both as individuals and communities, is an essential first step, but there is also a need to follow through with action. Workers need to know that their communities support them when they take the risk of denouncing wage theft.
  - **Support responsible businesses** – Supporting businesses that invest in our communities and support a dignified, sustainable Houston workforce is essential in resisting wage theft. This not only helps to counteract some of the negative impacts of wage theft, but also sustains, and hopefully creates, more workplaces where workers can free of the wage theft abuse.
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## Conclusion

As explored in the previous sections, for most employers, wage theft is at worst a zero-sum game. Meanwhile, workers face a multiplier effect on their losses, as late fees, property loss, relocation expenses, and other charges accrue following their stolen wages (not to mention time and monetary expenses if they decide to pursue further actions of wage recovery). Likewise, responsible businesses may continue to lose bids, customers, and profits as their unscrupulous competitors thrive on the backs of their workforce.

In addition to these problems, the agencies and institutions charged with dealing with wage theft are currently failing workers. Lack of worker protections in denouncing wage theft abuses, coupled with understaffed agencies, limited resources, weak enforcement mechanisms, and virtually non-existent consequences have created a wage theft crisis in Houston pushing thousands of workers further and further into an underclass.

Houston is demographically susceptible to wage theft, given its large immigrant, low-income, and low-wage worker population. As a growing urban area, Houston has widespread construction and service industries, two of the industries where wage theft is increasingly common. While Houston provides a troubling picture of the spreading wage theft trend, it also has many opportunities to effectively address this issue through community action and public policy.

Addressing wage theft at a local level could help create better wage theft prevention and recovery mechanisms based on the needs of the region's industries and workers. Also, given the potential social impacts of wage theft on households and their surrounding communities, it is essential to address this issue on a local level since local agencies and interests are often the first to be affected by and come to the aid of victims of wage theft.

The city of Houston is at a crossroads in addressing one of the most alarming issues facing our modern economy and labor market. Many Houston organizations, responsible businesses and individuals have already sprung to action to fight back against these abuses. However, strong, effective public policy along with committed community involvement is essential in tackling this issue. While the issue of wage theft poses many challenges, the answer is simple, "A fair day's pay for a fair day's work." The city can move forward by working together with the community and city officials to bring down wage theft and make Houston a just and prosperous place to work.

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