



NHCSL

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS

RESOLUTION No. 2023-02

Combatting Wage Theft with Particular Emphasis in the Construction Industry

Reported to the Caucus by the NHCSL Labor and Workforce Development Task
Force
Sen. Omar Aquino (IL), Chair

Sponsored by Sen. Cristina Castro (IL) and Rep. María Pérez (NH)

Unanimously ratified by the Caucus on December 2, 2023

I. Wage theft is a growing nationwide problem

WHEREAS, “wage theft occurs any time employees do not receive wages to which they are legally entitled for their labor”¹; and,

WHEREAS, some common forms of wage theft include:

- Minimum wage violations,
- Failing to pay overtime,
- Demanding work off-the clock,
- Denying meal breaks,

¹ Ihna Mangundayao, Celine McNicholas, Margaret Poydock, and Ali Sait. More than \$3 billion in stolen wages recovered for workers between 2017 and 2020. (Economic Policy Institute, Dec. 22, 2021). Available at <https://www.epi.org/publication/wage-theft-2021/>

- Illegal deductions from wages,
- Confiscating tips or failing to make up the difference between tips and the minimum wage,
- Misclassifying workers who do employee works as independent contractors;² and,

WHEREAS, wage theft is not limited to low-wage jobs. It can happen in relatively high-wage jobs; even in STEM fields, like the “entry- to mid-level technology jobs that for years served as a bridge to the American middle class”. For example, by outsourcing contractors who hire H-1B immigrant employees and pay them less than they pay their U.S. employees, who are citizens or permanent residents, they systematically underpay migrant workers;³ and,

WHEREAS, wage theft is a big problem nationwide. “State departments of labor and attorney generals in 41 states and the District of Columbia recovered \$138.3 million in 2017, \$138.3 million in 2018, \$155.5 million in 2019, and at least \$126.1 million in 2020, for a total of \$558.2 million recovered over those four years.” But those amounts are just the tip of the iceberg. Experts estimate that “workers throughout the country lose \$15 billion annually from minimum wage violations alone;”⁴ and, **WHEREAS**, despite the scope of the theft, eight states do not attempt to recover stolen wages for employees: Alabama, Delaware, Florida, Georgia, Louisiana, Mississippi, South Carolina, and South Dakota;⁵ and,

WHEREAS, in addition to the efforts of state labor departments, as of 2020, eight states (California, Illinois, Massachusetts, Michigan, Minnesota, New Jersey, New York, and Pennsylvania) and Washington, D.C. have also established dedicated workers’ rights units within state Attorney General offices. Some other Attorney Generals, like West Virginia’s, do the work without a dedicated unit;⁶ and,

² Ibid. And see Lisa Rowan. “How To Spot Wage Theft And What To Do If It Happens To You.” (*Forbes Advisor*, February 2, 2022). Available at <https://www.forbes.com/advisor/personal-finance/wage-theft-what-to-do/>.

³ Ron Hira and Daniel Costa. New evidence of widespread wage theft in the H-1B visa program. (Economic Policy Institute, Dec. 9, 2021). Available at <https://www.epi.org/publication/new-evidence-widespread-wage-theft-in-the-h-1b-program/>

⁴ Ihna Mangundayao, et al, *supra* n. 1. Data for Arizona and Oregon was not available for temporary technical reasons, nor was data from states that do not recover wages. Partial data for Nevada, New Hampshire, New Mexico, Oklahoma, Rhode Island and Washington. <https://www.epi.org/publication/wage-theft-2021/>

⁵ Ibid.

⁶ Gerstein, T. (2020). *Workers’ rights protection and enforcement by state attorneys general: State AG labor rights activities from 2018 to 2020*. Economic Policy Institute. <https://www.epi.org/publication/state-ag-labor-rights-activities-2018-to-2020/>

II. Construction workers are especially affected by wage theft

WHEREAS, as of 2023 there are approximately an estimated 9,997,965 workers within the construction industry across the United States⁷. Wage theft is becoming a larger trend nationwide within the construction industry⁸; and,

WHEREAS, the Midwest Economic Policy Institute estimates that 20 percent of construction industry workers suffer from payroll fraud;⁹ and,

WHEREAS, the Institute also found in 2021 that wage theft within the construction industry cost taxpayers in the states of Wisconsin, Minnesota, and Illinois more than \$362 million each year;¹⁰ and,

WHEREAS, the University of California Berkeley Labor Center found in 2022 that 39 percent of families of construction workers nationwide rely on state social safety net programs, over three times higher than the rate of any other industry of workers, and costing the states an estimated \$28 billion every year;¹¹ and

WHEREAS, the United States Bureau of Labor Statistics found that Hispanics made up 32.6 percent of the workers in the construction industry across the country in 2021;¹² and,

⁷ *Construction in the US - Employment Statistics 2004-2029*. (2023). IBISWorld - Industry Market Research, Reports, and Statistics. <https://www.ibisworld.com/industry-statistics/employment/construction-united-states/>.

⁸ *Wage Theft in the Construction Industry*. (2020). <https://www.mselaborlaw.com/news/wage-theft-construction-industry>

⁹Manzo, Frank IV. 2021. *Construction Wage Theft Costs WI, MN, and IL Taxpayers \$362 Million Per Year*. Midwest Economic Policy Institute. Published January 14, 2021. <https://midwestepi.org/2021/01/14/construction-wage-theft-costs-wi-mn-and-il-taxpayers-362-million-per-year/>.

¹⁰ Manzo, Frank IV. 2021. "Construction Wage Theft Costs WI, MN, and IL Taxpayers \$362 Million Per Year." Midwest Economic Policy Institute. Published January 14, 2021. <https://midwestepi.org/2021/01/14/construction-wage-theft-costs-wi-mn-and-il-taxpayers-362-million-per-year/>.

¹¹ Jacobs, Ken, Kuochih Huang, Jenifer MacGillvary, and Enrique Lopezlira. 2022. "The Public Cost of Low-Wage Jobs in the US Construction Industry." U. C. Berkeley Labor Center. Published January 10, 2022. <https://laborcenter.berkeley.edu/the-public-cost-of-low-wage-jobs-in-the-us-construction-industry/>.

¹² U.S. Bureau of Labor Statistics, *HOUSEHOLD DATA ANNUAL AVERAGES 18. Employed persons by detailed industry, sex, race, and Hispanic or Latino ethnicity*, last modified January 20, 2022. XLS file, <https://www.bls.gov/cps/cpsaat18.htm> (accessed June 20, 2022).

WHEREAS, undocumented immigrants are often the first to be taken advantage of on job sites due to inaccessibility of proper employment and wage policies;¹³ and,

WHEREAS, immigrants made up 14 percent of the population of the United States in 2019 and undocumented immigrants made up 3 percent of the United States' population in the same year,¹⁴ so that there are nearly 3 million immigrants working in the construction industry nationwide; and,

WHEREAS, in order to address the problem of wage theft within the construction industry, several states, like Illinois¹⁵ and California,¹⁶ now hold the primary contractor of a construction project responsible, after proper notice and reasonably short opportunity to cure, for wage claims of subcontractor employees, meaning unpaid wages, fringe, benefits payments, contributions, interest on payments, penalties, and attorney's fees, excluding liquidated damages; making the subcontractor indemnify the primary contractor for those payments.¹⁷

THEREFORE, BE IT RESOLVED, that the National Hispanic Caucus of State Legislators recognizes the impact that wage theft has on Hispanic workers, especially in the construction industry, and supports regulations and legislation to curb and punish the practice; and,

BE IT FURTHER RESOLVED, that the National Hispanic Caucus of State Legislators specifically calls on states to enact legislation to hold direct or general contractors in all industries liable to workers for wages¹⁸ left unpaid by subcontractors, with interest, penalties and attorneys' fees, once provided notice by the claimants and a reasonably short time to provoke payment by said subcontractor.

¹³ Zimmer, Jessica. 2021. "Wage Theft Runs Rampant in Today's Construction Industry." San Francisco Building and Construction Trades Council. Published July 26, 2021. <https://sfbuildingtradesCouncil.org/news/top-stories/1817-wage-theft-runs-rampant-in-today%E2%80%99s-construction-industry>.

¹⁴ American Immigration Council. 2020. "Immigrants in the United States." Accessed June 17, 2022. <https://www.americanimmigrationcouncil.org/research/immigrants-in-the-united-states>.

¹⁵ HR 5412, Sess. of 2022 (Ill. 2022), <https://www.ilga.gov/legislation/102/HB/PDF/10200HB5412lv.pdf>.

¹⁶ AB 1701 (2017). https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB1701

¹⁷ <https://www.wshblaw.com/news-contractors-on-the-hook-for-subcontractor-unpaid-wages>. See also Illinois General Assembly. EMPLOYMENT (820 ILCS 115/) Illinois Wage Payment and Collection Act. <https://www.ilga.gov/legislation/ilcs/ilcs3.asp?ActID=2402&ChapterID=68>

¹⁸ Wages include fringe benefits, benefits payments, and contributions.

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COMBATTING WAGE THEFT WITH PARTICULAR EMPHASIS IN THE CONSTRUCTION INDUSTRY

THE LABOR AND WORKFORCE DEVELOPMENT TASK FORCE UNANIMOUSLY RECOMMENDED THIS RESOLUTION TO THE EXECUTIVE COMMITTEE FOR APPROVAL. THE EXECUTIVE COMMITTEE UNANIMOUSLY APPROVED THIS RESOLUTION AT ITS MEETING OF APRIL 23, 2023, IN SAN JUAN, PUERTO RICO.

THE NATIONAL HISPANIC CAUCUS OF STATE LEGISLATORS UNANIMOUSLY RATIFIED THIS RESOLUTION ON DECEMBER 2, 2023 AT ITS ANNUAL MEETING IN PHILADELPHIA, PENNSYLVANIA.

