



# WAGE THEFT PLAYBOOK

Our “Policy Playbook” is a summary of resources that we have compiled from state and national advocates, organizers, and leading policy organizations across the country. Here you will find communications and messaging guidance, a menu of policy solutions, legislative language, and national organizations and experts who can support your efforts.

As a reminder, legislators are always encouraged to work with state partners to assess the local and state dynamics and to craft the strongest and most feasible legislation for their state—ensuring alignment with the work of groups in the field. On a related note, this resource is not meant to supersede working with advocacy organizations and policy experts to chart the most effective path for introducing such legislation. To get connected to state and national groups or individual experts on this topic, or to receive support on legislative research or drafting, please contact SiX Action at: [helpdesk@stateinnovation.org](mailto:helpdesk@stateinnovation.org).

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# INTRODUCTION

Wage theft is a catchall term for a range of situations in which an employer fails to pay an employee. It can take many forms—from employers paying employees less than the minimum wage or failing to pay overtime to withholding tips, not providing employees with their final paycheck, or requiring employees to work off the clock. These forms of theft hurt working families by threatening basic living standards and causing economic instability, reducing tax revenues, and harming local economies and businesses that follow the rules.

To improve upon federal protections, states have enacted legislation to address wage theft, including increasing the cost to employers for violating wage and hour laws, targeting bad actors to prevent repeat offenses, empowering state and local wage enforcement authorities, and improving small claims court administrative processes for wage theft cases. While these measures have begun to address the problem in certain states, wage theft remains a significant issue in most of the country, with one study finding that [68% of respondents](#) had experienced at least one pay-related violation in the last week alone.

Wage theft covers a variety of infractions that occur when working people do not receive their legally or contractually promised wages.

## VARIETIES OF WAGE THEFT

- **Off-the-clock work:** Requiring or asking hourly workers to perform tasks before they clock in or after they clock out for which they will not be paid
- **Overtime violations:** Failing to pay non-exempt employees time-and-a-half for work in excess of 40 hours per week or treating an employee as a manager in name only, so as to exempt the employee from overtime pay
- **Independent contractor misclassification:** Misclassifying workers as independent contractors not subject to wage and hour requirements
- **Minimum wage violations:** Failing to pay working people the legally required federal or state minimum wage
- **Meal or rest break violations:** Denying working people legal meal breaks or failing to compensate them for that time according to state laws
- **Uncompensated clothing purchase requirements:** Requiring employees to purchase clothing sold at the place of work and failing to reimburse them
- **Tip violations:** Confiscating tips from restaurant or hospitality workers, failing to pay tipped workers the difference between their tips and the required minimum wage, or controversies related to pooling tips and sharing them with non-tipped employees and management
- **Other wage and hour violations:** These issues are often enforced by state agencies and can include late payment of wages or failure to pay at all
- **Pay stub and illegal deductions:** Illegally deducting wages or not distributing pay stubs

A [study](#) looking at wage theft suits since 2000 found overtime violations to overwhelmingly be the basis for the majority of these suits, followed by misclassification, meal/rest break violations, other pay violations, and off-the-clock work. (Please note that overtime violations may be the easiest to document and therefore lead to higher instances of litigation, but it is not clear from this data that overtime is the most frequent type of wage theft violation that occurs.)

## DISPROPORTIONATE IMPACT OF WAGE THEFT

The federal Fair Labor Standards Act of 1938 (FLSA) was enacted to protect most working people from the most egregious forms of wage theft, requiring employers to pay at least the federal minimum wage and to provide overtime when applicable. But the FLSA excluded domestic and agricultural workers. Advocates contend that this decision was grounded in racist negotiation, and that this type of race-based exclusion

continues to negatively affect black and brown workers in related industries to this day. For example, Black and Latinx workers are overrepresented in about half of the top 10 sectors where wage theft is most prevalent.

A 2018 [report](#) produced by Good Jobs First and Jobs with Justice Education Fund analyzing court records concerning wage and hour lawsuits found that company payouts for violations over the last 18 years were highest in the retail industry followed by financial services, freight and logistics, business services, insurance, miscellaneous services, healthcare services, restaurants and foodservice, information technology, and food and beverage products. It also stated that “Black workers account for about 12 percent of the overall workforce but 20 percent of the labor force in business support services and 17 percent in freight. Latin[x] workers account for about 17 percent of the overall workforce but about 25 percent in restaurants and foodservice and 29 percent in food production.”

A 2017 [report on wage theft](#) produced by the Economic Policy Institute (EPI) found similar results and stated that “Roughly 5 percent of black workers and Hispanic workers are paid less than the minimum wage, compared with only 3.5 percent of white workers. This is partly a function of the fact that people of color are disproportionately represented among low-wage workers.” And since women are more likely than men to suffer from minimum wage violations, women of color may be the most disproportionately impacted group.

## LIVING STANDARDS & ECONOMIC STABILITY

Wage theft is a threat to basic living standards and causes economic instability that has a disproportionate impact on families living on the brink. According to EPI’s 2017 [report](#) on wage theft, minimum wage violations affect the lowest-wage workers in a number of negative ways. These are individuals and families who can least afford to lose earnings, as they are already on the lower end of the income spectrum. Minimum wage violations cause many families and individuals to fall below the poverty line and increases workers’ reliance on public assistance. Statistically, working people who experience minimum wage violations are far more likely to be in poverty than other minimum wage workers. Of the working people experiencing minimum wage violations, approximately one in three receive some form of public assistance, either directly or through a family member. One in five have family members receiving free or reduced school lunch, and almost 18% receive SNAP. Around 4% have housing subsidies and 3.4% receive home energy assistance.

# COMMUNICATIONS & MESSAGING

## VALUES-BASED MESSAGING

Lead with your values. While facts and figures can be helpful to back up your position, you need to connect with constituents in a way that opens their hearts and minds to hearing what you have to say. Leading with a values-based message allows you to make that connection.

## TOPLINE MESSAGING

No matter where we come from or what our color, most of us work hard for our families. But today, our families, local economies, and communities are being exploited by some greedy CEOs who are stealing billions of dollars in wages earned by working Americans. Wage theft occurs throughout the country and across a wide range of industries, affecting millions of working people each year. These greedy employers are highly profitable yet use a variety of tactics to pay their employees less than what they are owed—they may force them to clock out and then continue working, pay them less than minimum wage, or simply not pay them at all. Then they turn around and blame hard times on poor families, Black people, and new immigrants.

We need to join together with people from all walks of life to reject that blame and put the interests of working people first, just like when we won better wages, safer workplaces, and civil rights in our past. By joining together, we can stop wage theft and make sure every working person, white, Black, and brown, gets paid what they earn. We need to hold everyone accountable to fair rules that ensure our economy works for everyone.

Note: Much of this framing is from the [Race-Class Narrative project](#), which has developed an empirically tested narrative on race and class that resonates with all working people and offers an alternative to—and neutralizes the use of—dog-whistle racism.

## TALKING POINTS

### PROBLEM

- Many federal and state laws are designed to provide all working people with basic protections: minimum wage, overtime pay, and a safe and healthy workplace. These protections apply to all working people—white, Black, and brown. Everyone has a right to advocate for themselves when their employer is violating those laws. Employers are prohibited from threatening, intimidating, or in any way retaliating against workers for asserting their rights under the law.
- **However**, wage theft by greedy, highly profitable employers is becoming increasingly common. These employers use a variety of tactics to get around the laws, or they outright break the laws and use intimidation as a tool to get away with it. Over the last three decades, a significant percentage of full-time jobs have disappeared, and employers are increasingly relying on misclassified and “contingent” labor, such as contracted, temporary, or part time.
- These highly profitable employers are illegally hoarding funds by paying employees less than what they earn. **As a result, millions of working people are left struggling to make ends meet, while many of their employers are reporting record profits.**

### IMPACT

- Wage theft affects working people in cities, the suburbs, and rural regions. From the waitress whose tips are stolen, to the programmer whose job was changed to a contract, to the manager at the fast food chain who regularly works 80-hour weeks without overtime pay, to the farm worker who is paid sub-minimum wage—these are all people working hard to make ends meet but not getting the fair wages they earn.

- When working people are denied their hard-earned pay, it means they have less to spend at local businesses, and honest business owners often can't compete with those who shave their operating costs by breaking the law.
- Employers who cheat working people also rob state, local, and federal budgets of payroll taxes. An estimated \$15 billion in income across the U.S. is lost annually to minimum wage violations alone!

## SOLUTION

- Fighting wage theft is a fundamental issue of fairness, but it's also about bringing things back into balance and building a stronger economy for all people.
- When we all join together to stop wage theft, we can put rules in place to make sure every working person, white, Black, and brown, gets paid what they earn.
- We need to hold everyone accountable to fair rules that ensure our economy works for everyone.

## EFFECTIVE LANGUAGE (FROM AFL/CIO AND CCC STUDIES)

WORDS TO EMBRACE	WORDS TO AVOID
Can't make ends meet; living on the brink; working to provide for family	Poor; working poor; low income
Basic living	Safety net
Your health and retirement security	Entitlement
Wealthiest; poorest	The top; the bottom
CEOs fired more Americans; X handed out pink slips	Unemployment rate rose
People; mothers; fathers; servers; cooks; nurses, etc.; working people	Workers
Barriers between rich and the rest of us; obstacles for those struggling	Gap between the rich and poor
Greedy few rigged the game; corporations/CEOs have taken advantage	Systemic inequities
Barriers to success; obstacles to economic stability	Fight poverty; war on poverty; casualties of poverty
Economy off kilter; out of balance	Economic inequality
Good for families/the nation	Good for the economy
Speak up together	Bargain
Wages to sustain a family on	Wages to raise a family on
Get paid for the work you do	Low pay is bad
Change the rules	Enact these policies
Work	Jobs
Employers denying your pay	Falling wages
Economic stability	Economic opportunity
Rules are manipulated	Economy is rigged

(Source: Best Practices for Economic Justice Messaging, Center for Popular Democracy)



## STATE POLLING

SiX tested the public's understanding and support of expanded overtime protections for working people. This [polling](#) (from 2019 and 2020) found that voters in North Carolina (84%), Maine (79%), Washington (92%), Maryland (83%), Florida (81%), Virginia (63%) and Arizona (90%) overwhelmingly support these stronger laws. And a December 2019 [Michigan poll](#) found that not only is expanding overtime pay requirements supported by 69% of respondents, but increasing penalties on employers who misclassify employees had the support of 83% of these respondents.

## RECENT STUDIES

This [2017 EPI survey on minimum wage violations](#) analyzed the prevalence and magnitude of **minimum wage violations** in the 10 most populous U.S. states (California, Florida, Georgia, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Texas):

- In those 10 states, each year, 2.4 million workers covered by state or federal minimum wage laws reported being paid less than the applicable minimum wage in their states—approximately 17% of the eligible low-wage workforce.
- The total underpayment of wages to these workers amounts to over \$8 billion annually. If the findings for these states are representative of the rest of the country, they suggest that the total wages stolen from working people due to minimum wage violations exceeds \$15 billion each year. That \$15 billion exceeds the value of property crimes committed in the United States each year: according to the FBI, the total value of all robberies, burglaries, larceny, and motor vehicle theft in the United States in 2015 was \$12.7 billion.
- Working people suffering minimum wage violations are underpaid an average of \$64 per week, nearly one-quarter of their weekly earnings. This means that a worker who works year-round is losing, on average, \$3,300 per year and receiving only \$10,500 in annual wages.

This [2018 Report on Wage Theft Payouts](#) reviewed lawsuits from January 2000 to 2018 in which companies paid penalties for alleged wage and hour violations:

- The employers accused of wage theft include many highly profitable companies. Among the dozen most penalized corporations, all but two had an annual profit of more than \$1 billion in their most recent fiscal year. Some had tens of billions in profits, including AT&T (\$29 billion), JPMorgan Chase (\$24 billion), and Wells Fargo (\$22 billion).
- These companies also award their chief executives generous salaries, bonuses, and perks. Four of the corporations (JPMorgan Chase, AT&T, Walmart, and Bank of America) paid their CEOs annual compensation in excess of \$20 million. When the realized gains from stock options and other stock awards are added in, total compensation can reach much higher. Clearly, these corporations can afford to pay their workers properly.

This [2019 Report on Forced Arbitration](#) from the Center for Popular Democracy and the Economic Policy Institute analyzed the passage of forced arbitration laws, the enforcement crisis, and how working people are pushing back against law-breaking corporations. Some key findings:

- Corporations have increasingly used forced arbitration, which has already blocked over half of private-sector nonunion employees from suing when they experience discrimination, harassment, or wage theft, leaving private arbitration—a secretive, biased, and expensive alternative—as their only option. Analysis shows that by 2024, more than 80% of private-sector nonunion workers will be blocked from court by forced arbitration clauses with class- and collective-action waivers.
- Worker protection agencies are severely under-resourced. Staffing has not kept up with the growing workforce nor with the increasing size and complexity of businesses. At the same time, wage and hour violations, workplace discrimination, and health and safety violations persist. In Oregon, Washington, Maine, Massachusetts, New York, and Vermont (the states profiled in this report), the number of workers

per staffer in charge of investigating hours and wages ranges from 54,900 to 188,800. The number of workers per federal staffer investigating hours and wages is now 175,000—well over double the ratios that existed in the late 1970s.

- The report summarizes the key policy components of a whistleblower enforcement policy as one where whistleblowers play a key role in cost-effective enforcement, corporate wrongdoers fund enforcement capacity, representative actions address systemic violations, and strategic partnerships between community groups and public agencies leverage the strengths of worker organizations to curtail worker exploitation.

## OPPOSITION MESSAGING & RESPONSES

### **Opposition Argument #1:** Wage Theft Requirements Are a Burden on Businesses

“The new requirement imposes substantial administrative costs on every private-sector employer in New York, with little, if any, additional benefit. ... Onerous regulations already make it difficult to do business in New York. This unnecessary mandate only serves to further harm the job creators of our state.” [Sandra A. Parker](#), president and CEO of the Rochester Business Alliance, 12/20/2013.

**Response #1:** Holding corporations and businesses accountable for upholding the law is not a burden; it’s a necessity. Among the dozen most penalized corporations, all but two had an annual profit of more than \$1 billion in their most recent fiscal year. And allowing corporations to commit wage theft places an unfair burden on all businesses that treat their workers fairly. Across the country, working people suffer when they don’t get paid. Everyone should be held to the same rules; the system cannot be rigged to benefit greedy corporations and CEOs at the expense of the rest of us.

### **Opposition Argument #2:** Withholding Working People’s Pay Is Unintentional

“The bill paints everyone with a broad brush; it presumes that people are guilty until proven innocent.” [Mike Ralston](#), president of the Iowa Association of Business and Industry, 3/12/2014.

**Response #2:** There are no excuses for wage theft. Calling it an unintentional act is irresponsible. Greedy employers take advantage of millions of hardworking Americans every year, which means working people are not getting the money they have earned. Businesses who steal the wages of their employees drive down the wages across the industry and make it hard for those who run their operations fairly to compete. Everyone should be held accountable to the same set of rules; they should not be rigged to benefit the wealthy few.

### **Opposition Argument #3:** Laws Regarding Wage Theft Won’t Fix the Problem

“You [already] have laws that protect against these violations. ... If this is truly a problem, then the issue is education and access.” [Samantha Hunter Padgett](#), deputy general counsel for the Florida Retail Federation, which has officials from Walmart, Macy’s, CVS, Home Depot, and Disney World on its board, 7/6/2011.

**Response #3:** Even with the laws in place, wage theft exists, plain and simple. This is why we need to strengthen these laws, protect workers from retaliation, close loopholes, and fully fund the agencies meant to enforce the existing laws. A 2009 study shows that 76% of working people in America’s three largest cities—Chicago, Los Angeles, and New York—were underpaid or not paid at all for their overtime hours. Over 4,000 suits have been filed from 2000 to 2018. We can and must do better.



## WAGE THEFT SAMPLE SOCIAL MEDIA POSTS

Employer #wagetheft is not incidental or rare—it affects millions of working people across industries each year.

All working Americans deserve the wages they earned—it's time to fight #wagetheft.

#WorkingFamilies are already struggling to make ends meet—#wagetheft threatens the economic stability of those who can least afford it.

Highly profitable corporations commit #wagetheft, leaving employees struggling to make ends meet with less than they earn.

Threat of employer retaliation is a major barrier in reporting #wagetheft—we must strengthen protections for working people who speak up.

(Sources: [National Employment Law Project \(NELP\)](#), [WageTheft.org](#), [Good Jobs First](#), [EPI](#))

Use the graphic below or make your own ([canva.com](#) makes it easy!):



# POLICY OPTIONS

## KEY POLICY ELEMENTS

The following policies offer a non-exhaustive list of tactics for reducing the rates of wage theft, recouping stolen worker wages, and holding employers accountable. Policy elements include:

- Increased damages for violating wage and hour laws
- Disclosure of hours and wages to employees through standardized pay stubs
- Regulating contractor provisions
- Empowering government enforcement agencies
- Increasing overtime protections
- Enforcing anti-retaliation measures
- Reforming forced arbitration

Along with these policies, it is recommended that government agencies be strategic in their investigations into possible wage and hour violations. For example, states can employ tactics such as co-enforcement strategies to partner with organizations with industry expertise and relationships with working people and make public announcements of enforcement actions to act as a deterrent to businesses within similar industries.

## CLOSE WAGE THEFT LOOPHOLES

Closing wage theft loopholes can be accomplished by policies that address independent contractor misclassification, ensure appropriate overtime pay and work breaks, regulate pay card payments, and identify successor organizations. Closing these loopholes inhibits the ability for firms to exploit laborers in the first place, reducing instances of wage theft. This section includes:

- Independent Contractor Misclassification
- Overtime Threshold
- Payroll Card Regulations
- Successor Organizations

## INDEPENDENT CONTRACTOR MISCLASSIFICATION

Contractor wage theft violations, such as independent contractor misclassification, and imposing liability up the chain of contract are issues states can address. States and the federal government can end exemptions for employers, as individuals working in industries like eldercare and agriculture should be subject to minimum wage and work week requirements. States can also enforce rules around classification of employees and ensure contracted employees receive wages and benefits representative of their work. Over [a third](#) of all U.S. workers are considered to be in the gig economy, and technology is increasingly impacting this aspect of domestic labor. Labor protections for gig economy employees need to be considered.

### California

#### [2019 CA AB 5/Chapter 296](#)

2750.3. (a) (1) For purposes of the provisions of this code and the Unemployment Insurance Code, and for the wage orders of the Industrial Welfare Commission, a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

(A) The person is free from the control and direction of the hiring entity

California's newly passed law will force employers to recognize contracted workers as full employees requiring benefits, unless they fall under certain conditions.

*in connection with the performance of the work, both under the contract for the performance of the work and in fact.*

*(B) The person performs work that is outside the usual course of the hiring entity's business.*

*(C) The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.*

[2014 CA AB 1897/Chapter 728](#)

*(b) A client employer shall share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor for both of the following:*

*(1) The payment of wages.*

*(2) Failure to secure valid workers' compensation coverage as required by Section 3700.*

*(c) A client employer shall not shift to the labor contractor any legal duties or liabilities under the provisions of Division 5 (commencing with Section 6300) with respect to workers supplied by the labor contractor.*

[California's Employee Misclassification Act of 2011](#)

226.8. (a) *It is unlawful for any person or employer to engage in any of the following activities:*

*(1) Willful misclassification of an individual as an independent contractor.*

*(2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.*

Expands legal liabilities to employers and contractors.

Holds employers accountable for inaccurately classifying employees and independent contractors.

**Michigan**

[2019 MI HB 4877 \(Failed\)](#)

*Sec. 13c. A person shall not classify, report, or treat an employee as an independent contractor. A person who is alleged to have violated this section has the burden of proving, by a preponderance of the evidence, that the person did not classify, report, or treat the employee as an independent contractor.*

This bill would have put the burden of proof on the employer to show that the employee was correctly classified.

**New Jersey**

[2019 NJ AB 5839/Chapter 373](#)

1. a. *If the Commissioner of Labor and Workforce Development finds that a violation of a State wage, benefit and tax law has occurred and that the violation was in connection with failing to properly classify employees, the commissioner is, in addition to imposing any other remedies or penalties authorized by law, authorized to assess and collect:*

*(1) an administrative "misclassification penalty" up to a maximum of \$250 per misclassified employee for a first violation and up to a maximum of \$1,000 per misclassified employee for each subsequent violation; and*

(2) a penalty to be provided for the misclassified worker of not more than 5 percent of the worker's gross earnings over the past twelve months from the employer who failed to properly classify them. The employer may be required to make these penalty payments to the commissioner to be held in a special account in trust for the worker or workers, or paid on order of the commissioner directly to the workers or workers affected.

Allows both an administrative penalty against an employer who misclassifies an employee and a penalty of up to 5% of annual wages provided to the employee.

### 2019 NJ AB 5843/Chapter 375

1. Post notices about misclassification. a. Each employer required to maintain and report records regarding wages, benefits, taxes and other contributions and assessments pursuant to State wage, benefit and tax laws, as defined in section 1 of P.L.2009, c.194 (C.34:1A-1.11), shall conspicuously post notification, in a place or places accessible to all employees in each of the employer's workplaces, in a form issued by the commissioner, explaining:

(1) The prohibition against employers misclassifying employees;

(2) The standard delineated in paragraph (6) of subsection (i) of R.S.43:21-19 that is applied by the department to determine whether an individual is an employee or an independent contractor;

(3) The benefits and protections to which an employee is entitled under State wage, benefit and tax laws;

(4) The remedies under New Jersey law to which workers affected by misclassification may be entitled; and

(5) Information on how a worker or a worker's authorized representative may contact, by telephone, mail and e-mail, a representative of the commissioner to provide information to, or file a complaint with, the representative regarding possible worker misclassification.

b. No employer shall discharge or in any other manner discriminate against an employee because the employee has made an inquiry or complaint to his employer, to the commissioner or to his authorized representative regarding possible worker misclassification, or because the employee has caused to be instituted or is about to cause to be instituted any proceeding regarding worker misclassification under State wage, benefit and tax laws, or because the employee has testified in the proceeding.

Requires employers to post information about misclassification laws and who employees can contact to report a violation. This law also provides workers who seek justice with protections from employer retaliation.

## **OVERTIME THRESHOLD**

Enforcing overtime pay for employees can reduce the instances of exploitation. States and the federal government should amend their overtime threshold laws to reflect the 21st-century workplace. The FLSA was written before franchise models, subcontracting, outsourcing, and other techniques to lessen tax and employee liability became popular in the corporate world. Statutes and regulations must be updated to counteract rampant misclassification of employees as FLSA-exempt. The exemption to wage and hour laws most used by corporations is the exemption for executive, administrative, and professional personnel. Today, many companies classify low-level employees as managers to force them to work overtime hours for free. While the U.S. Department of Labor issued regulations ([84 FR 51230](#)) effective January 1, 2020, to increase the weekly standard salary level for overtime exemption from \$455 per week (\$23,660 per year) to \$684 per week (\$35,568 per year), it falls well short of the Obama administration's 2016 proposal to raise the standard to \$913 per week (\$47,476 per year). Fortunately, states are taking action to increase the number of salaried workers eligible for overtime pay beyond the federal minimums.

## Massachusetts

[2019 MA SB 2313 \(Failed\)](#) / [HB 4025 \(Failed\)](#)

Section 1C. Overtime pay salary threshold for executive, administrative or professional exemption.

[. . .]

*(b) Beginning January 1, 2021, the overtime threshold rate shall be no less than \$35,000; beginning January 1, 2022, the overtime threshold rate shall be no less than \$45,000; beginning January 1, 2023, the overtime threshold rate shall be no less than \$55,000; beginning January 1, 2024, the overtime threshold rate shall be no less than \$64,000.*

*(c) Beginning January 1, 2025, and each January 1 thereafter, the overtime threshold rate shall be no less than the higher of the following rates: the annual earnings of a full-time employee employed for 2080 hours per year at 2 times the minimum wage established under section 1 of this chapter, or the overtime threshold rate from the preceding year increased by the percentage annual increase, if any, in the second quartile of the usual weekly earnings for full time wage and salary workers, or its successor index, as published by the United States Department of Labor, Bureau of Labor Statistics, or its successor agency, with the amount of the overtime threshold rate increase rounded to the nearest dollar.*

Introduced legislation in Massachusetts would have increased the salary threshold for overtime exemption to go above the federal minimum in 2022 and increased the threshold until it reached \$64K in 2024.

Starting in 2025, the threshold is the greater of either 2 times the minimum wage or the 2024 threshold adjusted for inflation based on median wages.

## Michigan

[2019 MI SB 542 \(Failed\)](#) / [HB 5036 \(Failed\)](#)

*Sec. 4a. (1) Except as otherwise provided in this act, an employee must receive compensation at not less than 1-1/2 times the regular rate at which the employee is employed for employment in a workweek in excess of 40 hours.*

[. . .]

*(9) The exemption from payment of overtime compensation under subsection (4)(a) does not apply if the employee receives regular weekly rate compensation at less than the following rate:*

*(a) For calendar year 2019, \$673.00.*

*(b) For calendar year 2020, \$769.00.*

*(c) For calendar year 2021, \$865.00.*

*(d) For calendar year 2022, \$961.00.*

*(e) For calendar year 2023 and until the adjusted regular weekly rate compensation amount for 2024 takes effect under subsection (10), \$1,057.00.*

*(10) Every January beginning in 2024, the state treasurer shall adjust the regular weekly rate compensation amount then in effect under subsection (9) or this subsection, as applicable, by the most recent annual percentage increase, if any, in the second quartile of the usual weekly earnings for full-time wage and salary workers as published by the Bureau of Labor Statistics of the United States Department of Labor, and shall round the adjusted regular weekly rate compensation amount to the nearest dollar. . .*

Michigan introduced legislation that would have raised the salary rate to about \$40K in 2020 and \$55K by 2023.

Starting in 2024, this bill would have indexed the salary threshold to median weekly earnings.

## California

### [CA Labor Code § 515](#)

(a) The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. . .

California law indexes the overtime exemption salary threshold to two times their minimum wage.

### [CA Labor Code § 1182.12](#)

(b) Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

[ . . . ]

(D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

Based on California's scheduled minimum wage hikes, the overtime threshold will be about \$54K in 2020 to \$62.4K in 2022.

## Washington

### [WA State Register Proposed Rule 19-8-072](#)

WAC 296-128-545 Salary thresholds.

To qualify as an exempt employee under this section, an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities, as follows:

(1) Beginning July 1, 2020, and through December 31, 2020:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(2) Beginning January 1, 2021, and through December 31, 2021:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(3) Beginning January 1, 2022, and through December 31, 2022:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.0 times the minimum wage

Proposed administrative rule in Washington would phase in a minimum wage multiplier to calculate the overtime threshold, starting in 2020 at 1.75 times the minimum wage for employers with more than 50 employees and going up to 2.5 times the minimum wage in 2025.

prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(4) Beginning January 1, 2023, and through December 31, 2024, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(5) Beginning January 1, 2025, and through December 31, 2025:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(6) Beginning January 1, 2026, and each following year, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

## PAYROLL CARD REGULATIONS

Employers who require their employees to receive pay through debit cards and other “payroll cards”—which charge these employees to access their wages—is a cost-saving method for employers that is a less egregious form of wage theft.

### Illinois

[2014 IL HB 5622/Public Act 98-0862](#)

(820 ILCS 115/14.5)

Sec. 14.5. Payroll cards. An employer using a payroll card to pay an employee’s wages shall meet the following requirements:

(1) The employer shall not make receipt of wages by payroll card a condition of employment or a condition for the receipt of any benefit or other form of remuneration for any employee.

(2) The employer shall not initiate payment of wages to the employee by electronic fund transfer to a payroll card account unless:

(A) The employer provides the employee with a clear and conspicuous written disclosure notifying the employee that payment by payroll card is voluntary, listing the other method or methods of payment offered by the employer in accordance with Section 4, and explaining the terms and conditions of the payroll card account option, including: (i) an itemized list of all fees that may be deducted from the employee’s payroll card account by the employer or payroll card issuer; (ii) a notice that third parties may assess transaction fees in addition to the fees assessed by the employee’s payroll card issuer; and (iii) an explanation of how the employee may obtain, at no cost, the employee’s net wages, check the account balance, and request to receive paper or electronic transaction histories, as provided in item (3)

(B) The employer also offers the employee another method or methods of payment in compliance with Section 4; and

(C) The employer obtains the employee’s voluntary written or electronic consent to receive the wages by payroll card.

Clearly outlines that employers may not require wages to be received in the form of a payroll card.

Consent is required from the employee in order to utilize a payroll card.

## SUCCESSOR ORGANIZATIONS

Another tactic is to limit an employer's ability to avoid liability—through sale or transition of ownership—by ensuring preservation of liability for successor organizations.

### California

#### [2015 CA SB 588/Chapter 803](#)

*(e) Subject to subdivision (f), an employer similar in operation and ownership to an employer with an unsatisfied final judgment for unpaid wages, upon receiving written notice of the unsatisfied judgment, shall be deemed the same employer for purposes of this section if (1) the employees of the successor employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors or (2) if the new entity has substantially the same production process or operations, produces substantially the same products or offers substantially the same services, and has substantially the same body of customers.*

Provides that a business with similar owners and operations as one found in violation of a wage law is treated as the same business.

### New York

#### [2014 NY AB 8106/Chapter 537](#)

*S 4. Section 219 of the labor law is amended by adding a new subdivision 4 to read as follows:*

*4. An employer similar in operation and ownership to a prior employer found to be in violation of article six, 19 or 19-a of this chapter, shall be deemed the same employer for the purposes of this section if the employees of the subsequent employer are engaged in substantially the same work in substantially the same working conditions under substantially the same supervisors, or if the new entity has substantially the same production process, produces substantially the same products, and has substantially the same body of customers. Such a subsequent employer will continue to be subject to this section and shall be liable for the acts of the prior employer under this section.*

### Washington

#### [2010 WA HB 3145/Chapter 42](#)

*Sec. 4 RCW 49.48.086 and 2006 c89 s5 are each amended to read as follows:*

*(4) Whenever any employer quits business, sells out, exchanges, or otherwise disposes of the employer's business or stock of goods, any person who becomes a successor to the business becomes liable for the full amount of any outstanding citation and notice of assessment or penalty against the employer's business under this chapter if, at the time of the conveyance of the business, the successor has: (a) Actual knowledge of the fact and amount of the outstanding citation and notice of assessment or (b) a prompt, reasonable, and effective means of accessing and verifying the fact and amount of the outstanding citation and notice of assessment from the department. If the citation and notice of assessment or penalty is not paid in full by the employer within 10 days of the date of the sale, exchange, or disposal, the successor is liable for the payment of the full amount of the citation and notice of assessment or penalty, and payment thereof by the successor must, to the extent thereof, be deemed a payment upon the purchase price. If the payment is greater in amount than the purchase price, the amount of the difference becomes a debt due the successor from the employer.*

Provides that if someone takes over or buys a business with outstanding penalties, the new employer becomes responsible for those penalties.



## EMPOWER WORKING PEOPLE

The next step states can take is to empower working people by requiring that firms maintain wage statements and records, ensure workers can act if wage theft occurs, limit companies' ability to force employees into private arbitration, and protect working people from retaliation. This section includes:

- Wage Statements and Record-Keeping
- Whistleblower Enforcement
- Regulate Forced Arbitration
- Protect Working People from Retaliation

### WAGE STATEMENTS AND RECORD-KEEPING

Regulating administration of employee compensation can curb wage theft through disclosure and employee empowerment. The FLSA requires employers to keep records of employees' pay; however, there exists a significant lack of enforcement of this provision, which renders it fairly useless. Federal law also does not require employers to provide pay stubs. This hinders the ability of employees to prove a wage theft case. Wage statements help workers ensure that they are being paid correctly for all the hours they have worked because they can double-check the employer's calculations against their own and use the statements as support for a claim if they find a discrepancy. Requiring employers to provide contact information in both types of statements enables working people to locate their employer and collect on judgments if a dispute arises.

#### New York

##### [2010 NY SB 8380/Chapter 564](#)

*S 3. Subdivisions 1, 2, 3 and 4 of section 195 of the labor law are amended to read as follows:*

*(3) Furnish each employee with a statement with every payment of wages, listing the following: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages. For all employees who are not exempt from overtime compensation as established in the commissioner's minimum wage orders or otherwise provided by New York state law or regulation, the statement shall include the regular hourly rate or rates of pay, the overtime rate or rates of pay, the number of regular hours worked, and the number of overtime hours worked. For all employees paid a piece rate, the statement shall include the applicable piece rate or rates of pay and number of pieces completed at each piece rate. Upon the request of an employee, an employer shall furnish an explanation in writing of how such wages were computed;*

*(4) Establish, maintain, and preserve for not less than six years contemporaneous, true, and accurate payroll records showing for each week worked the hours worked; the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages for each employee.*

*S 7. Section 198 of the labor law is amended to read as follows:*

*(1)(d) If any employee is not provided a statement or statements as required by subdivision three of section 195 of this article, he or she*

Ensures employees are provided with standardized information that will aid them if any wage issues arise at place of employment. Pay stubs allow employees to review payments and ensure the information provided is accurate. Additionally, states can add provisions requiring that this information be provided to employees in their native language.

Establishes a time frame for how long employers must keep payroll records. These records can be key to proving wage theft cases.

shall recover in a civil action damages of one hundred dollars for each work week that the violations occurred or continue to occur, but not to exceed a total of twenty-five hundred dollars, together with costs and reasonable attorney's fees. The court may also award other relief, including injunctive and declaratory relief, that the court in its discretion deems necessary or appropriate. On behalf of any employee not provided a statement as required by subdivision three of section 195 of this article, the commissioner may bring any legal action necessary, including administrative action, to collect such claim, and as part of such legal action, in addition to any other remedies and penalties otherwise available under this article, the commissioner may assess against the employer damages of one hundred dollars for each work week that the violations occurred or continue to occur.

Strong damages hold firms accountable to their employees.

## WHISTLEBLOWER ENFORCEMENT: PROTECT WORKERS' RIGHTS TO ACCESS THE COURTS

The California Private Attorney General Act (PAGA) gives victims of wage theft an additional avenue to bring enforcement actions against wage and hour law violators. Rather than bringing a collective action, they can bring enforcement actions to subject their employers to the same civil penalties that the California attorney general could seek if she or he brought the case instead. In other words, rather than sue in their own names for their own back wages and other damages, victims can sue the company in the name of the state to collect penalties. While this law was originally meant to address an underenforcement of labor laws due to under-resourced state agencies, it has also been used to counter forced arbitration. And although the Supreme Court recently allowed corporations to force their employees to sign away the right to file wage theft collective actions, this California statute still allows wage theft victims to have their day in court (see more on forced arbitration below). It is important to note that even though this was a standalone bill in California, the operative language could as easily be included within omnibus wage theft legislation.

### California

#### [THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004](#) [\[2698 - 2699.6\]](#)

(a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

[. . .]

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs, including any filing fee paid pursuant to subparagraph (B) of paragraph (1) of subdivision (a) or subparagraph (B) of paragraph (1) of subdivision (c) of Section 2699.3. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

[. . .]

California leads states in access to courts and has set a standard for allowing working people to enforce each aspect of its wage and hour law directly by going to court rather than by asking government to enforce the laws on their behalf.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws, including the administration of this part, and for education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

Similar legislative efforts to pass whistleblower enforcement protections that build on the PAGA model are ongoing in [Massachusetts](#), [Vermont](#), [Maine](#), [Washington](#), [Oregon](#), and [New York](#).

Workers seeking civil penalties in these actions, if successful, receive 25% of the penalties, with 75% going back to the CA Labor and Workforce Development Agency to strengthen the state's ability to conduct future wage theft enforcement.

## REGULATE FORCED ARBITRATION

Forced arbitration occurs when firms require that in order to be hired, employees surrender their right to sue the company. Forced arbitration clauses limit an employee from suing an employer who steals their wages. Arbitrators are often picked and paid for by the defending company, and because the rules that allow workers to collect and present evidence in court may not apply in arbitration, working people are rarely given a fair opportunity to prove their case. This often acts as a deterrent for employees even filing wage theft lawsuits. As described above, the state PAGA model may be the strongest tool to combat forced arbitration, but additional examples below include a New York bill that would have attempted to prohibit forced arbitration agreements in employment contracts; a California law to make signing a forced arbitration agreement voluntary; a Vermont law that would have prevented “unconscionable terms” within those agreements; and a California law to invalidate these agreements if employers fail to provide the fees needed to enter into arbitration. It should be noted that state attempts to regulate forced arbitration have been challenged in the courts and in many instances found to have been preempted by the Federal Arbitration Act (see this [ACS Supreme Court Review](#) for more). This means that had the New York bill listed below been enacted, it is unlikely that it would have survived court challenges. As state legislators have moved from attempts to outlaw forced arbitration agreements to instead reform how they are implemented, the risk of federal preemption is lessened, but not removed.

### California

#### [2019 CA AB 51/Chapter 711](#)

SEC. 3. Section 432.6 is added to the Labor Code, to read:

432.6. (a) A person shall not, as a condition of employment, continued employment, or the receipt of any employment-related benefit, require any applicant for employment or any employee to waive any right, forum, or procedure for a violation of any provision of the California Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code) or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

Prohibits requiring an employee to sign a forced arbitration agreement as a condition of employment.

(b) An employer shall not threaten, retaliate or discriminate against, or terminate any applicant for employment or any employee because of the refusal to consent to the waiver of any right, forum, or procedure for a violation of the California Fair Employment and Housing Act or this code, including the right to file and pursue a civil action or a complaint with, or otherwise notify, any state agency, other public prosecutor, law enforcement agency, or any court or other governmental entity of any alleged violation.

Anti-retaliation protections.

(c) For purposes of this section, an agreement that requires an employee to opt out of a waiver or take any affirmative action in order to preserve their rights is deemed a condition of employment.

(d) In addition to injunctive relief and any other remedies available, a court may award a prevailing plaintiff enforcing their rights under this section reasonable attorney's fees.

(e) This section does not apply to a person registered with a self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. Sec. 78c) or regulations adopted under that act pertaining to any requirement of a self-regulatory organization that a person arbitrate disputes that arise between the person and their employer or any other person as specified by the rules of the self-regulatory organization.

(f) Nothing in this section is intended to invalidate a written arbitration agreement that is otherwise enforceable under the Federal Arbitration Act (9 U.S.C. Sec. 1 et seq.).

#### [2019 CA SB 707/Chapter 870](#)

SEC. 4. Section 1281.97 is added to the Code of Civil Procedure, to read:

1281.97. (a) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration administrator, the drafting party to pay certain fees and costs before the arbitration can proceed, if the fees or costs to initiate an arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel arbitration under Section 1281.2.

(b) If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may do either of the following:

(1) Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction.

(2) Compel arbitration in which the drafting party shall pay reasonable attorney's fees and costs related to the arbitration.

(c) If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction under paragraph (1) of subdivision (b), the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration shall be tolled as of the date of the first filing of a claim in any court, arbitration forum, or other dispute resolution forum.

(d) If the employee or consumer proceeds with an action in a court of appropriate jurisdiction, the court shall impose sanctions on the drafting party in accordance with Section 1281.99.

SEC. 5. Section 1281.98 is added to the Code of Civil Procedure, to read:

1281.98. (a) In an employment or consumer arbitration that requires, either expressly or through application of state or federal law or the rules of the arbitration provider, that the drafting party pay certain fees and costs during the pendency of an arbitration proceeding, if the fees or costs required to continue the arbitration proceeding are not paid within 30 days after the due date, the drafting party is in material breach of the arbitration agreement, is in default of the arbitration, and waives its right to compel the employee or consumer to proceed with

Makes the argument that this should not run afoul of federal preemption.

Provides that failure of an employer to pay the fees and costs needed to proceed with an arbitration within 30 days is a breach of the forced arbitration agreement.

that arbitration as a result of the material breach.

(b) If the drafting party materially breaches the arbitration agreement and is in default under subdivision (a), the employee or consumer may unilaterally elect to do any of the following:

(1) *Withdraw the claim from arbitration and proceed in a court of appropriate jurisdiction. If the employee or consumer withdraws the claim from arbitration and proceeds with an action in a court of appropriate jurisdiction, the statute of limitations with regard to all claims brought or that relate back to any claim brought in arbitration shall be tolled as of the date of the first filing of a claim in any court, arbitration forum, or other dispute resolution forum.*

(2) *Continue the arbitration proceeding, if the arbitration company agrees to continue administering the proceeding, notwithstanding the drafting party's failure to pay fees or costs. The neutral arbitrator or arbitration company may institute a collection action at the conclusion of the arbitration proceeding against the drafting party that is in default of the arbitration for payment of all fees associated with the employment or consumer arbitration proceeding, including the cost of administering any proceedings after the default.*

(3) *Petition the court for an order compelling the drafting party to pay all arbitration fees that the drafting party is obligated to pay under the arbitration agreement or the rules of the arbitration company.*

(4) *Pay the drafting party's fees and proceed with the arbitration proceeding. As part of the award, the employee or consumer shall recover all arbitration fees paid on behalf of the drafting party without regard to any findings on the merits in the underlying arbitration.*

(c) *If the employee or consumer withdraws the claim from arbitration and proceeds in a court of appropriate jurisdiction pursuant to paragraph (1) of subdivision (b), both of the following apply:*

(1) *The employee or consumer may bring a motion, or a separate action, to recover all attorney's fees and all costs associated with the abandoned arbitration proceeding. The recovery of arbitration fees, interest, and related attorney's fees shall be without regard to any findings on the merits in the underlying action or arbitration.*

(2) *The court shall impose sanctions on the drafting party in accordance with Section 1281.99.*

(d) *If the employee or consumer continues in arbitration pursuant to paragraphs (2) through (4) of subdivision (b), inclusive, the arbitrator shall impose appropriate sanctions on the drafting party, including monetary sanctions, issue sanctions, evidence sanctions, or terminating sanctions.*

## **New York**

### [2019 NY SB S3208](#)

§ 399-c. Prohibited mandatory arbitration agreements.

2. *Prohibited mandatory consumer and employment arbitration agreements. Notwithstanding any other provision of this article, no mandatory arbitration agreement shall be valid or enforceable if it requires arbitration of an employment dispute or consumer dispute.*

3. *Prohibition of effect of certain mandatory arbitration clauses or agreements. Mandatory arbitration clauses or agreements covering*

Allows for an employee to withdraw from arbitration and bring suit in court against an employer who breaches the arbitration agreement by not paying the fees needed to continue the arbitration process.

This New York legislation would have prohibited forced arbitration agreements but likely not have survived challenges in the courts.

consumers and employee disputes are contrary to the established public policy of this state. Because employees and consumers are required to assent to these agreements as a condition of being an employee or consumer before any dispute has arisen with the employer or merchant, these agreements do not offer employees and consumers a meaningful choice about how to resolve their disputes with the employer or merchant. In addition, mandatory arbitration agreements prevent employees and consumers from effectively vindicating their rights under state law. For these reasons, **except when inconsistent with federal law, the state prohibits the formation and enforcement of mandatory arbitration agreements in employment and consumer contracts.**

[. . .]

5. **Prohibition of mandatory arbitration clauses in employment contracts for workers exempted from the Federal Arbitration Act.**

(a) A mandatory arbitration agreement within or part of any written contract of employment of seamen, railroad employees or any other class of workers engaged in foreign or interstate commerce is unenforceable and void. Any such arbitration agreement shall be considered severable, and all other provisions of the employment contract shall remain in effect and given full force.

(b) The provisions of this section shall not apply to agreements negotiated with any labor union through collective bargaining.

6. **Prohibition of mandatory arbitration clauses that are not governed by federal law. Any mandatory arbitration agreement, or portion thereof, in an employment or consumer contract is invalid, unenforceable and void, when the enforceability of such arbitration agreement, or the portion at issue, is governed by state law. Any such arbitration agreement shall be considered severable, and all other provisions of the employment contract shall remain in effect and given full force.**

**Vermont**

[2018 VT SB 105](#) (Vetoed)

**§ 6055. UNCONSCIONABLE TERMS IN STANDARD-FORM CONTRACTS PROHIBITED**

(a) **Unconscionable terms. There is a rebuttable presumption that the following contractual terms are substantively unconscionable when included in a standard-form contract to which one of the parties to the contract is an individual and that individual does not draft the contract:**

(1) A requirement that resolution of legal claims take place in an inconvenient venue. As used in this subdivision, "inconvenient venue" includes for State law claims a place other than the state in which the individual resides or the contract was consummated, and for federal law claims a place other than the federal judicial district where the individual resides or the contract was consummated. Inconvenient venue shall not include the State or federal judicial district in which the individual suffered injury during the performance of the contract.

(2) A waiver of the individual's right to assert claims or seek remedies provided by State or federal statute.

(3) A waiver of the individual's right to seek punitive damages as provided by law.

(4) Pursuant to 12 V.S.A. § 465, a provision that limits the time in which

This would prohibit the enforcement of forced arbitration agreements, except when preempted by federal law.

The prohibition on forced arbitration includes employment contracts not governed by federal law. This may be one of the few categories of employment law not explicitly preempted by the Federal Arbitration Act.

This Vermont bill would have spelled out provisions of contracts that would be considered unconscionable, which would include forced arbitration agreements

an action may be brought under the contract or that waives the statute of limitations.

(5) A requirement that the individual pay fees and costs to bring a legal claim substantially in excess of the fees and costs that this State's courts require to bring such a State law claim or that federal courts require to bring such a federal law claim.

## PROTECT WORKING PEOPLE FROM RETALIATION

A national survey found that 43% of workers who complained to their employer about their wages or working conditions experienced retaliation. This has a chilling effect on the entire workplace and leaves all working people more vulnerable. Meaningful penalties for retaliation would be an effective way to deter employers from retaliating and to compensate workers who experience retaliation. Enabling enforcement agencies to receive anonymous worker complaints or permitting third parties (such as unions or worker centers) to file complaints on behalf of working people also limits employer retaliation. No wage theft law is complete without provisions to protect employees from retaliation when they report wage theft violations by their employers. (See the NELP Report, *Exposing Wage Theft Without Fear*, for the essential components of an effective retaliation protection law.) Without these protections, rates of reporting are chilled, and state agencies are left with the monumental task of identifying underpaid employees who are willing to risk their jobs to stand up against wage theft.

### Arizona

#### [AZ Statutes § 23-364](#)

*B. No employer or other person shall discriminate or subject any person to retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.*

[. . .]

*G. . . Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, unpaid earned sick time, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.*

Arizona has one of the strongest anti-retaliation laws in the nation; it presumes as retaliation any adverse action taken by an employer within 90 days of claiming a minimum wage violation.

Penalty of at least \$150 per day of violating these anti-retaliation provisions.

### California

#### [CA Labor Code § 1102.5](#)

*(b) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who*

has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

(c) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

(d) An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for having exercised his or her rights under subdivision (a), (b), or (c) in any former employment.

[. . .]

(f) In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.

California includes retaliation protections for those who refuse to violate a law or regulation.

California imposes a civil penalty of up to \$10,000 for each violation.

## New York

### [NY Labor Law § 215](#)

1. (a) No employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person, shall discharge, threaten, penalize, or in any other manner discriminate or retaliate against any employee (i) because such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general or any other person, that the employer has engaged in conduct that the employee, reasonably and in good faith, believes violates any provision of this chapter, or any order issued by the commissioner (ii) because such employer or person believes that such employee has made a complaint to his or her employer, or to the commissioner or his or her authorized representative, or to the attorney general, or to any other person that the employer has violated any provision of this chapter, or any order issued by the commissioner (iii) because such employee has caused to be instituted or is about to institute a proceeding under or related to this chapter, or (iv) because such employee has provided information to the commissioner or his or her authorized representative or the attorney general, or (v) because such employee has testified or is about to testify in an investigation or proceeding under this chapter, or (vi) because such employee has otherwise exercised rights protected under this chapter, or (vii) because the employer has received an adverse determination from the commissioner involving the employee.

[. . .]

(b) If after investigation the commissioner finds that an employer or person has violated any provision of this section, the commissioner may, by an order which shall describe particularly the nature of the violation, assess the employer or person a civil penalty of not less than one thousand nor more than ten thousand dollars provided, however, that if the commissioner finds that the employer has violated the provisions of this section in the preceding six years, he or she may assess a civil

New York law provides for a civil penalty of between \$1,000 and \$10,000, but this penalty goes up to \$20,000 if the employer is a repeat offender over the last six years.



penalty of not less than one thousand nor more than twenty thousand dollars. The commissioner may also order all appropriate relief including enjoining the conduct of any person or employer; ordering payment of liquidated damages to the employee by the person or entity in violation; and, where the person or entity in violation is an employer ordering rehiring or reinstatement of the employee to his or her former position or an equivalent position, and an award of lost compensation or an award of front pay in lieu of reinstatement and an award of lost compensation. Liquidated damages shall be calculated as an amount not more than twenty thousand dollars. The commissioner may assess liquidated damages on behalf of every employee aggrieved under this section, in addition to any other remedies permitted by this section.

New York law empowers the commissioner to require an employer to reinstate an employee who faced retaliation and compensate them for lost wages.

[. . .]

2. (a) An employee may bring a civil action in a court of competent jurisdiction against any employer or persons alleged to have violated the provisions of this section. The court shall have jurisdiction to restrain violations of this section, within two years after such violation, regardless of the dates of employment of the employee, and to order all appropriate relief, including enjoining the conduct of any person or employer; ordering payment of liquidated damages, costs and reasonable attorneys' fees to the employee by the person or entity in violation; and, where the person or entity in violation is an employer, ordering rehiring or reinstatement of the employee to his or her former position with restoration of seniority or an award of front pay in lieu of reinstatement, and an award of lost compensation and damages, costs and reasonable attorneys' fees. Liquidated damages shall be calculated as an amount not more than twenty thousand dollars. The court shall award liquidated damages to every employee aggrieved under this section, in addition to any other remedies permitted by this section. . .

By awarding an employee with attorneys' fees in a civil action against their employer, it is more likely that an employee facing retaliation will be able to hire legal counsel to represent them in court.

[. . .]

3. Any employer or his or her agent, or the officer or agent of any corporation, partnership, or limited liability company, or any other person who violates subdivision one of this section shall be guilty of a class B misdemeanor.

The New York law even classifies violations of this anti-retaliation section as a class B misdemeanor.

## MAKE GOVERNMENT AGENCIES EFFECTIVE LAW ENFORCERS

The FLSA alone is insufficient in preventing wage theft, and the U.S. Department of Labor is under-resourced. Additionally, Congress has been gridlocked and too corporation-friendly to pass significant wage protection reforms. It is therefore incumbent upon the states to protect working people from wage theft. This section includes:

- Stronger State Enforcement Capacity
- Levying Fines on Employers
- Stop-Work Orders

## STRONGER STATE ENFORCEMENT CAPACITY

Therefore, it is up to state legislatures to equip the relevant state or local governmental bodies to stand up for working people's rights.

## Alaska

### [AK Statutes § 23.10.080](#)

*The director, or an authorized representative of the director, shall*

- (1) investigate and ascertain the wages and related conditions and standards of employment of any employee in the state;*
- (2) enter the place of business or employment of an employer at reasonable times for the purpose of inspecting payroll records that relate to the question of wages paid or hours worked;*
- (3) require and subpoena from an employer a statement in writing, when the director or the representative considers it necessary, of hours worked by and the wages paid to a person in the employ of the employer, and the commissioner may require the employer to make the statement under oath;*
- (4) question an employee in a place of employment during work hours with respect to the wages paid and the hours worked by the employees;*
- (5) compel the attendance of witnesses and the production of books, papers, and documents by subpoena when necessary for the purpose of a hearing or investigation provided for in AS 23.10.050 – 23.10.150.*

Alaska does not limit its state labor enforcement agency to only investigating formal allegations.

## California

### [2016 CA SB 1342/Chapter 115](#)

*SEC. 2. Section 53060.4 is added to the Government Code, to read:*

*53060.4. (a) The legislative body of a city or county may delegate to a county or city official or department head its authority to issue subpoenas and to report noncompliance thereof to the judge of the superior court of the county, in order to enforce any local law or ordinance, including, but not limited to, local wage laws.*

*(b) The Legislature finds and declares that these provisions do not constitute a change in, but are declaratory of, existing law.*

This law allows local officials to be granted subpoena-issuing authority to enforce wage laws.

## Texas

### [TX Penal Code § 31.04.](#)

*(a) A person commits theft of service if, with intent to avoid payment for service that the actor knows is provided only for compensation:*

...

*(4) the actor intentionally or knowingly secures the performance of the service by agreeing to provide compensation and, after the service is rendered, fails to make full payment after receiving notice demanding payment.*

...

*(d-1) For purposes of Subsection (a)(4):*

*(1) if the compensation is or was to be paid on a periodic basis, the intent to avoid payment for a service may be formed at any time during or before a pay period; and*

*(2) the partial payment of wages alone is not sufficient evidence to negate the actor's intent to avoid payment for a service.*

Texas has brought its police force into the fight against wage theft. Texas includes wage theft in its “theft of services” statutory section and recently passed a law to close a loophole on partial payments.

## LEVYING FINES ON EMPLOYERS

Enforcing wage and hour laws and investigating violations are extremely resource intensive. Legislatures can help facilitate enforcement by using fines levied on violating employers to create a special fund to assist in paying for enforcement activities.

### New York

#### [2014 NY AB 8106/Chapter 537](#)

S 12. The state finance law is amended by adding a new section 97-pppp to read as follows:

S 97-pppp. Wage theft prevention enforcement account.

(1) There is hereby established in the custody of the state comptroller the wage theft prevention enforcement account.

(2) Such fund shall consist of moneys collected pursuant to the provisions of articles five, six, 19 and 19-a of the labor law, and sections 215 and 218 of the labor law, and the regulations promulgated thereunder.

(3) Moneys of the fund shall be available to the commissioner of labor for purposes of offsetting the costs incurred by the commissioner of labor for the administration and enforcement of articles five, six, 19 and 19-a of the labor law, and sections 215 and 218 of the labor law, and the regulations promulgated thereunder.

(4) The moneys shall be paid out of the fund on the audit and warrant of the comptroller on vouchers certified or approved by the commissioner of labor or his or her designee.

New York's law gives more discretion to the labor commissioner.

### Colorado

#### [2014 CO SB 5/Chapter 276](#)

Section 7. In Colorado revised statutes, amend 8-4-113 as follows: 8-4-113. Fines pursuant to enforcement - wage theft enforcement fund - created.

(3)(a) The division shall transmit all fines collected pursuant to this section to the state treasurer, who shall credit the same to the wage theft enforcement fund, which fund is created and referred to in this section as the "fund". The moneys in the fund are subject to annual appropriation by the general assembly to the division for the direct and indirect costs associated with implementing this article.

(b) The state treasurer may invest any moneys in the fund not expended for the purpose of this article as provided by law. The state treasurer shall credit all interest and income derived from the investment and deposit of moneys in the fund to the fund. Any unexpended and unencumbered moneys remaining in the fund at the end of a fiscal year remain in the fund and must not be credited or transferred to the general fund or another fund. States are dealing with an ever-increasing number of employers and complex employer-employee relationships. Localities are often closer to wage theft violations, and one way that states can improve wage theft enforcement is to strengthen local wage enforcement authorities. For example, California recently passed legislation to allow county and municipal boards to authorize local officials to issue subpoenas.

Colorado puts the fund under the control of the legislature.

## STOP-WORK ORDERS

Stop-work orders are legal devices which can force a firm to immediately suspend all work until a legal matter has been worked out, forcing firms to be held immediately accountable for wage theft claims.

### New Jersey

[NJ Statutes § 34:11-56.35](#)

[...]

*(d) If the commissioner makes an initial determination that an employer has violated the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.) by paying wages at rates less than the rates applicable under that act, whether or not the commissioner refers the matter to the Attorney General or other appropriate prosecutorial authority for investigation or prosecution pursuant to subsection (c) of this section, the commissioner may immediately issue a stop-work order to cease all business operations at every site where the violation has [continued] occurred. The stop-work order may be issued only against the employer found to be in violation or non-compliance. If a stop-work order has been issued against a subcontractor pursuant to this subsection, the general contractor shall retain the right to terminate the subcontractor from the project. The stop-work order shall remain in effect until the commissioner issues an order releasing the stop-work order upon finding that the employer has agreed to pay wages at the required rate and has paid any wages due and any penalty deemed satisfactory to the commissioner. As a condition for release from a stop-work order, the commissioner may require the employer to file with the department periodic reports for a probationary period that shall not exceed two years that demonstrate the employer's continued compliance with the provisions of P.L.1963, c.150 (C.34:11-56.25 et seq.). The commissioner may assess a civil penalty of \$5,000 per day against an employer for each day that it conducts business operations that are in violation of the stop-work order. That penalty shall be collected by the commissioner in a summary proceeding in accordance with the «Penalty Enforcement Law of 1999,» P.L.1999, c.274 (C.2A:58-10 et seq.).*

Stop-work orders heavily penalize employers who engage in wage theft.

### Maine

[ME Sec. 1. 26 MRSA §637](#)

§ 637. Wage theft remedies

*2. Injunction. In addition to other remedies allowed by this chapter, the Department of Labor or any person or persons injured by an unlawful wage payment practice or policy that causes direct harm to workers may bring an action for injunctive relief to enjoin further wage theft. If a party seeking an injunction prevails, the employer is liable to pay the cost of suit, including a reasonable attorney's fee.*

*3. Issuance of a cease operations order. The Commissioner of Labor or the commissioner's designee may order an employer to cease its business operations if the commissioner or the commissioner's designee determines that the employer has committed wage theft, the commissioner or the commissioner's designee has previously determined the employer's practice or policy resulted in wage theft on more than one occasion or within the last 12 months and:*

*A. The practice or policy resulting in the wage theft affects 10 or more employees; or*

Injunctions increase penalties for employers who fail to lawfully pay employees.

*B. The wage theft is equal to or greater than twice an employee's average weekly wage.*

*If an employer refuses to obey an order to cease operations, that order may be enforced in Superior Court.*

## **RAISE COST TO EMPLOYERS FOR VIOLATIONS**

Research demonstrates that meaningful penalties can have a deterrent effect on wage theft. Lawmakers can enact triple-damages and increase penalties through other avenues. Damages that go to working people are the most direct method of increasing the cost of wage and hour violations on employers and reducing the incidence of violations. This section includes:

- Increased Damages
- Liens
- Expanding Individual Liability
- Surety Bonds

### **INCREASED DAMAGES**

Wage theft laws can dramatically increase the costs to businesses for violating the law. And damages that are awarded directly to working people are some of the most direct means of increasing the cost of violations.

#### **Massachusetts**

##### [2008 MA SB 1059/Chapter 80](#)

*SECTION 1. Section 27 of chapter 149 of the General Laws, as appearing in the 2006 Official Edition, is hereby amended by striking out the last paragraph and inserting in place thereof the following paragraph: An employee claiming to be aggrieved by a violation of this section may, 90 days after the filing of a complaint with the attorney general, or sooner if the attorney general assents in writing, and within three years after the violation, institute and prosecute in his own name and on his own behalf, or for himself and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.*

States like Massachusetts have some of the strongest awards for damages, at three times the unpaid wages owed.

#### **Minnesota**

##### [MN Statute Section 181.13 PENALTY FOR FAILURE TO PAY WAGES PROMPTLY.](#)

*(a) When any employer employing labor within this state discharges an employee, the wages or commissions actually earned and unpaid at the time of the discharge are immediately due and payable upon demand of the employee. Wages are actually earned and unpaid if the employee was not paid for all time worked at the employee's regular rate of pay or at the rate required by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater. If the employee's earned wages and commissions are not paid within 24 hours after demand, whether the employment was by the day, hour, week, month, or piece*

or by commissions, the employer is in default. In addition to recovering the wages and commissions actually earned and unpaid, the discharged employee may charge and collect a penalty equal to the amount of the employee's average daily earnings at the employee's regular rate of pay or the rate required by law, whichever rate is greater, for each day up to 15 days, that the employer is in default, until full payment or other settlement, satisfactory to the discharged employee, is made.

In the case of a public employer where approval of expenditures by a governing board is required, the 24-hour period for payment does not commence until the date of the first regular or special meeting of the governing board following discharge of the employee. An employee's demand for payment under this section must be in writing but need not state the precise amount of unpaid wages or commissions. An employee may directly seek and recover payment from an employer under this section even if the employee is not a party to a contract that requires the employer to pay the employee at the rate of pay demanded by the employee, so long as the contract or any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority requires payment to the employee at the particular rate of pay. The employee shall be able to directly seek payment at the highest rate of pay provided in the contract or applicable law, and any other related remedies as provided in this section.

Penalizes an employer who withholds earned wages of a terminated employee.

Allows newly fired or resigned employees who are not paid their final paycheck to impose a penalty on their former employer for failure to pay wages. This penalty goes to the employee, unlike most penalties, which go to a state agency.

Changed the penalty for failure to pay wages from an unclassified misdemeanor to theft, resulting in petty offense, misdemeanor or felony. One of the purposes behind H.B. 1267 is to recognize labor as "a thing of value" that can be subject to theft as a way to aid law enforcement in combatting labor trafficking.

## Colorado

### [CO Revised Statutes, 8-4-114](#)

8-4-114. Criminal penalties. (2) In addition to any other penalty imposed by this ARTICLE 4, any employer or agent of an employer who willfully refuses to pay WAGES OR COMPENSATION as provided in this ARTICLE 4, or falsely denies the amount of a wage claim, or the validity thereof, or that the same is due, with intent to secure for himself, herself, or another person any discount upon such indebtedness or any underpayment of such indebtedness or with intent to annoy, harass, oppress, hinder, COERCE, delay, or defraud the person to whom such indebtedness is due, **COMMITTS THEFT AS DEFINED IN SECTION 18-4-401.**

## LIENS

One potential mechanism for ensuring that employers pay any unpaid wages is by imposing a wage lien on the companies in question.

## California

### [2015 CA SB 588/Chapter 803](#)

SEC. 6. Section 238.2 is added to the Labor Code, to read:

(a) The labor commissioner may create a lien on any real property in California of an employer, or a successor employer pursuant to subdivision (e) of Section 238, that is conducting business in violation of Section 238 for the full amount of any wages, interest, and penalties claimed to be owed to any employee. To the extent attorney's fees are specifically allowed to be recovered by this code, such as by, but not limited to, subdivision (f) of Section 2673.1 and Section 2802, during a hearing pursuant to Section 98, the labor commissioner may include

Authorizes the state labor commissioner to impose a lien on real and personal property of an employer that violates the state's wage and hour laws.

that amount in the lien. (d) Unless the lien is satisfied or released, a lien under this section shall continue until 10 years from the date of its creation. (e) Prior to using the lien procedure in this section, the labor commissioner shall provide at least 20 days' notice to the employer. The notice shall advise the employer of the labor commissioner's authority to create a lien on the property to secure payment of the claim.

SEC. 7. Section 238.3 is added to the Labor Code, to read:

(a) The labor commissioner may create a lien on any personal property in California of an employer that conducts business in violation of Section 238 for the full amount of any wages, interest, and penalties claimed to be owed to any employee.

## New York

### [2019 NY SB S2844B](#)

2. *Employee's lien.* An employee who has a wage claim as that term is defined in subdivision twenty-three of section two of this chapter shall have a lien on his or her employer's interest in property for the value of that employee's wage claim arising out of the employment, including liquidated damages pursuant to subdivision one-a of section one hundred ninety-eight, section six hundred sixty-three or section six hundred eighty-one of the labor law, or 29 U.S.C. § 216 (b), from the time of filing a notice of such lien as prescribed in this chapter. An employee's lien based on a wage claim may be had against the employer's interest in real property and against the employer's interest in personal property that can be sufficiently described within the meaning of section 9-108 of the uniform commercial code, except that an employee's lien shall not extend to deposit accounts or goods as those terms are defined in section 9-102 of the uniform commercial code. The department of labor and the attorney general may obtain an employee's lien for the value of wage claims of the employees who are the subject of their investigations, court actions or administrative agency actions.

Allows workers to impose a wage lien on the property of an employer when a wage claim is filed. It allows workers to hold shareholders of non-publicly traded companies personally liable for wage theft. And it allows workers to hold the 10 largest owners of a limited liability company personally liable for wage theft.

## EXPANDING INDIVIDUAL LIABILITY

Including individual liability for those “acting on behalf of an employer” is an important way to reduce the incidence of wage theft, since it holds liable all individuals and businesses responsible for the violation.

## California

### [2015 CA SB 588/Chapter 803](#)

558.1. (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

A strategy adopted by California is to establish liabilities for client employers who get employees from third-party labor contractors, allowing for worksite employers to be held responsible for unpaid wages even if they are not found to be the “employer” of the unpaid employees.

## SURETY BONDS

One tactic is to prevent employers from conducting business unless they hold a surety bond to cover violations.

### California

#### [2015 CA SB 588/Chapter 803](#)

238. (a) *If a final judgment against an employer arising from the employer's nonpayment of wages for work performed in this state remains unsatisfied after a period of 30 days after the time to appeal therefrom has expired and no appeal therefrom is pending, the employer shall not continue to conduct business in this state, including conducting business using the labor of another business, contractor, or subcontractor instead of the labor of an employee, unless the employer has obtained a bond from a surety company admitted to do business in this state and has filed a copy of that bond with the labor commissioner. The bond shall be effective and maintained until satisfaction of all judgments for nonpayment of wages. The principal sum of the bond shall not be less than the following:*

- (1) *Fifty thousand dollars (\$50,000) if the unsatisfied portion of the judgment is no more than five thousand dollars (\$5,000).*
- (2) *One hundred thousand dollars (\$100,000) if the unsatisfied portion of the judgment is more than five thousand dollars (\$5,000) and no more than ten thousand dollars (\$10,000).*
- (3) *One hundred fifty thousand dollars (\$150,000) if the unsatisfied portion of the judgment is more than ten thousand dollars (\$10,000).*

#### [2013 CA AB 1387/Chapter 751](#)

*The commissioner may not permit any employer to register, nor may the commissioner permit any employer to renew registration until all of the following conditions are satisfied:*

- (b) *The employer has obtained a surety bond issued by a surety company admitted to do business in this state. The principal sum of the bond shall be not less than one hundred fifty thousand dollars (\$150,000). The employer shall file a copy of the bond with the commissioner.*
  - (1) *The bond required by this section shall be in favor of, and payable to the people of the state of California and shall be for the benefit of any employee damaged by his or her employer's failure to pay wages, interest on wages, or fringe benefits, or damaged by violation of Section 351 or 353.*
  - (2) *Thirty days prior to the cancellation or termination of any surety bond required by this section, the surety shall send written notice to both the employer and the commissioner identifying the bond and the date of the cancellation or termination.*
  - (3) *An employer may not conduct any business until the employer obtains a new surety bond and files a copy of it with the commissioner.*

This 2015 California law is an example of the use of surety bonds after an employer has been found to have violated wage and hour laws.

Surety bonds have been used preemptively to require targeted industries to have funds available if they are found to be in violation of specific state labor laws. California again provides an example of this through its law requiring car washing companies to obtain a wage bond before doing business in the state.



# ADDITIONAL RESOURCES

## OVERVIEW OF STATE LAWS

- [Overtime, Breaks & Wage and Hour Violations in States](#)
- [Current and Pending Wage Theft Legislation - Map](#)
- [Roundup of Recent State and Local Activity to Combat Wage Theft](#)

## RESEARCH, REPORTS & POLICY BRIEFS

- [Facts on Forced Arbitration: How Forced Arbitration Harms America's Workers](#), Employee Rights Advocacy Institute for Law & Policy, October 2019
- [Exposing Wage Theft Without Fear: States Must Protect Workers from Retaliation](#), National Employment Law Project, June 2019
- [Winning Wage Justice](#), National Employment Law Project, March 2015
- [Who's the Boss](#), National Employment Law Project, May 2014
- [Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities](#), National Employment Law Project, September 2009
- [Grand Theft Paycheck: The Large Corporations Shortchanging Their Workers' Wages](#), Good Jobs First, June 2018
- [Employers steal billions from workers' paychecks each year](#), Economic Policy Institute, May 2017
- [Independent Contractor Misclassification](#), Economic Policy Institute, June 2015
- [An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year](#), Economic Policy Institute, Sept. 2014
- [The Labor Standards Enforcement Toolbox](#), Center for Innovation in Worker Organization and the Center for Law and Social Policy

## ACADEMIC JOURNAL ARTICLES & PAPERS

- [How Employers Profit from Digital Wage Theft Under the FLSA](#)
- [The Rise of Wage Theft Laws: Can Community-Labor Coalitions Win Victories in State Houses?](#)
- [What's Left to Remedy Wage Theft? How Arbitration Mandates That Bar Class Actions Impact Low-Wage Workers](#)
- [Deterring "Wage Theft": Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance](#)

## OP-EDS & BLOG POSTS

- *Massachusetts Community Labor United*: [Wage Theft Should Be at the Top of Legislature's Agenda](#) by Darlene Lombos and Gladys Vega
- *New York Times*: [Wage Theft in Restaurants](#) by The Editorial Board
- *Huffington Post*: [Wage Theft in the Land of Plenty](#) by David Macaray
- *Economic Policy Institute*: [New legislation could help end wage theft epidemic](#) by Ross Eisenbrey
- *New York Times*: [Wage Theft Across the Board](#) by The Editorial Board
- *New York Times*: [More Workers Are Claiming 'Wage Theft'](#) by Steven Greenhouse
- *The American Prospect*: [Broken Laws, Unprotected Workers](#) by Annette Bernhardt
- *Washington Post*: [Down and Out](#) by Editorial Pages
- *New York Times*: [Workers in America, Cheated](#) by Editorial

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