



**The Washington Lawyers' Committee for Civil Rights and Urban Affairs
Supporting Testimony for B20-671, the Wage Theft Prevention Act of 2014**

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My name is Matthew Handley, Director of Litigation at The Washington Lawyers' Committee for Civil Rights and Urban Affairs, a non-profit law firm located in Washington D.C. I'd like to thank you for inviting me to speak on behalf of The Wage Theft Prevention Act of 2014, which the Washington Lawyers' Committee, along with the Equal Justice Center and the National Lawyers' Committee, fully endorses.

For nearly fifty years, the Washington Lawyers' Committee has addressed issues of discrimination and entrenched poverty through pro bono litigation, representing individuals in claims related to employment, housing, incarceration, disability and immigrant rights.

Recently, the Washington Lawyers' Committee has seen an influx of intakes from victims of wage theft – over half of our Immigrant Rights Project intakes in the past year concerned unpaid wages. As we continue to receive and evaluate more of these complaints, it becomes clearer that wage theft is an important hurdle in the civil rights struggle: it is the systematic neglect of already marginalized communities – the impoverished and new arrivals to our community. We believe that this problem is only likely to grow in the absence of needed reform. As municipalities, states and the federal government move forward with long overdue efforts to raise the minimum wage, the effect of these raises will almost certainly be more concerted efforts to commit wage theft by those employers already inclined to do so.

By passing the Wage Theft Prevention Act of 2014, we might take another step to end the routine exploitation of the impoverished and immigrant communities, thereby ending a pervasive, albeit somewhat disguised, form of discrimination.

Many workers choose not to report underpayment because they assume that their attempts to seek justice will fail due to lack of evidence or lack of resources. They are afraid to bring up the issue of “correct payment” with their employers because they will not be protected by current law against retaliation. They need assurance that their claims will be recognized and that their rights will be enforced. The proposed amendments in the Act will empower workers who might otherwise accept wage abuse by encouraging transparency and communication in the workplace; increasing protections against retaliation; and expanding the impact of litigation to cover collective claims.

1. Written Notices

As we describe in the “Stolen Wages in the Nation’s Capital” report, one of the greatest challenges in enforcing wage and hour law is encouraging workers to report nonpayment.¹ Many of our clients have indicated that the majority of their co-workers suffer wage theft silently and choose not make claims because they believe they lack the evidence necessary to file a charge. Low-wage workers often rely on verbal agreements to determine their payment, and in some circumstances they do not even know the full name of their employer.

The Wage Theft Prevention Act would remedy this problem by requiring employers to provide a written notice to employees, upon hiring, of the expected pay rate, method of calculation, and pay period, thereby creating formal consensus between the employer and employee over the pay agreement, and also granting workers greater leverage in the case of a wage dispute. Also, by requiring that all employers formally disclose their full name, address, and contact information, the Act would help workers track down fly-by-night employers and hold them accountable for unpaid wages.

2. Retaliation

Unfortunately, there are many cases where wages are withheld not because of a lack of understanding of the pay agreement, but rather because the employer is intentionally using his authority over the employee to exploit his labor. In these situations, an employer might threaten the employee with suspension, termination or (in the case of undocumented workers) deportation for reporting wage theft to an outside authority. Even in situations where employers have not made explicit threats, workers still do not assert their wage rights for fear of retaliation – they do not believe that they are realistically protected against termination or punishment for filing wage theft complaints, and they often do not report such mistreatment until after they’ve already been fired from their jobs.

As we outline in the “Stolen Wages” report, the District of Columbia’s employees are in need of greater legal defense against retaliation. With explicit protections in place, workers who are accustomed to systemic neglect might gain confidence in the legal system and have less fear in asserting their wage and hour rights.

3. Tolling

Another deterrent to stopping wage theft is the time limitation during which workers may make claims. Many victims of wage theft are unaware of the scope of their employer’s wrongdoing, and for this reason fail to report the stolen wages in a timely manner.

¹ Employment Justice Center; Lawyers’ Committee for Civil Rights Under Law; Washington For Civil Rights & Urban Affairs. *Stolen Wages in the Nation’s Capital: Fixing DC’s Broken Wage Theft Claims Process (white paper)*. Washington, D.C.: 2013. Print.

The proposed Act would toll the period to file claims if an employer fails to provide notice explaining workers' rights, or provide the proposed written notice of the workers' expected wages. The statute of limitations would not begin to run until the worker becomes aware of their rights under the law.

4. Consent of the Complainant in Settlement

We also would like to enhance the participation of wage theft complainants in the administrative settlement process. By requiring the consent of wage theft complainants in the settlement of claims, the new law would grant these marginalized members of the workforce greater authority in the resolution process of their disputes. Also, complainants would be allowed to inquire and receive status updates on the enforcement of the decisions, creating more transparency and granting greater satisfaction in the remedying of labor offenses.

5. Subcontractors / Contractors

In our work at the Washington Lawyers' Committee, we have found that culpability for wage theft extends beyond one bad actor—a general contractor can often be just as responsible for the failure to pay workers the wages due as those workers' direct employer. Under the Act, contractors would be jointly responsible when their subcontractors fail to pay their workers. By broadening accountability, the most vulnerable workers in the industry—day laborers and other low-income workers—would have greater protection from bad practices.

Better Access to Representation

1. Class Action

We anticipate that there will continue to be victims who will not seek administrative or legal remedies because they lack the resources, knowledge or security to execute such procedures. For this reason, we are calling for a new provision in the law that allows class action groups, community or labor organizations, and other interested parties to advocate on behalf of individuals who may not always do so themselves. Such a legal measure would broaden the impact of this law and relieve many of the forms of retaliation faced by workers.

2. Attorneys' Fees

Legal advocates for wage theft victims are often financially restrained in how they might undertake claims of wage theft. Under the Act, judges would be given clearer instructions on how to calculate and award attorneys' fees, lowering the risk that successful attorneys would lose money even when they successfully prosecute meritorious claims.

Conclusion

The Washington Lawyers' Committee, along with many of the individuals whom we represent, would welcome this bill's passage and the resulting changes to employment practices in the District. It is our hope that by enacting the proposed amendments, low-wage workers will make significant strides in overcoming the exploitation and marginalization perpetuated under current law. We know that once passed, this Act has the potential to reshape not only the labor practices of employers, but also the notions of equality and empowerment among workers. It has the potential to set a new standard for civil rights in the District as well as in cities that look to the nation's capital for new examples of just and fair law.