



**Testimony of Daniel A. Katz, Senior Counsel, Washington Lawyers' Committee for  
Civil Rights and Urban Affairs<sup>i</sup>  
Before the U.S. House of Representatives Committee on Appropriations, Subcommittee on  
Labor, Health and Human Services, Education, and Related Agencies  
April 9, 2019**

A national epidemic of wage theft is wreaking havoc on the ability of low-wage workers to support their families. Each month, the Washington Lawyers' Committee for Civil Rights and Urban Affairs assists over 100 low-wage District of Columbia workers who suffer wage theft and other violations of their rights in the workplace. My testimony is informed by our experiences in these workers' rights clinics and my 25 years of experience representing hundreds of victims of wage theft, and counselling many hundreds more.

Wages are essential to family economic security. Nevertheless, work is not lifting enough families out of poverty. Twenty-seven percent of all working families and 38 percent of working African American families in the District of Columbia work but do not earn enough to move out of poverty.<sup>ii</sup> Millions of the lowest wage workers are cheated out of their lawful wages each year, depriving vulnerable families of billions of dollars in income.<sup>iii</sup> Studies have found that as many as one-in-four low-wage workers experience some form of wage theft each year.<sup>iv</sup>

We encourage the Committee to ensure that the U. S. Department of Labor's ("DOL") enforcement and outreach functions are adequately funded and that DOL protects the most vulnerable members of the workforce. We strongly support the proposed amendments to the Fair Labor Standards Act ("FLSA"). Increased federal enforcement, enhanced penalties, as well as strengthened notice, record keeping and pay-stub information rules will discourage employers from cheating employees and make it easier for those cheated to secure a remedy.

Day in and day out, we speak with individuals who work on construction sites, in restaurants, in hotels, in day care centers, in nursing homes and elsewhere, who do not receive the minimum wage, do not receive overtime pay, who get paid for only a fraction of their work, and others who work and simply do not get paid at all. These are the victims of wage theft. Here are a few of their stories.

We represented members of a construction crew who worked up to 48 hours at a stretch, moving from project to project. The employer never explained how they would be paid or how many hours they would have to work. The employer did not pay overtime and threatened the workers when they complained about the long hours. After extensive litigation, the Court found the employer had cheated them out of more than \$600,000 in wages.

A small subcontractor working on luxury apartments in Foggy Bottom hired six workers to hang drywall for three weeks. They were paid nothing. When they tried to collect their three weeks' wages, the subcontractor was nowhere to be found. The general contractor, who was on site daily and helped supervise their work, claimed it had no responsibility to pay them since it had not directly hired them. The workers received nothing for their labor.

A young mother worked 50 hours per week in a pizza restaurant in a tony indoor market. The restaurant paid her for only 40 hours each week. When she complained, her employer told her she was lucky that he paid her minimum wage for those 40 hours. She received neither time nor time-and-a-half for 10 hours work each week.

Six back-of-the-house restaurant workers were not paid for four weeks of work when the restaurant at which they worked changed hands. The new owner told them they could keep their jobs, but refused to pay them their back wages. They could not figure out who the old owners were, because the paystubs referred only to an LLC which was out of business.

A few D.C. restaurant workers were not paid for three weeks. The owner told them to keep coming to work, that he would eventually pay them. The next week they received half the wages due, but nothing for that weeks' work. The next week, they received half of what they were owed for the prior week. The following week they showed up for work, and the restaurant had shut down.

Over 300 janitors worked for a tri-state custodial company, some for up to 15 years. Many earned just above the federal minimum wage. Their paychecks for the last half of August 2018 did not arrive, and as the paychecks for the first half of September were due, they received word the company had closed. We are representing a group of over 200 in court. The owners of the company have significant assets in Maryland and Virginia, but are avoiding legal process.

A server regularly worked 12-hour shifts at a D.C. bar. She made only tips. Her employer did not even pay her the \$3.89/hour wage an employer must pay a tipped employee. When she complained, they gave her two options – keep serving or leave.

Thirty workers performed electrical work renovating and constructing a public hospital. They were hired by a labor broker, but worked with and performed the same tasks as the individuals hired directly by the electrical contractor. They were paid less than half the wage of the other electrical workers and did not receive overtime premium. When they sought the wages owed, the labor broker had disappeared, and the electrical contractor disclaimed responsibility.

Wage theft has a disturbingly discriminatory pattern, disproportionately affecting African Americans, women and immigrants. A report by the Economic Policy Institute found that workers of color are more likely to experience minimum wage violations than white workers. Approximately five percent of black workers and Hispanic workers are paid less than the minimum wage, compared with 3.5 percent of white workers. Women hold approximately 47%

of all minimum wage jobs, yet they suffer over 55% of all minimum wage violations.<sup>v</sup>

Unscrupulous employers prey upon immigrant workers and exploit their vulnerabilities. In many of these scenarios, immigrant workers know that when they complain to the boss – or seek assistance from a workers’ rights clinic – or seek justice in the courts, they risk their livelihood, the financial stability of their families, and their ability to be in this country.

Private enforcement of the wage and hour laws, and state and local efforts, are important but insufficient. First, there are many victims of wage theft whose cases are “small” – who are owed \$1000 or \$2000 – amounts of critical importance to the worker, but insufficient for an attorney to expend resources litigating. Second, state investigative agencies are severely underfunded, and at times, defunded, when budget priorities change or when the state administration is hostile to enforcement of wage law.<sup>vi</sup> Third, a state agency’s authority extends only to that state, whereas many employers’ activities are interstate or even national.

In light of the limited private and state resources available to workers, robust federal protections are essential to deter and remedy violations. The DOL has the investigative and legal resources to identify violations and change the behavior of those employers who benefit from wage theft. The proposed enhancement of DOL’s enforcement authority, together with increased resources to conduct outreach and worker education, can dramatically strengthen its ability to enforce the law.

Other proposed FLSA amendments would reduce opportunities for worker exploitation. Many victims of wage theft justifiably fear retaliation due to threats from employers, and do not seek legal assistance until after they leave the employer. An enlarged statute of limitations, to four or five years to bring claims, would assist employees to seek redress. The potential of enhanced penalties for retaliation should help deter illegal reprisals against those who seek

wages they have earned. Unscrupulous employers often do not disclose to the employees what the worker's pay rate is, or how the wage is determined. The requirement that employers provide paystubs with hours and rate information will help combat wage theft.

One final note: The benefits of the proposed FLSA amendments would be seriously undermined by a pernicious Department of Labor proposal that would gut a core protection for low-wage workers. For vulnerable workers, such as those described above, the current FLSA joint employment rules – which recognize that liability attaches to all of those persons or entities who codetermine the terms and conditions of a worker's employment -- provide the only hope that, when the labor broker or fly-by-night subcontractor who brought the worker to the job disappears, the worker still might recover the wages she earned from the general contractor. However, last week, the Department of Labor proposed a new four-part test for determining "joint employment" under the FLSA. This test would effectively insulate general contractors and others in the employer chain from the consequences of wage theft from which they directly benefit. The DOL proposal would upend decades of court precedent and ignore the reality of the sub-contracting and out-sourcing structure of employment today. This change would leave thousands of unpaid workers without any relief from wage theft. I urge the Committee to consider steps to ensure that the DOL never implements these regulations.

Thank you for the opportunity to present this testimony. I look forward to any questions.

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<sup>i</sup> The Washington Lawyers' Committee for Civil Rights and Urban Affairs has worked for more than fifty years for racial, gender and economic justice in the workplace. The Committee is a non-profit civil rights legal services program that seeks to create racial and economic equity through litigation and policy advocacy. We partner with area law firms, labor unions, faith communities, and community groups in our work.

<sup>ii</sup> [http://www.workingpoorfamilies.org/states/popups/district\\_of\\_columbia.html](http://www.workingpoorfamilies.org/states/popups/district_of_columbia.html)

<sup>iii</sup> <https://www.workingamerica.org/fixmyjob/compensation/not-getting-paid-hours-worked>

<sup>iv</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies>

<sup>v</sup> <https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year-survey-data-show-millions-of-workers-are-paid-less-than-the-minimum-wage-at-significant-cost-to-taxpayers-and-state-economies/>

<sup>vi</sup> <https://www.baltimoresun.com/news/bs-xpm-2005-01-30-0501300152-story.html>