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HOUSE OF REPRESENTATIVES
COMMONWEALTH *of* PENNSYLVANIA

House Democratic Policy Committee Hearing

Wage Theft

Tuesday, February 25, 2025 | 12:00 p.m.

Representative Emily Kinkad

OPENING REMARKS

12:00p.m. Rep. Emily Kinkad, D-Allegheny

PANEL ONE

12:05p.m. Robert Daley, Principal Attorney
Robert Peirce & Associates, P.C.

Q & A with Legislators

PANEL TWO

12:30p.m. Michael Ford, Secretary, Treasurer
Pennsylvania Building & Construction Trades Council

Q & A with Legislators

House Democratic Policy Hearing on Wage Theft
Written Testimony of Robert F. Daley, Esquire

I. INTRODUCTION

Wage theft, a pervasive problem in the Commonwealth of Pennsylvania, negatively impacts hundreds of thousands of hardworking Pennsylvanians every year. Conservative estimates show that millions of dollars may be stolen by Pennsylvania employers on an annual basis. This has a devastating impact not only on the affected workers and their families, but on Pennsylvania's economy as a whole. Therefore, the Legislature of the Commonwealth should consider harsher civil penalties and more stringent enforcement of criminal penalties, as well as an expansion of the statute of limitations and the creation of tolling provisions to give a wider path towards relief for affected workers.

II. SCOPE OF WAGE THEFT IN PENNSYLVANIA

A. Wage Theft is a Common Occurrence Nationally

Wage theft by employers of low-wage workers is a rampant problem in the United States. Surveys suggest that the three most common types of wage theft are (1) minimum wage violations, (2) overtime violations and, (3) "off-the-clock" violations.¹

Minimum wage violations occur when employers fail to pay employees the mandated hourly wage.² The mandated hourly wage varies from state to state but, with a handful of specific occupational exemptions, can never dip below the \$7.25 per hour federal minimum.³ Minimum wage violations may occur when employers willfully fail to pay non-exempt employees the mandated hourly rate or when employers erroneously classify an employee under a minimum wage

¹ Sheller Center for Social Justice, Temple University Beasley School of Law, *Shortchanged: How Wage Theft Harms Pennsylvania's Workers and Economy*, (2015), [hereinafter *Temple Study*].

² *Id.* at 4.

³ *Id.*

exempt category.⁴ A survey conducted by many researchers, including Annette Bernhardt, showed that in several large cities across the United States, 26% of low-wage workers were paid less than minimum wage, and 60% of those affected were underpaid by more than \$1 per hour.⁵ In the ten most populous states alone, 2.4 million workers are cheated out of \$8 billion every year.⁶

Overtime violations occur when employers fail to pay employees the legal rate for time worked in excess of 40 hours during a single workweek.⁷ These violations may occur by failure to pay the appropriate overtime rate or failure to pay for overtime hours at all.⁸ The Bernhardt Survey showed that of the roughly one quarter of low-wage workers who worked in excess of 40 hours in a given workweek, 76% were not paid the legal overtime rate by employers.⁹

Finally, “off-the-clock” violations occur when employers fail to pay employees for work done either before they officially “clocked in” or after they officially “clocked out.”¹⁰ The Bernhardt Survey showed that of the roughly one quarter of low-wage workers who did “off-the-clock” work, 70% never received any payment at all for the time they worked outside of their regular shift.¹¹

Though the Bernhardt Survey was conducted in 2008, the occurrences of wage theft have shown no signs of slowing down. Rather, from 2021 through 2023, the U.S. Department of Labor

⁴ *Id.*

⁵ Annette Bernhardt *et al.*, *Broken Laws, Unprotected Workers: Violations of Employment And Labor Laws In America’s Cities*, National Employment Law Project (2009), [hereinafter *Bernhardt Survey*].

⁶ David Cooper & Teresa Kroeger, *Employers Steal Billions from Workers’ Paychecks Each year*, Economic Policy Institute, (2017).

⁷ *Temple Study*, *supra* note 1, at 4.

⁸ *Id.*

⁹ *Bernhardt Survey*, *supra* note 5, at 2.

¹⁰ *Temple Study*, *supra* note 1, at 5.

¹¹ *Bernhardt Survey*, *supra* note 5, at 3.

(“DOL”) alone recovered an average of \$219.9 million dollars for workers due to wage theft.¹² In that same timeframe, \$1.5 billion in lost wages were recovered in total by the DOL, state agencies, and class action lawsuits.¹³ Wage theft remains a pervasive problem in the United States today.

B. An Estimated 46 Million Instances of Wage Theft Occur Annually in Pennsylvania

While no original data specific to Pennsylvania exist to show the precise number of low-wage workers in Pennsylvania who are affected by the three most common types of wage theft, there is no evidence to suggest that Pennsylvania low-wage workers are not similarly impacted in terms of the national percentages. A Temple University study (hereinafter the “Temple Study”), based on the Bernhardt Survey, found that **every week** in Pennsylvania **397,673** workers experience a minimum wage violation, **326,647** workers experience an overtime violation, and **257,204** workers experience an “off-the-clock” violation.¹⁴ This equates to **981,524** occurrences of just the three most common types of wage theft every week.¹⁵ There are fifty-two possible work weeks in any given year, and even assuming that employers provide employees with a full five weeks of personal time per year, the average employee works forty-seven weeks per year. Following the trend of 981,524 occurrences of wage theft per week, in Pennsylvania around **46,131,628** wage thefts occur **every year**.

¹² Margaret Poydock & Jiayi Zhang, *More than \$1.5 billion in stolen wages recovered for workers between 2021 and 2023*, Economic Policy Institute, (2024).

¹³ *Id.*

¹⁴ *Temple Study*, supra note 1, at 12.

¹⁵ This figure does not represent the number of employees who experience wage theft every week. Rather, this figure only synthesizes the Temple Study data to show that there may be as many as 981,524 individual occurrences of wage theft per week in Pennsylvania. It is entirely plausible that a given employee experiences all three types of wage theft in a single week, meaning the actual number of employees who experience wage theft per week is very likely lower than the 981,524-occurrence rate of individual occurrences of wage thefts per week.

The projected numbers become strikingly alarming when considering which low-wage occupations were studied. The Temple Study focused on fifteen occupations – the same fifteen occupations surveyed in the Bernhardt Survey which provided the original raw data, classified as low-wage occupations.¹⁶ Among the fifteen occupations studied, four are in the top ten most employed occupations in Pennsylvania statewide.¹⁷

As of 2023, Home Health and Personal Care Aides were the largest occupation statewide in Pennsylvania.¹⁸ The Bernhardt Survey showed that 17.5% of home health care workers experienced a minimum wage violation every week.¹⁹ Roughly one quarter of home health care workers work overtime or “off-the-clock” hours every week, and of that subset 82.7% experience overtime violations and 90.4% experience “off-the-clock” violations.²⁰ When applied to home health care workers in Pennsylvania, there are roughly **129,461**²¹ occurrences of wage theft **every week** for the Commonwealth’s number one occupation alone.

¹⁶ The full list of low-wage occupations studied includes: (1) beauty, dry cleaning, and general repair; (2) building services and grounds workers; (3) car wash, parking lot, and drivers; (4) cashiers; (5) childcare workers; (6) cooks, dishwashers, and food preparers; (7) factory and packaging; (8) general construction; (9) home health care; (10) maids and housekeepers; (11) retail salesperson, and tellers; (12) security guards; (13) sewing and garment workers; (14) stock/office clerks & couriers; and (15) waiters, cafeteria workers, and bartenders. Notably the Temple Study specifically pointed out that the data does not account for other types of low-wage professions that may be common in Pennsylvania such as farming, fishing, and forestry jobs, and therefore the actual numbers of weekly wage theft occurrences are likely higher than the estimations provided in the study.

¹⁷ *Charts of the largest occupations in each area, May 2023*, Bureau of Labor Statistics, (2023), https://www.bls.gov/oes/current/area_emp_chart/area_emp_chart.htm.

¹⁸ *Id.*

¹⁹ *Bernhardt Survey*, supra note 5, at 31.

²⁰ *Temple Study*, supra note 1, at 14.

²¹ This result is the total number of all three of the most common types of wage theft based on the occupation-specific percentages from the Bernhardt Survey and Temple study applied to the most recent census data showing that there are 213,020 home health workers statewide in Pennsylvania.

Among the top ten other largest occupations in Pennsylvania, retail salespersons (6th most common), cashiers (7th most common), and office clerks (8th most common) were all included in the study.²² When applying the same mathematical process above, retail salespersons experience roughly **84,854** occurrences of wage theft, cashiers experience roughly **63,245** occurrences, and office clerks experience roughly **71,773** occurrences all in a single workweek. Further, waitresses, cooks, dishwashers, bartenders, and food preparers (“restaurant workers”) were all included occupations in the study.²³ The study found that restaurant workers experience a similar rate of wage theft.²⁴ Restaurants and other eating establishments are the number one industry in Pennsylvania, indicating that this is likely a widespread problem throughout the Commonwealth.

A survey of the twenty-four highest wage theft penalties paid between 2000 and 2018, shows that four of the top fifty employers in Pennsylvania – Walmart, FedEx, UPS and CVS Pharmacy – were found liable for wage theft violations ranging from \$87,691,026 to \$1,408,901,183.²⁵ Most significantly, Walmart, which was found liable for 187 million dollars in wage theft in Pennsylvania alone, is the third-largest employer in the Commonwealth behind the federal and state governments.²⁶

These numbers, while estimates calculated from existing data rather than original data, suggest a disturbingly common tendency of Pennsylvania employers to not only violate the law

²² *Bureau of Labor Statistics*, supra note 17.

²³ *Temple Study*, supra note 1, at 13-14.

²⁴ *Id.*

²⁵ *Wage Theft in Pennsylvania*, Local Majority, (2020) available at https://www.localmajority.org/wpcontent/uploads/2020/06/PA.Wage_Theft.20200531.JW_.final_.pdf

²⁶ *Top 50 Employers 3rd Quarter, 2024*, Pennsylvania Department of Labor and & Industry, (2024), available at https://www.pa.gov/content/dam/copapwppagov/en/dli/documents/cwia/products/top-50-emp-ind/pennsylvania_com_top_50.pdf

but also to impact the livelihood of hard-working Pennsylvanians. There is no reason to believe that the percentages found in the Bernhardt Survey are not directly applicable to Pennsylvania nor that the estimations provided in the Temple Study are inaccurate. There is no evidence to suggest that Pennsylvania employers are any more likely to follow the law or that Pennsylvania workers are any less likely to experience wage theft. To the contrary, four of Pennsylvania's largest employers have been shown to be among the worst wage theft offenders in the last twenty-five years. Further, many of the most commonly affected occupations are among the top ten occupations and industries in the Commonwealth. Assuming for the sake of argument that, though improbable, in the best-case scenario Pennsylvania employers are somehow 75% less likely to commit wage theft violations, 11.5 million wage thefts would still occur every year. Even in blindly assuming the best-case scenario, 11.5 million occurrences of wage thefts is too widespread a problem for the state Legislature to ignore.

C. Wage Theft Negatively Affects the State Economy

Unsurprisingly, the economic impact of widespread wage theft can be devastating not only to the affected workers and their families, but to Pennsylvania's economy as a whole. The Bernhardt Survey calculated that 15% of the weekly income of impacted workers is stolen.²⁷ The Temple study found that these type of workers studied earn an average of \$343.60 to \$582.40 per week.²⁸ When applying the average percentage of 15%, roughly \$51.54 to \$87.36 are stolen by employers every week. On the low end and based only on the 397,673 Pennsylvanians who experience a minimum wage violation every week, a minimum of approximately \$20.4 million

²⁷ *Temple Study*, supra note 1, at 16.

²⁸ *Id.*

dollars is stolen from paychecks every week. Therefore, extended across a 52-week year, **\$936.3 million** are stolen from the pockets of Pennsylvania citizens **every single year**.

Aside from the obvious negative potential impact of the individually affected workers and their families by not receiving the full income for which they are entitled, local economies may also be significantly impacted. Using conservative estimates, for a single employee who doesn't receive the \$51.54 that he or she is entitled to after a week's work, there is potentially \$51.54 that will not be reinvested in the local economy through typical commerce. Depending on the size of the locality, every week this could equate to tens of thousands of dollars in total that cannot be reinvested into the local economy because the consumers are not in possession of the funds. Rather, this money is still in the possession of employers who are unlikely to reinvest the funds into the local economy on the same scale that thousands of individual employees would in a given week.

Additionally, the state government loses out on income tax revenue. Given Pennsylvania's flat income tax rate of 3.07%, estimates suggest that the state is deprived of between \$29.5 million and \$50.1 million in income tax per year, which could be used to directly benefit every citizen of the Commonwealth. Instead, those millions of dollars are being improperly diverted into the business and personal accounts of employers across Pennsylvania. Wage theft only stands to benefit those employers, while it hurts every Pennsylvania citizen, either directly or indirectly, as well as local economies and the state government.

D. SOLUTIONS AND REMEDIES

Given the scope of wage theft in Pennsylvania, a problem of this magnitude requires a legislative solution. The Legislature should attempt to cure the problem by both curbing the frequency of wage theft violations and increasing the chance of recovery by affected workers.

To curb the frequency of wage theft violations of employers, the Legislature should institute harsher penalties for violations and encourage the pursuit of criminal prosecutions for wage theft. Under the Pennsylvania Wage Payment and Collection Law (“WPCL”) victims of wage theft are entitled to bring a civil action to recover both their unpaid wages and liquidated damages. Under 43 P.S. § 260.10, the WPLC caps liquidated damages to no more than an amount equal to 25% of the total amount of wages due, or \$500.00, whichever is greater. Instead, 43 P.S. § 260.10 should be rewritten to provide liquidated damages up to three times (treble) the total amount of wages due. Pennsylvania courts have found that treble damages are a tool used by the Legislature to “enhance the impact of monetary awards . . . **to deter wrongful** trade practices affecting the public at large.”²⁹ Doing so would also be in conformity with other neighboring states that have already instituted treble damage provisions for wage theft.³⁰

The WPCL also provides for potential criminal penalties, though the statute does not include language that guarantees criminal prosecution. The first provision of 43 P.S. § 260.11a only allows for “[t]he secretary or any employee, group of employees, labor organization or party to whom any type of wages is payable” to institute criminal prosecutions. This provision should be strengthened (as written, any violation is only a summary offense), and used more frequently than it is, recognizing of course that not all “wage thefts” can be (or should be) criminally prosecuted. However, if wage theft is systemic and clearly intentional, the threat of serious criminal penalties can help to alleviate an already serious problem.

²⁹ *Schwartz v. Rocky*, 932 A.2d 885, 898 (2007).

³⁰ See e.g. Oh. Const. Art. II, § 34a (In Ohio, for minimum wage violations “[d]amages shall be calculated as **an additional two times the amount** of the back wages”); ALM GL ch. 149, § 150 (In Massachusetts, victims of wage theft “shall be **awarded treble damages**, as liquidated damages, for any lost wages and other benefits”); Md. Labor and Employment Code Ann. § 3-507.2 (In Maryland, the court may award victims of wage theft “an amount not exceeding **3 times the wage**”).

Recognizing that harsher deterrents will never entirely cure the problem of wage theft, the Legislature should also assist the victims of wage theft by lengthening the statute of limitations and drafting a tolling provision. The statute currently provides only a three-year statute of limitations from the date that the wages were payable and contains no tolling provision. The statute of limitations should be increased to at least five years because it would allow for additional recovery of stolen wages by victims who may be entirely unaware that their wages were being stolen.³¹ Further, a tolling provision for employees of employers who are being investigated by the Department of Labor and Industry would appropriately provide victims with a reasonable chance to discover the wage theft through the Department's investigation which may, in theory, take longer than the proposed five-year statute of limitations.

³¹ Other states do extend the statute of limitations to five years or even to six years. *See e.g.* Fla. Const. Art. X, § 24 (Five-year SOL for willful violations); NY CLS Labor § 198 (Six-year SOL).