



City Strategies to Combat Wage Theft and Empower Workers

Better Administrative Systems

1. *Create a Task Force/Advisory Board*
2. *Establish a City Department of Labor*
3. *City-State Coordination and Referral*
4. *Intra-City Agency Coordination*
5. *Police Assistance for Increased Reporting*
6. *Use Community Organizations to Educate and Empower Workers*
7. *Use Community Organizations to Investigate Claims*

Better Information

1. *Employer Transparency and Disclosure*
2. *Require Public Disclosure of Employment Practices*
3. *Employer and City Funded Know-Your-Rights Sessions*
4. *Sponsor Know-Your-Rights Advertising*

Stronger Sanctions

1. *Include Wage Theft Provisions in Industry-Specific Legislation*
2. *Retaliation Prevention*
3. *License Suspension and Revocation*
4. *Expanding Licensing*
5. *Establish Worker Liens*
6. *Establish Surety Bonds to Ensure Recovery*
7. *Utilize Criminal Penalties*
8. *Increase Damages for Workers*
9. *Increase Administrative Fees for Cities*
10. *Increase Efficiency and Timeliness*

Better Administrative Systems

1. Create a Task Force/Advisory Board

Task forces or advisory boards can be valuable tools for public engagement and education. A city could implement a general task force on economic rights for workers or a task force focused specifically on wage theft. Made up of workers, elected officials and administrators, and members of the public, the Task Force could hold hearings, conduct investigations, and make recommendations for reforms to the city's labor laws, including recommending innovative policies to combat wage theft. Such a task force could consider an array of options that could apply to all employers, all employers over a certain size, or all employers in a particular industry (like fast food).

In **Seattle**, the Mayor appointed a Labor Standards Advisory Group to develop recommendations for enforcing the city's minimum wage, paid sick days, ban-the-box, and other labor standards. After the Group released its recommendations, the Mayor called for the creation of a Department of Labor Standards.

El Paso's Wage Theft Task Force includes the Police Department, the Sheriff's Office, County and District Attorneys and the Labor Justice Committee. In 2013 the owner of an El Paso roofing company was indicted after refusing to pay an employee \$2000. Worker advocates were only able to secure the indictment because of the coordination of the task force.

A Councilmember in **San Jose** recently proposed establishing a Wage Theft Task Force to meet for six months to develop recommendations for an effective ordinance to combat wage theft. The Task Force would consist of representatives from city departments that issues business licenses, collect business taxes, the City Attorney's office, members from the business community, community-based organizations, workers, and labor unions.

2. Establish a City Department of Labor

Cities that have the legal power to enact their own minimum or living wage should create local enforcement systems.

For example, **San Francisco's** ordinance gives the city's Office of Labor Standards and Enforcement (OLSE) the ability to enforce the city's minimum wage standards, including wage theft provisions. The ordinance also allows investigators to access payroll records, interview workers, and inspect labor sites at any time during business hours.

OLSE has increased recovery and payment by violators. It has recovered over \$6.5 million for 2,761 employees who were denied minimum wage and overtime pay by employers in the city, and over \$1.7 million in penalties through agency enforcement actions. In 99% of cases where the city concluded that back wages were owed, a settlement was reached that paid all of the owed minimum wages to the workers.

Washington, DC also has the power to enforce wage theft laws. In the proposed Wage Theft Prevention Act of 2014 (which is awaiting the Mayor's signature), workers can choose between formal hearings held by Administrative Law Judges and informal mediation by the Office of Wage-Hour. Administrative judges would have the authority to issue subpoenas, weigh relevance and reliability of evidence, and issue enforceable judgments. The order can also be challenged in court under the substantial evidence standard.

Florida has no state Department of Labor nor any mechanism to enforce state minimum wage laws. That leaves localities to shoulder the resources required for enforcement. In **Miami-Dade and Broward Counties**, workers are entitled to a hearing in front of a Hearing Examiner who the county has appointed and who is qualified to hear wage theft matters. The Hearing Examiners can administer oaths, issue subpoenas, and compel and receive evidence. They can also determine and impose fines and penalties for refusals to comply.

3. City-State Coordination and Referral

In cities where preemption prohibits enacting a minimum wage, there are other innovative and creative options for preventing wage theft. Some cities have created agencies that have the power to coordinate with state agencies even if they can't enforce wage theft laws themselves. A city could enter into a partnership with local prosecutors, state agencies, or the federal government on a campaign to eliminate wage theft. The effort should involve a formal inter-governmental MOU establishing the partnership and defining roles, and could incorporate (1) expanded education for workers and employers about their rights and responsibilities, (2) expanded resources for intake, investigation, and mediation of complaints and for enforcement and punishment against violators, (3) combining the prosecutorial and enforcement powers of federal/state/district attorneys with the regulatory and licensing power of the city, and (4) collaboration with community-based organizations and workers' advocates to ensure that high-violation industries are reformed.

In **Houston**, if a wage theft complaint is unrelated to a city contract, the worker will be referred to the Texas Workforce Commission. A complaint related to a city contract that cannot be resolved by staff in the city's Office of Inspector General also will be referred to the Workforce Commission.

In **San Jose**, despite the city's ability to raise the minimum wage and therefore create an enforcement agency, the Office of the California Labor Commissioner handles enforcement claims. And in **San Francisco**, despite the existence of a city enforcement agency, 10% of city complaints are referred to other agencies, mostly the state enforcement agency.

4. Intra-City Agency Coordination

Cities can also create a city agency that can coordinate with other city departments to prevent wage theft by, for example, receiving and reviewing complaints regarding egregious wage violators. And, in cases where license suspension, criminal enforcement, or contracting ineligibility is deemed possibly appropriate, those staff can make requests to the licensing, prosecution, or contracting agencies and jointly create guidelines to ensure enforcement.

In **San Francisco**, the Office of Labor Standards Enforcement works with other city agencies to enforce the wage theft law. The Department of Public Health revokes health permits from businesses that violate the wage law. It also helps educate employers and employees who are interested in obtaining a permit about the law. The Office of Small Business uses the Small Business Assistance Function to counsel and educate small business owners and entrepreneurs on wage and hour requirements. And the city's Office of the Treasurer and Tax Collector coordinates with OLSE to collect from employers who fail to pay.

In **Houston**, if a city contract is involved, the wage theft coordinator reports it to the city's database. The coordinator also monitors council agendas to determine whether an employer seeking any city contract has

been convicted or wage theft violations or is the subject of an unresolved matter. If so, the coordinator notifies the city attorney and the mayor's office.

5. Police Assistance for Increased Reporting

Police forces should treat wage theft as the crime that it often is. And even in places where enforcement of criminal penalties is not a priority, police departments can potentially be helpful in wage theft enforcement by conducting preliminary investigations. Good relationships between police and community are critical for this to work, as is the training of police officers to identify, listen to, and report wage theft cases.

In **Princeton**, workers were hesitant to report wage theft violations to the police because of immigration concerns. Princeton brought in community leaders to train workers on their wage theft rights and to train the Police Department on what to look for in wage theft cases. As a result, reports of wage theft violations increased significantly.

6. Use Community Organizations to Educate and Empower Workers

Workers are crucial for proper enforcement. They are the ones who know where the violations are and they are the ones who can deter violations by being informed, organized, and empowered.

Cities can grant money to community-based organizations to enable them to inform workers of their rights, help identify instances of wage theft, refer victims to state enforcement programs, and integrate wage theft education materials into city programs that reach workers, such as workforce development and one-stop centers. These programs could include geographically-, linguistically- and culturally-accessible training and outreach to create a referral pipeline of wage theft cases.

In **San Francisco**, the Office of Labor Standards and Enforcement is required to work with community partners to develop culturally and language-appropriate outreach materials, and currently distributes approximately \$600,000 per year in grants for community outreach. The city recognizes that a major obstacle in the fight against wage theft is workers' fear of retaliation, and that trusted entities like worker centers and community-based organizations can be successful at engaging workers where government is not.

In **Burlington**, VT, the city funds worker education through the city-appointed independent monitoring agency, the Vermont Worker's Center, which educates employees about their rights under city ordinance.

In **New York City**, The Department of Youth and Consumer Development currently grants approximately \$300,000 from Neighborhood Development Area funds to legal service and worker education to combat wage theft.

7. Use Community Organizations to Investigate Claims

Burlington, VT, passed a livable wage ordinance that included wage theft provisions in 2001. But for the first twelve years the measure was largely ineffective because of a lack of enforcement. Recently, however, the ordinance was revised to appoint and fund an independent monitoring agency, currently the Vermont Worker's Center. The Center staffs an employee hotline, investigates complaints, and refers wage theft

violations to the City Attorney. The Center will have to report its compliance progress to the City at the end of the year.

Better Information

1. Employer Transparency and Disclosure

Even cities that do not have the power to regulate wages can require employers to be clear with employees about their rights under federal and state law, as well as inform the public about their previous violations.

In **Santa Fe**, not posting the text of the Living Wage Ordinance in a prominent location in both English and Spanish can result in a business's license being suspended or revoked. **San Francisco** penalizes employers who don't provide their name and contact information to workers. Employers are penalized if they do not post notice of Minimum Wage.

In **San Francisco** and **Washington, DC**, employers are required to inform workers of pending investigations. They are also required to post notice to public when, in violation of a settlement agreement or a decision by a hearing officer, the employer has still not paid wages.

In **Houston**, any company that has a documented record of wage theft (criminal conviction, final decision from the Texas Workforce Commission, or final decision from the court) is listed on a public database on the city website for five years.

2. Require Public Disclosure of Employment Practices

Cities could mandate that businesses aggregate and publicly disclose information about their employment practices. The requirement could be tailored to particular industries – like the fast food industry – or to businesses above a particular size. (In the fast food industry, the obligation could be placed on the franchisor, which would tie the corporation more closely to its franchisees' labor practices). The information could include workers' wages, hours, length of tenure with the company, health benefits, and entitlement to and use of paid leave. Such "sunshine" legislation would help advocates make the case that industries like fast food need to provide better jobs. And it would constitute a paradigm shift in American labor law by establishing the notion that a firm's employment practices are of public concern, not proprietary information owned by the corporation.

3. Employer and City Funded Know-Your-Rights Sessions

Cities could require that employers in high violation industries pay for their employees to obtain training. Such programs could include safety training and also serve as know-your-rights sessions: workers could be informed about the laws that protect their rights to minimum wages and overtime, and collective action. These trainings could be conducted by non-profit entities or worker centers and could educate workers about what to do if they believe their rights have been violated.

Cities could also create the infrastructure that could implement a more robust city-mandated training program on workers' rights where employer funds would supplement tax funding, for all employees in certain sectors or citywide.

4. *Sponsor Know-Your-Rights Advertising*

A city could choose to undertake a thorough and compelling know-your-rights campaign using public transportation advertising, targeted social media, and radio, to inform workers of their wage rights. The city would choose to send a clear message that it is taking a stand on worker abuses and would reach major swaths of impacted workers. Workers with complaints could call a centralized number or determined city agency.

Stronger Sanctions

1. *Include Wage Theft Provisions in Industry-Specific Legislation*

Including wage theft provisions in industry-specific legislation is one way to prevent wage theft in cities where an all-encompassing law is not legally or politically feasible.

For example, the **New Brunswick** ordinance covers restaurants and retail establishments. In **Princeton**, the wage theft provisions were included with rules governing landscaping companies. They expect to include similar regulations in restaurant and construction ordinances later this year. And **Houston's** license revocation applies to 46 types of city permits or licenses

2. *Retaliation Prevention*

It is critical that cities penalize retaliation by employers to encourage employees to be forthcoming about wage theft violations and to deter future retaliation.

San Francisco's law contains no statutory penalty or liquidated damages but does include reinstatement, lost wages, and tort remedies under California state law. These remedies include punitive damages, pain and suffering, back pay, and reasonable attorney's fees and costs. The city also penalizes employers \$1000 for each retaliation violation in addition to providing damages for the employee.

In **Seattle**, the city explicitly bans communication that "directly or indirectly, explicitly or implicitly" threatens to inform the government that the complaining employee is not lawfully in the country.

A city can also take steps to protect an employee's privacy or identity. **Washington DC's** proposed law requires that the Mayor keeps the employee's name and other identifying information confidential to the extent possible.

And **Santa Fe's** Living Wage Ordinance makes it is unlawful for any business or employer to retaliate and that any adverse action against a complainant within 60 days of filing wage theft complaint raises a rebuttable presumption of retaliation.

Even cities that do not have the ability to set and enforce wages could pass strong, catch-all whistleblower and anti-retaliation laws. Such laws could create strong penalties for any employer who punishes a worker who attempts to exercise her legal rights on the job, inform another person of his or her rights, or speak out about any legal violation, including violations of the health code.

Although some states preempt cities from establishing penalties specifically for retaliating against workers for collective action, a broad anti-retaliation law might give workers protection while surviving preemption. The law could include provisions that give workers financial incentive to report violations by firms that do business with the City.

3. License Suspension and Revocation

For cities that do not have the power to adjudicate and enforce wage theft laws, there are other creative avenues available to ensure that workers are being legally compensated. One approach is license revocation.

New Brunswick and **Princeton** have passed laws empowering the executive branch to refuse to renew the license of a business found guilty (either in court or by the New Jersey Department of Labor) of not paying for all hours worked, not paying at least the minimum wage, or not paying overtime.

In **San Francisco**, when violators are not prompt in responding to accusations of wage theft or paying owed wages and damages, city agencies or departments can revoke or suspend any registration certificates, permits or licenses. However, the right to suspend or revoke licenses only lasts until the violation is remedied.

Other cities have longer revocation and suspension periods. In **Seattle**, the city's Director of Finance and Administrative Services can refuse or revoke a license for at least one year if an employer is convicted of wage theft, has received a notice of assessment from the state but has not paid within 30 days, or has been held civilly liable in court for wage theft and hasn't paid within 30 days.

In **Houston**, on the other hand, any business or person criminally convicted of wage theft who has exhausted all appeals is barred from renewing permits and licenses for five years. The city is also banned from hiring people or businesses that have been criminally convicted or civilly penalized for wage theft violation, provided all appeals are exhausted or a civil judgment remains unpaid.

And in **Chicago**, the City's Commissioner of Business Affairs and Consumer Protection can suspend or revoke the license of wage theft violators. The Commissioner can also deny an application for a business license if the applicant has either admitted guilt or been found liable of committing or attempting to commit a willful violation of the state wage theft law, or two or more non-willful violations.

4. Expanding Licensing

Cities should consider expanding licensing and creating mandatory licensing for low-wage, high-violation industries like car washes and fast food restaurants. If the city were to rely on license revocation as the sole tool for combatting wage theft, wage theft would go unenforced in those unlicensed sectors. Cities should explore expanding licensing to key high violation industries, and then make wage theft compliance a factor in licensing decisions for those sectors.

5. Establish Worker Liens

A wage lien gives a worker a claim against property such as real estate and bank accounts until a wage theft dispute or payment is resolved, giving employers the financial incentive to pay workers.

These liens have primarily been implemented by states, but there is possible action to be done by cities, as well. For example, in **San Francisco**, the municipal code permits the city to “create and impose liens against any property owned or operated by a person who fails to pay a penalty assessed by administrative citation.”

6. Establish Surety Bonds to Ensure Recovery

Oftentimes workers are unable to recover the money that they are owed, even after a judgment in their favor. Cities can take on this problem by mandating that employers in high-violation industries post surety bonds.

Modeled after a California law, **New York City** is considering requiring car washes to file surety bonds in order to ensure that workers can recover on any wage theft judgments against the car wash.

7. Utilize Criminal Penalties

In many states, wage theft violates criminal laws as well as civil. Thirty states plus DC have criminal penalties for unpaid wages in their state law, and in some of them any violation of a labor commissioner’s order is a misdemeanor. Additionally, 38 states plus DC have a theft of services provision in their criminal law.

Some cities have included criminal penalties in their wage theft ordinances – for example, in **Washington, DC**, any employer who violates the wage theft requirements can be found guilty of a misdemeanor and sentenced to up to 90 days and prison and a \$50,000 fine. Similarly, in **Santa Fe**, a wage theft violation is a misdemeanor and can result in fines and imprisonment.

Sometimes these criminal penalties translate into prosecution by city agencies or district attorneys. For example, the **Santa Monica** City Attorney’s Office filed a criminal complaint against Wilshire West Car Wash for failure to pay the minimum wage, taking back wages that had already been paid, and grand theft of money and labor. And in **San Francisco**, the District Attorney charged a painting contractor for the city with 57 criminal counts including wage theft, after the contractor failed to pay San Francisco’s prevailing wage to workers and cheated them out of more than \$600,000 in wages.

However, enforcement of criminal penalties requires deep coordination with the District Attorney and the Sheriff, cooperation from the police department, and training of police and other law enforcement actors. **Austin** was the first city to use local law enforcement to enforce the state’s theft of service law. In 2009, the Austin Police Department received 970 theft of services cases, investigated 845 of them, and arrested 136 defendants. **El Paso** has also coordinated local law enforcement actors to ensure that employers are held criminally responsible for wage theft.

8. Increase Damages for Workers

Cities with the power to set their own minimum wage should require worker compensation to be significant enough to deter the employer and encourage employees to report theft.

In order to create real deterrence, cities should instate treble or quadruple damages – requiring payment of three or four times the worker’s unpaid/underpaid wages. Currently, that level of damages exists in **Miami-**

Dade County, which allows a worker to recover three times their lost wages, but does not allow for recovery for attorneys' fees. In Florida's **Broward County**, the wage theft ordinance allows recovery of only twice the wages, plus attorneys' fees and costs. **Washington, DC**'s new law allows for quadruple damages: back wages owed plus three times back wages owed.

In **Santa Fe**, employees are also due the reduced/unpaid wages, plus damages equal to twice the amount of any wages due as well as attorneys' fees and costs.

9. Increase Administrative Fees for Cities

Cities often fail to pursue administrative penalties, because the cost of holding a hearing exceeds the potential collected penalties. As a result, there is little incentive for employers to follow requirements about posting notices, maintaining records, or providing information to workers because the fine is usually minimal and there are no administrative damages.

However, implementing these damages can serve as a strong wage theft deterrent. In **Washington, DC**, an employer can be required to pay \$50 for each employee or person whose rights have been violated for each day that the violation occurred. For any subsequent offenses, the fine per day increases to \$100. **DC** also holds general contractors liable to employees for a subcontractor's wage theft violations.

In **San Francisco**, failure to maintain payroll records, allow inspection of records, post notice of rights or employer information to employees, post notices of investigation to employees, and post notice of violation to public all result in administrative fines. These fines are increased by 50% for each additional violation within a three-year period and can reach up to \$10,000 total.

The city can also require payment of enforcement costs to cover the money spent on enforcing the administrative penalty, including attorney's fees.

10. Increase Efficiency and Timeliness

Cities should ensure that allegations of wage theft are addressed quickly to ensure repayment to struggling workers.

San Francisco's law removes the city's previous 10-day grace period for citations and removes the grace period for employers, allowing the city to cite violations immediately. It also requires the city to resolve cases or begin hearing proceedings within 1 year.

Washington DC's requires formal hearings to be held within 45 days of a request. Furthermore, it requires prompt response from employers – once employers receive notice of a complaint employers have 15 days to respond. If the employer does neither, the allegations in the complaint will be regarded as admitted, and a default judgment enforceable in court will be issued in favor of the worker.

Broward County's Wage Theft Ordinance considers employers late if they do not pay their employees within 14 days.