

**A Survey of State Wage
Enforcement Laws:
Models for Successful Reform**

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National Employment Law Project

55 John Street, 7th Floor

New York, NY 10038

(212) 285-3025 • nelp@nelp.org • (212) 285-3044 (fax)

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Introduction

Prompted by an intensive organizing campaign by community, labor, business and religious organizations, Governor Pataki recently signed legislation making New York wage enforcement law the strongest in the country. The Unpaid Wages Prohibition Act raises penalties against employers who repeatedly do not pay their workers to up to \$20,000, and makes repeated non-payment a felony. The Workplace Project, a non-profit organization of Latino immigrant workers on Long Island that led the campaign for reform, compiled information on hundreds of claims brought by individuals and the organization to demonstrate that the current wage law did not adequately protect those on the bottom rung of the economic ladder. Together with labor, the organization then successfully rallied a diverse coalition to the cause, including Long Island business groups. Their successful efforts can serve as a national model for similar campaigns.

While the federal Fair Labor Standards Act (FLSA) provides basic protections for unpaid wages, the gaps in coverage under the federal law for various industries and job classifications, and the limited enforcement ability of the U.S. Department of Labor, require strict *state* penalties like the New York law to guarantee employer adherence to the wage laws. In conjunction with the New York campaign, the National Employment Law Project (NELP) prepared a survey of all state laws enforcing wage requirements. The survey demonstrated that many states could benefit from stronger enforcement provisions, and that in some states employers receive little more than a slap on the wrist for violating the most basic legal rights of low-wage workers. NELP's research also disclosed, however, that several states have unique provisions to protect jobs and wages that, like New York's new law, may serve as models for similar

legislative proposals in other states. The summary below briefly explains the findings of NELP's research regarding penalties for wage violations. Attached is a copy of the New York material relating to the campaign (Appendix A) and a chart surveying all state laws on the subject (Appendix B).

Survey of State Penalties for Wage Violations

The FLSA levies a \$1,000 penalty only against employers who “repeatedly or wilfully” violate the federal minimum wage law and allows the employee to recover double damages if the employer knew that the failure to pay wages violated the law. 29 U.S.C. § 216(b); 29 C.F.R. § 579.1. Many state laws, however, do not reach even that far. Nine states have no penalty for a violation of the minimum wage, save a collection action by the employee. Some states impose additional civil penalties for subsequent or wilful violations, and some states criminalize the violation. Fourteen states make the failure to pay the minimum wage a misdemeanor, and either do not set out the penalty by statute or set out a penalty of less than \$300. Seven states also provide the option of imposing 90 days imprisonment instead of, or in addition to, the fine, while Colorado, D.C. and Hawaii allow for imprisonment up to one year. Colorado, Hawaii, Maryland, New Jersey, Oklahoma, Puerto Rico and Rhode Island impose higher fines for the misdemeanor, and prior to the passage of the new New York law, Alaska, Connecticut and D.C., had the highest fines on the books.

Supplementing FLSA, which has been interpreted to require timely payment of wages, many state laws mandate that wages be paid within a certain period of time and some contain special provisions for complete non-payment of wages. Yet most state penalties in this area do little to compel compliance with the law, which was the motivation behind the New York campaign. Five states have no penalty for non-timely or complete non-payment of wages, outside a civil collection action, and many states

classify non-payment or non-timely payment of wages as a misdemeanor, punishable by a minimal fine. Some states do fine employers who fail to pay wages on time up to \$1,000, and states such as Connecticut, Delaware, and the District of Columbia can impose steep penalties up to \$5,000. Before the passage of the New York law, the toughest state law was in Hawaii, which allows a fine of \$10,000 in addition to a one year prison term for non-payment of wages.

Checklist of Model State Laws

In addition to New York's ground-breaking legislation, several states have innovative employment laws on the books that protect workers' jobs and wages. These laws may provide models for other states seeking to improve state employment protections.

<u>State:</u>	<u>Penalties:</u>
Maine	Upon a terminated employee's written request, the employer must provide written reasons for the termination. 26 MRS §630
Texas	If an employer <u>at the time of hiring</u> intends to avoid payment of wages and fails to pay them upon demand, the employer commits a "felony of the third degree." Tex. Lab. Code § 61.019
West Virginia	Employers who knowingly, wilfully and fraudulently dispose of or relocate assets with the intent to deprive employees of their wages are guilty of a felony and can be fined up to \$30,000 and imprisoned for up to 3 years. W.Va Code § 21-5-15(b)
Washington	If an employer having the ability to pay fails to pay employees their wages, the director of the state Department of Labor can require them to post a bond with sufficient surety to guarantee

payment to those employees within six months; if the employer fails to provide the bond, the director can bring suit and obtain an order enjoining that employer from doing business in the state. Wash. Rev. Code § 49.48.060

Appendix A

New York's Unpaid Wages Prohibition Act

Appendix B

NELP's Survey of State Wage Enforcement Laws

Penalties for Minimum Wage and Wage Payment Violations, By State
October 1997

State	Description of Penalty	Statute
Alabama	NOTHING	
Alaska	Employer punishable upon conviction for violation of wage laws by fine of \$100-2,000; 10-90 days in prison or both; Employer has to pay double amount due to employee. For violation of wage payment law (time, etc.) fine up to \$1,000, imprisonment up to one year or both.	Alaska Stat. § 23.10.140 and 23.10.110(a); §23.05.280 (wage payment law)
Arizona	Payment of less than minimum wage is "Class 3 misdemeanor." Violation of provisions respecting method of payment and time of payments is "petty offense"	Ariz. Rev. Stat. Ann. § 23-329(B); § 23-351(F) and § 23-353(D)
Arkansas	Any Employer who pays less than minimum wage shall be fined "not more than \$100." Untimely wage payments: fine of \$50 to \$500.	Ark. Code Ann. § 11-4-206(a); § 11-4-401(b)
§ California	Violation of any provision of minimum wage law: misdemeanor punishable by fine not less than \$100 or imprisonment not less than 30 days or both. Civil penalty for Employer who pays less than minimum wage: \$50 for each intentional violation, and \$100 for subsequent violations (\$250 effective 1/1/98) Failure to pay wages in time: \$50 for initial violation, and for each subsequent or wilful violation, \$100 and 25% of amount unlawfully withheld, plus additional civil penalty of \$50 for initial violation and \$100 for each subsequent violation plus 25% of amount unlawfully withheld.	Cal. Labor Code §1199 (criminal penalty); §1197.1 (a) and (e) (civil penalty); §210 (for failure to pay wages in timely fashion); § 225.5 (extra penalty for violation of payment method, other laws)
Colorado	Payment of less than minimum wage: not less than \$100 nor more than \$500, or imprisonment for not less than 30 days nor more than 1 year. Employer who fails to pay wages as required gets penalty of up to \$50 for each failure to each employee, and employer is guilty of misdemeanor and can be punished by additional penalty of up to \$300 and/or 90 days in jail if the refusal was wilful, or if done with the intent to annoy, harass or oppress.	Colo. Rev. Stat. § 8-6-116; § 8-4-109(1) (failure to pay wages as required); § 8-4-117 (extra penalty)
Connecticut	Underpayment of wages: an employer can be fined from \$400 to \$5000, and sentenced to prison for a period from 3 months to five years, depending on	Conn. Gen. Stat, § 31-69(a) and (b), as amended by 1997

	the amount of unpaid wages. The same penalty scheme applies for a violation of the wage payment law regulating the time of payment. In addition, Employer shall be liable for civil penalty of \$150 for each violation.	Conn. Acts 263 (Reg. Sess.) (underpayment of wages); § 31-71g; § 31-69a (civil penalty)
Delaware	Minimum wage violation: employer subject to civil penalty from \$1,000 to \$5,000; liable for difference between rate paid and minimum wage plus costs of action to recover. Failure to pay required wages: Employer liable to employee for liquidated damages in amount of 10% of unpaid wages for each day that failure continues. Employer who violates any provision subject to civil penalty from \$1,000 - 5,000	Del. Code Ann. Tit.19 § 910; §911(a); Tit. 19 § 1112
District of Columbia	\$10,000 maximum fine, six months maximum imprisonment, or both, for violating any provision of min. wage law, but no prison for first offense; Employer who having ability to pay wilfully violates any provision of wage payment law shall be guilty of misdemeanor, and be fined up to \$300 for 1st offense, or up to \$2,000 for subsequent offense.	D.C. Code Ann. §36-220.10(a) (minimum wage); §36-107 (wage payment law)
Florida	NOTHING	
Georgia	NOTHING	
Hawaii	Any Employer that pays or agrees to pay less than minimum wage is guilty of misdemeanor and shall be punished by fine from \$50 to \$500, or by imprisonment for one year, or both. Employer who fails to pay wages w/out equitable justification liable to employee double wages due plus interest. Employer who does not pay wages shall be guilty of misdemeanor and punishable by fine from \$100 to \$10,000 or imprisonment for one year, or both.	Haw. Rev. Stat. §387-12(a) (min. wage); § 388-10(a) (double wages due); § 388-10(b) (misdemeanor)
Idaho	Nothing for minimum wage; Director may levy civil penalty up to \$500 for consistently making untimely payment of wages.	Idaho code § 45-608(4)
Illinois	Any Employer who pays wages below minimum is guilty of misdemeanor, shall be fined from \$50 to \$200, or by 10-90 days imprisonment, or both. Paying rates less than rate established by mandatory minimum wage order: misdemeanor, fine from \$50	820 ILCS 105/11(b); 820 ILCS 115/14 (failure to pay wages)

	to \$200 or 10-90 days imprisonment, or both. Any Employer who wilfully refuses to pay, or denies validity or amount of claim falsely, guilty of Class C misdemeanor.	wages)
Indiana	Any Employer who fails to pay min. wage commits Class C infraction (not a criminal penalty, judgment up to \$500 may be entered), any Employer who knowingly or intentionally fails to pay minimum wage commits Class A infraction (not criminal penalty, judgment up to \$10,000 may be entered) while Employer with prior judgments for same commits Class B misdemeanor (Up to 180 days in prison and may be fined up to than \$1,000). Failure to pay wages for 10 days after demand for wages is made: Employer liable to employee for full value of labor + \$1 penalty for each day.	Ind. Code § 22-2-2-11(b) to (d) (min. wage); § 22-2-4-4 (failure to pay)
Iowa	No minimum wage provision; for payment of wages: "any Employer who violates any provisions of this chapter...shall be subject to civil money penalty of not more than \$100."	Iowa Code §91A12(1)
Kansas	Minimum wage: any Employer convicted of violating any provision of Act shall be fined from \$250 to \$1,000. Wage payment: in case of failure to comply w/ compulsory process (order to pay issued by Sec.?) may seek citation for contempt	Kan. Stat. Ann. §44-1210(a) (minimum wage); §44-422(a) (wage payment)
Kentucky	Any Employer who pays less than minimum wage shall be assessed civil penalty of \$100 to \$1000. Failure to pay employee wages when due: shall be assessed civil penalty of \$100 - \$1,000.	Ky Rev. stat. Ann. §337.990(8) (min. wage); Sec. 337.990(1) (failure to pay when due)
Louisiana	Minimum wage: no penalty. Untimely payment of wages: violator shall be fined from \$100 - \$250, imprisoned from 30 - 90 days or both, also shall be liable to civil penalty up to \$500.	La. Rev. Stat. Ann. §23:964(A), (C),(E)
Maine	Minimum wage: Employer who violates Act shall be punished by fine from \$50 to \$200. Failure to pay wages when due: forfeiture from \$100 to \$500 for each violation.	Me. Rev. Stat. Ann. tit. 26, § 671 (min. wage); §626-A (failure to pay)
Maryland	Employer who pays less than minimum wage: guilty of misdemeanor and subject to fine not exceeding \$1,000. Payment of wages: guilty of misdemeanor,	Md. Code Ann. § 3-248(a) and © (min. wage); § 3-

	subject to fine not exceeding \$1,000	508(c)(1) (payment of wage)
Massachusetts	Employer who pays less than min. wage: shall be punished by fine from \$50 to \$200 or by imprisonment from 10 to 90 days or both. Violation of provisions as to time of payment: fine of \$500 to \$3,000 or imprisonment for up to 2 mos. or both.	Mass. Gen. L. ch. 151, § 19(2) (min. wage); ch. 149, §148
Michigan	Employer who pays less than minimum wage is subject to fine up to \$1,000, in addition to civil remedies. Employer who fails to pay wages is guilty of misdemeanor, and Employer who does so with intent to defraud is guilty of misdemeanor punishable by fine of not more than \$1,000 or imprisonment for not more than 1 yr. or both	Mich. Comp Laws § 408.393(b)(3) (min. wage) (as amended by 1997 Mich. Pub. Acts 1); § 408.484 (payment of wage)
Minnesota	Violation of minimum wage provision is misdemeanor. Non-payment of wages: commissioner may bring action to collect a penalty of two times amount of wages earned, paid to employee, plus a \$1,000 civil penalty for repeated or wilful violations.	Minn. Stat. § 177.32(7) (min. wage); § 181.101; § 177.27(7) and (8)
Mississippi	No min. wage provision or penalty; violation of time provisions is misdemeanor, punishable by fine from \$25 to \$250 for each offense.	Miss. Code Ann. § 71-1-53
Missouri	Violation of minimum wage: liable to employee for double damages. Violation of time of payment: misdemeanor fine from \$50 to \$500 for each offense	Mo. Rev. Stat. § 290.527 (min. wage); § 290.080 (time of payment)
Montana	Failure to pay wages is a misdemeanor, and penalty must be assessed at 110% of wages owed.. Non-payment of wages: only collection action by commissioner	Mont. Code Ann. § 39-3-206
Nebraska	Min. wage violation: Class IV misdemeanor. Non-payment of wages: collection action by employee, plus amount equal to judgment may be recovered from Employer (and double if wilful) to go to <u>schools</u>	Neb. Rev. Stat. §48-1206(2); § 48-1231 (collection action), § 48-1232 (\$ to schools)
Nevada	Violation of minimum wage is misdemeanor; failure to pay wages on time is misdemeanor	Nev. Rev. Stat. Ann. §608.290 (min. wage); § 608.195 (failure to

		pay)
New Hampshire	Failure to pay required wage minimum: misdemeanor. Employer who willfully fails to comply with wage payment act is guilty of misdemeanor	NH Rev. Stat. Ann. § 279:28(II) (min. wage); § 275:52 (wage payment)
New Jersey	Failure to pay required min. wage: disorderly persons offense punishable for 1st violation by fine of \$100 - \$1,000 or imprisonment 10-90 days or both; 2nd or subsequent violation punishable by fine of \$500 - \$1,000 or imprisonment 10-100 days or both. Employer who knowingly and wilfully violates wage-payment law shall be guilty of disorderly persons offense and punishable by fine of \$100 - \$1,000, commissioner can collect additional administrative penalty up to \$250 for 1st and \$500 for subsequent violations.	NJ Stat. § 34:11-56a22 (min. wage); § 34:11-4.10 (payment of wages)
New Mexico	Violation of any provision of Minimum Wage Act: misdemeanor punishable by fine of \$25 to \$300 or by imprisonment for 10-90 days or both. Violations of wage payment: punishable by fine from \$25 to \$50 for each offense or imprisonment for 10-90 days or both.	N.M. Stat. Ann. §50-4-26(A) and (B) (min. wage); §50-4-10 (wage payment)
New York	see text of new law.	
North Carolina	Employer who violates min. wage and wage payment law liable to employee for amount of unpaid wages.	N.C. Gen. Stat. §95-25.22(a) and (a1)
North Dakota	Violation of any provision of the act is a class B misdemeanor. Employer who willfully refuses to pay wages due, or does so with intent to harass, oppress, etc. is guilty of infraction.	N.D. Cent. Code §34-06.1-09; § 34-14-07
Ohio	Employer is liable to employee for full amount of wage rate, plus 6% of unpaid wages as penalty. Violation of provision regulating time for payment of wages: misdemeanor of first degree	Ohio Rev. Code Ann. §4111.10(A); §4113.15; §4113.99(A)
Oklahoma	If additional wages due, 10% added to claim as penalty; Employer who pays less than min. wage shall be punished by fine up to \$500 or imprisonment for up to 6 mos. or both. Misdemeanor to violate provision regarding timely payment of wages	Okla. Stat. tit. 40, §197.8 (10% penalty); § 197.13 (fine for min. wage violation); § 169.8 (timeliness)

Oregon	Employer who pays less than min. liable to employee for full amount of wages; if Employer wilfully fails to pay wages of employee whose employment ceases, as penalty wages continue from due date until paid or action commenced, up to 30 days. Failure to pay wages on time results in criminal fine of \$500, and secretly paying lower wage than required by law is misdemeanor	Or. Rev. Stat. § 653.055(1) (liability); §652.150 (failure to pay wages on termination.); §652. 990(3) and (6) (timeliness & secret lower wage)
Pennsylvania	Failure to pay required minimum wage: fine from \$75 to \$300 or imprisonment from 10 to 60 days or both. Employer who violates wage payment & collection law guilty of summary offense and shall be punished by fine not more than \$300 or imprisonment up to 90 days or both	Pa. Stat. Ann. tit. 43, § 333.112(b) (minimum wage); § 260.11a(b) (payment of wages)
Rhode Island	Failure to pay min. wage: fine from \$100 to \$500 or imprisonment from 10 to 90 days or both. Failure to pay wages pursuant to law: misdemeanor, punishable by fine from \$50 to \$100 or imprisonment from 10-90 days or both.	R.I. Gen. Laws § 28-12-18 (minimum wage); § 28-14-17 (wage payment)
South Carolina	No min. wage provision or penalty; failure to pay wages in time required by law: written warning by commissioner for 1st offense, civil penalty of not more than \$100 for each subsequent offense	S.C. Code Ann. § 21-20-80(A)
South Dakota	Violation of min. wage law is Class 2 misdemeanor. Any Employer who intentionally refuses to pay all wages due and payable when demanded or who falsely denies amount due commits Class 2 misdemeanor (30 days imprisonment or \$200 fine or both, § 22-6-2).	S.D. Codified Laws § 60-11-3 (min. wage); § 60-11-15 (payment of wages)
Tennessee	No min. wage provision; failure to pay wages in time required by law is Class B misdemeanor, punishable by fine from \$100 to \$500. Every Employer willfully violating law shall be subject to civil penalty from \$100 to \$500; at sole discretion of Commissioner to proceed civilly or criminally, but Employer shall not be charged both civilly & criminally for same violation.	Tenn. Code Ann. §50-2-103(g)
Texas	For failure to pay min. wage, Employer is liable to employee for amount + liquidated damages. If Employer acted in bad faith in not paying wages as	Tex. Lab. Code § 62.201 (min. wage); § 61.053

	required (in time, etc.), commission may assess admin. penalty in amount of wages claimed or \$1,000, whichever is less. If Employer at time of hiring intends to avoid payment of wages and fails to pay them upon demand, Employer commits felony of third degree	(not paying wages as required); § 61.019 (felony)
Utah	Division may impose penalty of up to \$500 for violation of minimum wage law; repeated violation is Class B misdemeanor, and upon 3rd violation department may prosecute criminal action. Failure to pay wages as due or falsely denying that they are due is punishable as a misdemeanor (according to Sec. 76-1-16, misdemeanor is punishable by imprisonment up to 6 mos. or fine up to \$300 or both, and corps. guilty of misdemeanors may be fined up to \$1,000)	Utah Code Ann. § 34-40-202 and 34-40-203 ; § 34-40-204(1) and (2); § 34-28-12(2) (failure to pay wages due);
Vermont	Employer who pays less than min. wage shall be fined not more than \$100; violation of provisions relating to method and time of payment: fine up to \$500 or imprisonment up to 1 yr. or both	Vt. Stat. Ann. tit. 21, § 394(b) (min. wage violation); § 345 (payment of wages)
Virginia	Whoever knowingly and intentionally violates any provision of min. wage Act shall be punished by fine from \$10 to \$200; Employer who knowingly fails to make payment of wages shall be subject to civil penalty of up to \$1,000, also liable for payment of all wages due.	Va. Code Ann. § 40.1-28.11 (min. wage violation); § 40.1-29(A)(2) (failure to make payment of wages)
Washington	Any Employer who pays less than applicable wage is guilty of gross misdemeanor; if director finds Employer having ability to pay is not paying employees for services, can require bond w/ sufficient surety conditioning Employer to pay employees w/in 6 mos; if bond not provided, can bring suit to enjoin Employer from doing business in state.	Wash. Rev. Code § 49.46.100(1) (violation of min. wage); § 49.48.060 (failure to pay wages)
West Virginia	Employer who pays less than min. wage rate liable to employee for amount of unpaid wages; if Employer fails to pay employee required wages, liable for equal amount in liquidated damages; Employers who knowingly, willfully and fraudulently dispose of or relocate assets w/ intent to deprive employees of their wages or benefits are	W.Va. Code § 21-5C-8(a) to (d) (violation of min. wage); § 21-5-4(e) (liquidated damages); § 21-5-15(b) (disposing of

	guilty of felony and shall be fined between \$5,000 and \$30,000 or imprisoned for 1-3 years or both	assets)
Wisconsin	Failure to pay min. wage: fine of \$10 to \$100 for each offense, each day of violation constituting separate offense; Employer who having ability to pay fails to pay wages due w/ intent to annoy, harass, oppress, etc. may be fined not more than \$500 or imprisoned for not more than 90 days, or both.	Wis. Stat. § 101.02(13) (a), 104.3, 104.4 and 104.11 (min. wage); § 109.11(3) (failing to pay wages)
Wyoming	Employer who pays less than min. wage liable in civil action for unpaid min. wage; violation of provision respecting time of payment: fine of \$25 to \$100 or imprisonment for up to 90 days or both; wilful violation of provision respecting payment of wages on termination is misdemeanor and punishable by fine of between \$500 - \$750.	Wyo. Stat. § 27-4-204 (liability in civil action); § 27-4-103 (time of payment); § 27-4-105 (payment on termination)