

**National Employment  
Law Project**

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Before the Maryland House Economic Matters Committee  
March 3, 2009

Thank you, Chairperson Davis and Delegate Ramirez, for the opportunity to submit written testimony. My name is Raj Nayak, and I am an attorney at the National Employment Law Project (NELP). NELP is a national advocacy organization that responds to the core problems of the U.S. labor market in the 21st century – including systemic violations of our country’s fundamental employment and labor laws.

I am testifying about the problem of workers in low-wage industries who are paid less than the minimum wage and who are not paid overtime – and how states around the country are addressing this problem by strengthening the damages available to workers when they are not paid the wages they are owed.

**I. Many Low-Wage Workers Are Not Paid the Minimum Wage and Overtime**

Across the country, as in Maryland, workers are increasingly facing violations of core employment laws, including their most basic rights to a minimum wage and overtime. Low-wage workers and their communities are particularly hard hit by these violations.

Federal law and most states give most workers the right to be paid a minimum wage for each hour that they work and a premium hourly wage (usually one and a half times their regular rate of pay) for working more than forty hours in a week. The federal minimum wage and Maryland minimum wage are each currently \$6.55 per hour, and both will increase to \$7.25 on July 24 of this year.

**But in practice, many low-wage workers earn even less than these laws require.** Wage-and-hour violations are becoming standard practice in many of our key job-rich industries – ranging from construction, retail, and hospitality to agriculture, health care, and childcare. While comprehensive data are not available to quantify the prevalence of these violations, researchers, advocates, and even government agencies have developed strategies to document the scope of the problem.

For example, in the late 1990s, the United State Department of Labor began to target key low-wage industries using random inspections to measure the prevalence of violations. In their final annual study in this series, published in 2001, the agencies found a staggering violation rate in low-wage industries like nursing homes (60% non-compliance rate nationally), apparel manufacturing (26-67% non-compliance, depending on the city), and agriculture (25%-100% non-compliance depending on the industry – with 0% compliance among poultry processors).<sup>1</sup>

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<sup>1</sup> United States Department of Labor, 1999-2000 Report on Initiatives (2001), available at <http://www.nelp.org/page/-/EJP/US%20DOL%20Enforcement%20Report%201999-2000.pdf>.

**These studies, however, are only measuring the tip of the iceberg: On the ground, community and legal advocates – including some of the groups testifying here today – are seeing pervasive violations across the full spectrum of industries.** They are also seeing the very real and immediate impact that these violations have on our economy. Workers in low-wage industries count on every dollar to support their families, and even a small amount in lost wages in a given day can translate into thousands of dollars annually. Immigrant communities are especially hard hit, with the highest rates of workplace violations but the fewest resources to address them.

**But all of Maryland’s communities bear the costs of this endemic problem.** Law-abiding employers are forced into a race to the bottom when unscrupulous competitors pay below the minimum wage, setting off a downward spiral that erodes labor standards throughout the economy. And local governments lose significant tax revenues when workers are underpaid.

## **II. States Are Increasing Damages to Stop These Violations**

Researchers and advocates alike have identified weak damages as a key obstacle to ensuring that workers are paid the wages that they are owed. Maryland should follow the trend of other states around the country and increase the damages available in order to deter violations of these core workplace protections – both to protect low-wage workers and to level the playing field for employers who play by the rules.

**Weak damages lie at the heart of these endemic violations.** Federal law provides that workers who are not paid the minimum wage can collect the back wages they are owed plus an equal amount in liquidated damages.<sup>2</sup> But some states – including Maryland at present – lag further, providing that workers who are not paid the minimum wage may recover only the back wages that they are owed – with no additional damages.<sup>3</sup>

**As a result, Maryland law currently allows employers to take the *calculated risk* not to pay minimum wage.** Unscrupulous employers understand that there is a minimal risk of being caught for these violations, and they realize that even if they are caught, they will likely pay at most what they originally owed, perhaps with some nominal court costs and attorneys fees. As Harvard economist David Weil describes, these sorts of weak workplace protections “provide insufficient penalties and insignificant chances of inspection [to make employers comply with the law]. The costs of complying may seem too high relative to the expected costs of being found in violation of the law.”<sup>4</sup>

**States around the country have begun to increase the penalties that workers can collect from employers who fail to pay the minimum wage and overtime required by law.** In at least thirty-one states, employers may be required to pay not only the back wages that they owe workers, but also an equal amount in damages – for a total of twice unpaid wages or “double damages” – which

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<sup>2</sup> 29 U.S.C. § 216(b).

<sup>3</sup> Md. Lab. Code § 3-427.

<sup>4</sup> David Weil, *Crafting a Progressive Workplace Regulatory Policy: Why Enforcement Matters*, 28 Comp. Labor Law & Pol’y J. 125, 128 (2007), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=996901](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=996901).

is more in line with the damages provided by federal law.<sup>5</sup> This is preferable to the law in states like Maryland – which provide no damages at all – but it is still a relatively weak deterrent given that violations are still difficult to uncover.

Increasingly, states are recognizing that double damages are not sufficient, though. **In the last decade alone, four states have increased the damages available in minimum wage cases to back wages plus *twice* unpaid wages – or “treble damages” – including three states which have done so since 2006 alone:**

- **Arizona** (Ariz. Rev. Stat. § 23-364(g)) (2006)
- **Idaho** (Idaho Code § 44-1508) (1999)
- **Ohio** (Ohio Const. Art. II, § 34a) (2006)
- **Massachusetts** (Mass. Gen. Laws. Ch. 151 § 20) (2008)

More states – including Maryland – have recognized that double damages are insufficient in a closely related situation: when workers are not paid the wages that they were promised above the minimum wage. **At least 9 states now allow for *treble damages or more* when workers file certain types of “payment of wages” claims, including:**

- **Arizona** (Ariz. Rev. Stat. § 23-360) (treble)
- **Idaho** (Idaho Code § 45-615) (treble)
- **Maine** (26 Maine Rev. Stat. § 626-A) (treble)
- **Maryland** (Md. Lab. Code § 3-507.1) (quadruple)
- **Massachusetts** (Mass. Gen. Laws ch. 149, § 150) (treble)
- **Michigan** (Mich. Comp. Law § 408.488) (treble)
- **North Dakota** (N.D. Cent. Code § 34-14-09.1) (quadruple)
- **South Carolina** (S.C. Code § 41-10-80) (treble)
- **Vermont** (21 Verm. Stat. § 342a) (treble)

Maryland should follow this trend and update its minimum wage law to require that workers who are not paid the minimum wage and overtime that they are owed be awarded at least treble damages – three times their back wages. Doing so will send employers the signal that Maryland intends to enforce core workplace protections for low-wage workers and their communities, and that the state will protect employers who face unfair competition simply because they follow the law.

Please feel free to contact me if you have any questions about our testimony.

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<sup>5</sup> 29 U.S.C. § 216(b).