

# Workers Lose Billions in Unpaid Wages Every Year

## Enforcement of Fair Pay Laws Is Key to Protecting Workers' Paychecks and Promoting Good Jobs and a Level Playing Field for Employers

*Corporations steal billions of dollars from their workers each year, resulting in losses to the economy and wreaking havoc in the lives of millions of workers. The failure to enforce wage laws creates severe economic insecurity for workers and encourages dishonest employers to continue their illegal wage practices—in effect subsidizing abusive business models at the expense of honest, law-abiding employers. According to an analysis of existing survey data by the Economic Policy Institute, an estimated \$15 billion is lost just to minimum wage violations every year.<sup>1</sup>*

Although the nation's fair pay laws have been on the books since the turn of the 20<sup>th</sup> century, enforcement remains startlingly rare, especially in light of increasingly aggressive trends such as corporate fissuring (which has created confusion for agencies and workers about who is responsible for wage violations) and corporate imposition of take-it-or-leave-it arbitration and collective action waivers that prohibit workers from having their day in court to recover unpaid wages. While more states are raising their minimum wage, the federal minimum wage remains stuck at a pitiful \$7.25 per hour, or \$15,000 per year for full-time work. And when employers do not even pay those minimum wages, workers and the economy suffer, especially in key jobs—in construction, building services, home and health care, hospitality, food processing and agriculture, warehouse, transportation, logistics, and manufacturing—that are supposed to drive our economic recovery. It is crucial that these jobs are not undercut by employer wage theft, which has been called a “national emergency.”<sup>2</sup>

Now is the time to act! As the federal government invests billions in infrastructure and climate jobs, these subsidies must align with good-jobs principles.

### Companies Fail to Pay Billions to Workers Every Year

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Every year, workers lose billions in unpaid wages, also called employer wage theft.<sup>3</sup> The Economic Policy Institute studied survey data in the 10 largest states (representing over half of the country's working population) and found that \$8 billion had been lost to wage theft

just from minimum wage violations alone (not counting overtime and other violations).<sup>4</sup> Adjusted for the entire country, that would mean \$15 billion is lost to wage theft every year.<sup>5</sup> For the average worker, that can be thousands of dollars lost each year—money that could go towards paying rent, buying clothes and food for children, making necessary repairs to cars, and spending money in the local economy. Workers who experience wage theft are also more likely to be living in poverty and reliant on public assistance to make ends meet.<sup>6</sup>

Wage theft occurs when workers do not receive their promised and legally required wages. It can result from a variety of violations: failure to pay minimum wage or overtime, asking workers to work off the clock, meal break violations, illegal deductions, tipped minimum wage violations, and employee misclassification.<sup>7</sup> And yet, wage theft receives far less attention from the media and law enforcement, partly because employers have a great deal more power and influence with lawmakers.

## **Weak Enforcement Rewards Unscrupulous Employers and Skews Competition**

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Unscrupulous businesses often try to gain an unfair advantage over law-abiding employers by exploiting their workers, knowing that the likelihood that they will get caught—or even that a worker will speak out—may be small. Underpaying workers has become the business model for too many irresponsible companies. It means that employers paying higher wages and providing decent working conditions may bear a higher cost for operating ethically and within the law. The result is that economic competition, particularly in industries with tight profit margins, is often skewed in favor of those businesses willing to skirt the law by underpaying their employees when they see the risk as small.

## **Wage Theft Hurts Workers in Key Jobs and Destabilizes Families That Need Those Paychecks to Survive**

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Wage theft is a crime of opportunity, most often found in industries with high concentrations of workers in low-wage jobs who, living paycheck to paycheck, fear retaliation for speaking up. A 2017 [study](#) found that, in the 10 most populous states in the country, 17% of low-wage workers reported they were paid below minimum wage. Immigrants and workers of color, who are overrepresented in lower-wage industries, are particularly susceptible to wage theft, and make up 45% of today's working class, while women constitute nearly half of today's working class.<sup>8</sup>

Many workers in labor-intensive jobs get employment via temp and staffing agencies that are used by some companies to evade workplace accountability. A stunning 24% of workers in the temp industry say they have had their wages stolen from them by their employers, according to a 2022 [survey](#) that examines cycles of poverty and precarity for the temp industry's disproportionately Black and Brown workers. Work obtained via temp and staffing agencies is consistently categorized as one of 15 industries on the [Department of Labor's list](#) of "Low Wage, High Violation" industries.

# Jobs Created by Infrastructure and Inflation Reduction Acts Are in Peril of Being Poor Jobs

The recent industrial policy laws aimed at creating good jobs for a modern economy are important first steps, but they are in danger of over-promising economic gains if employers are permitted to siphon-off wages with impunity.<sup>9</sup> Now is the time to ensure consistent and aggressive enforcement of wage protections, so that these public investments create good, sustaining jobs.<sup>10</sup>

The Biden Administration’s April 2023 executive order requiring improvements to care jobs is another possible bellwether of unmet promises, if adequate attention is not paid to employer behavior in those key growth sector jobs.<sup>11</sup> Ensuring that women and workers of color have access to higher-paying construction and manufacturing jobs is vital to supporting communities of workers who have been excluded. Unionization should be available to those who seek it, via the Protecting the Right to Organize (PRO) Act and other reforms, to ensure access for workers of color, ongoing monitoring of job quality, and compliance. And the government must commit to scrutinizing the job quality of the newly created jobs as well as the growth sectors in service, logistics, food and building service, retail, and health and home and child care.

## The working class is far more likely to hold service, retail, and construction jobs

Top 10 occupations and industries by number of employed working-class Americans and those with four-year college degrees, 2021

Click buttons to see breakdowns:

**Working class** College-educated

Top 10 occupations for the working class		Top 10 industries for the working class	
Driver/sales workers and truck drivers	3.28M	Construction	8.83M
Laborers and freight, stock, and material movers	2.08M	Restaurants and other food services	5.16M
Janitors and building cleaners	2.04M	General medical and surgical hospitals, and specialty hospitals <sup>1</sup>	3M
First-line supervisors of retail sales workers	1.96M	Elementary and secondary schools	2.58M
Other managers	1.87M	Supermarkets and other grocery stores <sup>2</sup>	1.87M
Customer service representatives	1.83M	Truck transportation	1.71M
Retail salespersons	1.76M	General merchandise stores, including warehouse clubs and supercenters	1.68M
Cashiers	1.72M	Justice, public order, and safety activities	1.63M
Construction laborers	1.62M	Services to buildings and dwellings <sup>3</sup>	1.35M
Cooks	1.54M	Automotive repair and maintenance	1.11M

<sup>1</sup>: Except psychiatric and substance abuse

<sup>2</sup>: Except convenience

<sup>3</sup>: Except cleaning during construction and immediately after construction

Source: Steven Ruggles and others, "Integrated Public Use Microdata Series, Version 12.0, U.S. Census Data for Social, Economic, and Health Research, 2021 American Community Survey" (Minneapolis: Minnesota Population Center, 2022), available at <https://doi.org/10.18128/D010.V12.0>.

Table: Center for American Progress

## Barriers to Enforcement Include Retaliation Against Workers, Forced Arbitration, and Union Declines; All Combine to Encourage Wage Theft; Departments of Labor Must Ensure Effective Enforcement

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Employer retaliation denies workers the ability to defend their rights on the job and organize for better conditions, especially immigrant working people and people of color.<sup>12</sup> Retaliation against workers who assert their rights is a significant challenge for the enforcement of employment laws. Termination, hours reduction, and harassment are just a few of the tools that employers use to retaliate against workers who speak up for their rights; these tactics wreak havoc on workers' lives.<sup>13</sup> This intimidation is reinforced by attacks undermining legal access to enforcement systems.

**Employers' imposition of forced arbitration agreements, typically with class and collective action waivers, work to diminish their culpability.** Employers' imposition of forced arbitration agreements, typically with class and collective action waivers, also works to diminish their culpability. Such agreements are increasingly included as a condition of employment and prohibit employees from suing their employer or pursuing a class action lawsuit. Instead, workers are forced to pursue claims and disputes through arbitration—a secretive process that heavily favors employers. Fully 59.1% of Black workers and 57.6% of women workers have arbitration requirements imposed upon them by their employers, making Black workers and women workers the most likely groups to be subject to forced arbitration.<sup>14</sup> Moreover, 54.3% of Hispanic workers have forced arbitration imposed on them, as do 55.6% of white workers and 53.5% of workers who are men.

A NELP report found that in 2019 alone, \$9.27 billion was stolen from workers who earned less than \$13 an hour and who were subject to forced arbitration agreements.<sup>15</sup> Further, as many as 26% of the 17.75 million private-sector, nonunion workers subject to forced arbitration—4.6 million workers—experienced wage theft in 2019. In addition to legal barriers to recourse, the vast majority of workers experiencing wage theft (98%) do not report the violation or seek legal remedies out of fear of retaliation from their employers (Baran and Campbell 2021).

Public enforcement has not and cannot fill the void left by lack of access to private litigation to recover unpaid wages. A recent study tracing recovery of unpaid wages by the U.S. Department of Labor, state labor departments, and state attorneys general found a significant drop in recoveries after the U.S. Supreme Court's 2018 ruling in *Epic Systems v. Lewis*, which allows employers to force workers to use arbitration instead of class action lawsuits in cases of wage theft. The report's authors show that the amount of wages recovered for workers dropped significantly in 2020 across public and private options for wage recovery: The U.S. Department of Labor recovered 20% less for workers in 2020 than in 2019, while state labor departments and attorneys general recovered 15.5% less, and class action settlements were 34% smaller.<sup>16</sup>

## Conclusion and Recommendations

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Wage theft is an endemic problem in our society, costing billions every year to workers and the economy. Experience and research have shown that some businesses come to rely on it as almost part of their business model. The result is an uneven playing field for law-abiding businesses and havoc in the lives of working people who depend on their paychecks to survive. Given today's emphasis on creating good jobs, with billions in public investment behind it, we cannot afford not to pay attention to wage theft's impacts on workers, communities, and law-abiding companies.

We call for significant investment in strategic government-community partnerships, to allow for adequate monitoring and compliance with baseline workplace protections. Workers need and deserve laws and agency action that adequately compensate workers, deter employers from re-violating, and do not place the burden exclusively on workers to ensure employer compliance with the law.

## Endnotes

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- <sup>1</sup> [https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/?gclid=EAlaIqobChMlzcGXhtXo\\_gIVHQZMCh2LswTrEAAAYASAAEgL1yvD\\_BwE](https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/?gclid=EAlaIqobChMlzcGXhtXo_gIVHQZMCh2LswTrEAAAYASAAEgL1yvD_BwE)
- <sup>2</sup> Michael Felsen & M. Patricia Smith, "Wage Theft is a National Emergency," *The American Prospect*, March 5, 2019.
- <sup>3</sup> Wage theft as a term is not without controversy. It often involves non-criminal acts under the law, and can be used in a negative narrative to blame and encourage punishment of non-criminal actors. See Daniel Schwartz, "Wage Theft": The Trendy Phrase that May Not Mean What You Think It Means, CONN. EMP'T L. BLOG (Apr. 23, 2014), <https://www.ctemploymentlawblog.com/2014/04/articles/wage-theft-the-trendy-phrase-that-runsamok/>; Benjamin Levin, Wage Theft Criminalization, 54 U.C. DAVIS L. REV. 1429 (2021), available at <https://scholar.law.colorado.edu/faculty-articles/1315>.
- <sup>4</sup> David Cooper & Teresa Kroeger, "Employers steal billions from workers' paychecks every year," *Economic Policy Institute*, May 10, 2017.
- <sup>5</sup> Amy Traub, "Wage Theft vs. Shoplifting: Guess Who Goes to Jail?" *Demos*, June 13, 2017.
- <sup>6</sup> Cooper, op. cit.
- <sup>7</sup> [Wagetheft.org](http://Wagetheft.org), "What is Wage Theft?" Accessed March 13, 2019.
- <sup>8</sup> Aurelia Glass, Center for American Progress, *What Policymakers Need to Know About Today's Working Class*, April 2023; Cooper, op. cit.
- <sup>9</sup> See, Infrastructure Investment and Jobs Act, : <https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/06/fact-sheet-the-bipartisan-infrastructure-deal/>; The Inflation Reduction Act (summarized): <https://www.americanprogress.org/article/how-bidens-american-style-industrial-policy-will-create-quality-jobs/>.
- <sup>10</sup> See, U.S. Department of Labor and Dept. of Commerce Good Jobs Principles, [https://www.dol.gov/general/good-jobs/principles#:~:text=Workers%20have%20job%20security%20without,deployed%20with%20input%20from%20workers;and e.g., poor quality in manufacturing jobs:https://jobstomoveamerica.org/update/?gclid=EAlaIqobChMI0Z3ayj\\_h\\_gIV6c3jBx0CJQ2WEAAAYASAAEgIlbvD\\_BwE](https://www.dol.gov/general/good-jobs/principles#:~:text=Workers%20have%20job%20security%20without,deployed%20with%20input%20from%20workers;and e.g., poor quality in manufacturing jobs:https://jobstomoveamerica.org/update/?gclid=EAlaIqobChMI0Z3ayj_h_gIV6c3jBx0CJQ2WEAAAYASAAEgIlbvD_BwE)
- <sup>11</sup> President Biden's April 2023 Executive Order includes dozens of directives for Federal Agencies to increase access to affordable and high-quality care, allow care workers to join unions if they choose, and provide support for care workers and family caregivers.
- <sup>12</sup> See, e.g., Scott, Brittany, Opening the Door: Ending Racial Discrimination in Industrial Temp Hiring Through Innovative Enforcement, Partners for Dignity & Rights (2021), <https://dignityandrights.org/wp-content/uploads/2021/03/Opening-the-Door-Report.pdf>.
- <sup>13</sup> See, <https://www.nelp.org/news-releases/workers-who-report-employer-misconduct-face-rampant-retaliation/>
- <sup>14</sup> See Alexander J.S. Colvin, Economic Policy Institute, The Growing Use of Mandatory Arbitration, At 9 (2018), <https://www.epi.org/files/pdf/144131.pdf>.
- <sup>15</sup> Baran, Hugh, and Elisabeth Campbell, Forced Arbitration Helped Employers Who Committed Wage Theft Pocket \$9.2 Billion in 2019 From Workers in Low-Paid Jobs. National Employment Law Project. <https://s27147.pcdn.co/wp-content/uploads/Data-Brief-Forced-Arbitration-Wage-Theft-Losses-June-2021.pdf>
- <sup>16</sup> <https://files.epi.org/uploads/240542.pdf>.