

# A PRACTICAL GUIDE TO COMBATTING WAGE THEFT

Lessons from the Field

NOVEMBER 2017



  
THE CENTER FOR **POPULAR**  
FOR **DEMOCRACY**

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## Introduction

Wage theft—any instance of an employer failing to pay their employees the wages owed for work performed—continues to plague communities across the country. Every year unscrupulous employers steal billions of dollars from workers. Practices of wage theft include:

- Paying less than the minimum wage
- Failing to pay required overtime
- Paying less than the promised wage
- Misclassifying an employee as an independent contractor to avoid providing workers compensation, unemployment insurance, or an hourly wage
- Deducting the cost of required uniforms or tools from paychecks
- Failing to provide paid sick leave where required by law
- Requiring uncompensated work “off the clock”

### Wage Theft is Pervasive

A study by the National Employment Law Project (NELP) of low-wage workers in New York City, Chicago, and Los Angeles found that over two-thirds of low-wage workers had experienced wage theft in the previous workweek.<sup>1</sup> The Economic Policy Institute estimates that wage theft costs America’s low-wage workers more than \$50

billion each year.<sup>2</sup> In New York alone, the New York Department of Labor recovered \$30.2 million in wages to 27,000 claimants in 2014<sup>3</sup>—most likely a fraction of the actual value of legal violations that year.

The pervasiveness of wage theft, and its financial impact on workers, communities, businesses and local economies, is well documented. For example, a study by the National Employment Law Project (NELP) of nearly 4,500 low-wage workers in three major U.S. cities (New York City, Chicago and Los Angeles) found that:

- Over two-thirds of low-wage workers had experienced wage theft in the previous workweek<sup>4</sup>
- Employers stole more than \$56 million in workers’ wages every week,<sup>5</sup> which translates to nearly \$3 billion in total annual wage theft

If these findings are generalizable to the rest of the population, the Economic Policy Institute estimates that *wage theft costs America's low-wage workers more than \$50 billion each year.*<sup>6</sup>

For many workers in the US, wage theft is the rule, not the exception. For low-wage workers especially, stolen wages mean that families struggle to pay the rent, put food on the table, buy school supplies for their children, or pay for needed medications.

Workers and their families are not the only victims of wage theft, however. Employers who steal wages wield an unfair economic advantage over businesses that follow the law. They also rob the community of significant tax revenue. For example, it has been estimated that wage theft costs New York State as much as \$427 million dollars in tax revenue each year.<sup>7</sup>

Wage theft is by definition unlawful, but legal remedies are often costly, time-consuming, and insufficient to deter employers from violating the law.<sup>8</sup> Even when workers manage to win an unpaid wage case against their employers, they are often unable to collect the money due to inadequate enforcement. In California, more than \$282 million was awarded for unpaid wages between 2008 and 2011, but only \$42 million was ever collected from employers and distributed to victims of wage theft.<sup>9</sup>

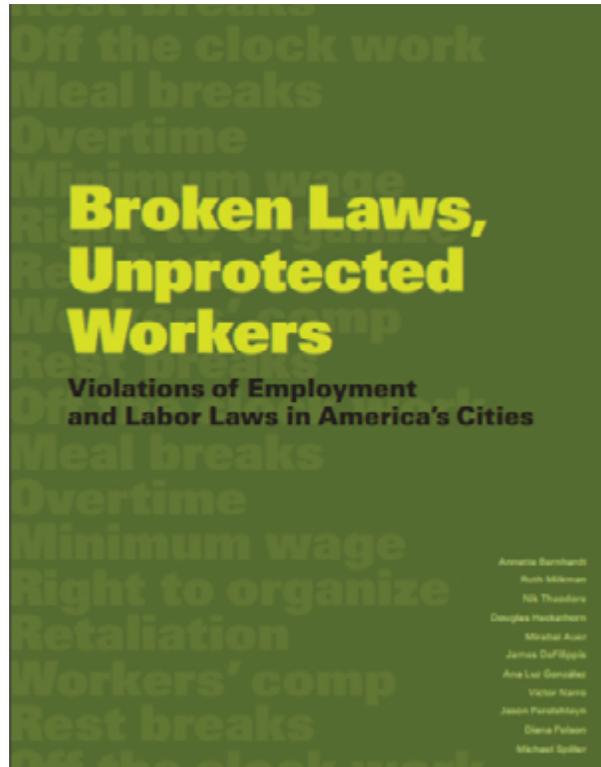
The reality is that many employers commit wage theft with impunity. Increasing the consequences of wage theft for employers, improving the remedies available to workers, and strengthening wage theft enforcement tools are core strategies to realizing economic justice and respecting workers' dignity.

Over the last decade, workers, advocates, and community leaders have developed a variety of strategies to combat wage theft in cities and states across the country. Campaigns have organized direct actions against employers and industries, fought for stronger legal protections at the state and local level, and advocated to improve enforcement of existing laws.

Successful legislative campaigns have included, among other improvements:

- Stricter penalties for violations
- Stronger protections from employer retaliation
- Increased funding for enforcement<sup>10</sup>

In spite of gains made around the country, however, wage theft remains rampant. Especially in this political moment, strong enforcement is critical to fighting the Trump administration's efforts to erode worker rights and protections.



This guide gathers lessons from successful campaigns, as well as sample materials from leading advocates in the field, to support the growing network of organizations working to combat wage theft and strengthen laws that protect workers from abuse.

Existing resources, such as "[Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft](#)" by the National Employment Law Project, provide in-depth analysis of cutting-edge substantive legal reforms to pursue as part of a wage theft campaign.<sup>11</sup> This guide complements existing resources about policy priorities by focusing instead on the *how* of launching and winning high-impact campaigns to combat wage theft. Gathered here are **best practices for planning, strategizing, and executing a state or local wage theft campaign.**

We seek to explain *how* an organization or coalition can best build and maximize its resources and capacities to:

- Pursue the most effective political strategy
- Incorporate worker participation and leadership at all stages of the campaign
- Build and maintain the most powerful and effective coalition
- Identify and conduct the necessary research
- Develop and execute a strong communications strategy
- Win policy change at the state and local level
- Ensure the successful implementation and enforcement of new wage theft laws

This guide is intended to be a point of entry for organizers and organizations that are planning to launch a wage theft campaign, as well as a resource for established campaigns or coalitions. Due to the contextualized nature of campaign planning, much of the content is presented in general terms. We encourage you to contact the Center for Popular Democracy, as well as organizations referenced throughout this guide, for technical advice and support as you build your wage theft coalition and campaign.

# **Getting Started:** Campaign Planning

A thoughtful campaign plan can serve as an important resource throughout the life of a campaign, establishing a shared understanding of goals and priorities, and facilitating the work needed to implement policy victories. As explored below, an effective campaign plan is grounded in a sophisticated Power Analysis. What are your coalition’s existing sources of power, and what will it take to overcome opposition and win? Even the best policy goals cannot be realized if you are unable to rally sufficient power to beat back the business opposition you will always face.

A campaign plan lays the foundation for building the power of allies, moving campaign targets toward positions of support, and reducing the power of opponents. The framework outlined below provides a structure for the campaign planning process. These activities can be done internally as an organization and/or as a full coalition. They are excellent political education activities to do with impacted workers, building their leadership from the start in the campaign. The best plans are living documents that can be nimbly adjusted in response to campaign successes, shifting political realities, and organizational changes.

## Campaign Planning: A Six-Step Framework

While every campaign is specific to the legal, political, and economic context from which it originates, there are core campaign plan building blocks that are useful across campaigns. The following six-step framework provides a series of guiding questions and tools to develop your wage theft campaign plan.

The six steps are as follows:

- 1) Assess the local landscape and your organizational capacity
- 2) Define a campaign goal
- 3) Identify the target, your allies and opponents, and conduct a Power Analysis
- 4) Define your Win Theory
- 5) Do the Tactics and Timeline Exercise
- 6) Develop and refine your Campaign Work Plan

### 1. Assess the local landscape and your organizational capacity

An in-depth analysis of the local political landscape and your own organizational capacity will help shape the foundation of your wage theft campaign. It will help determine what legislative policy—or other type of campaign goal—to pursue, as well as where and how to focus your resources. CPD has developed a tool, called the [Wage Theft Landscape Analysis](#), to facilitate this type of inquiry. It includes a series of detailed questions and considerations in the following areas:

- Current context in your state or city
- Organizational goals and/or interests
- Industry and sector analysis
- Existing legal framework
- Emerging legal issues

- Allies and opponents
- Structural questions
- Service provision to support the organizing
- Funding and resources

Find the full version of the document in the [Appendix](#).

In the context of limited resources, organizations often need to choose between different priorities. Launching a new legislative or policy campaign may seem daunting because of the resources it requires. However, in addition to the potential for broad and lasting impact, legislative and policy campaigns can also build on other organizational priorities without superseding them.

### **Case Study:**

#### **Balancing Organizational Priorities at Arise Chicago**

[Arise Chicago's Worker Center](#) had a long and successful track record of organizing direct actions to hold employers accountable for their treatment of workers, especially around wage theft. In considering what the city could do to address the problem of wage theft, Arise took the lead in passing a 2013 ordinance that allows the city to revoke the business licenses of employers found guilty of wage theft.<sup>12</sup> Arise maintained its core organizational focus on worker organizing and direct action in order to pursue this goal, and has continued to engage directly with employers. But the policy reform enhanced the efficacy of worker organizing by increasing workers' leverage against employers. Having such an ordinance on the books also increased the Illinois Department of Labor's leverage: the agency's citations to Chicago-based employers now contain a reference to the ordinance and the possibility of the business losing its license, improving their ability to settle with employers. Arise successfully achieved a policy goal that benefits workers throughout Chicago while simultaneously supporting its core organizational goals. In 2015, Arise led the effort to successfully pass a similar ordinance in Cook County, tying tax abatement benefits to employers' compliance with wage and hour laws.<sup>13</sup>

### **2. Define a campaign goal**

The next step is to define your campaign goal. Legislative or policy campaigns seek to strengthen legal protections against wage theft. Enforcement campaigns typically seek to enhance enforcement of laws and regulations, and/or increase resources for enforcement. Industry-specific campaigns take on a particularly egregious employer or set of employers, or work to clean up a particular industry. A comprehensive campaign may combine any or all three approaches.

Your campaign goal should be ambitious enough to make significant change in people's lives and address the root causes of wage theft, but also focused enough that you can realistically win the campaign. Your analysis of the local reality and your organizational capacity should guide you towards the right balance between these two criteria.

Additional criteria for a good campaign goal include whether this campaign will:

- 1) Result in a real improvement in people's lives
- 2) Be winnable
- 3) Give people a sense of their own power

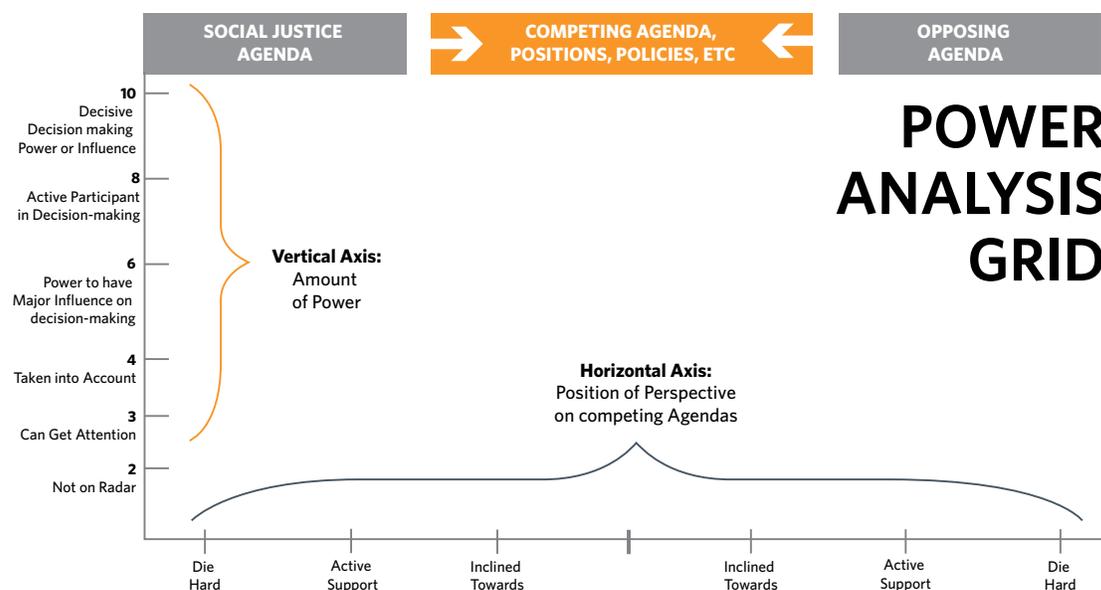
- 4) Alter the relationships of power so that workers have a real voice in the workplace
- 5) Be widely and deeply felt by workers and their families
- 6) Be easy to understand by those who have a direct stake in the campaign's outcome
- 7) Target a clear decision-maker
- 8) Have a clear time frame that works for you
- 9) Set your organization up for the next campaign by expanding your membership and building members' leadership skills, helping your organizations raise resources, and/or strengthening relationships with allies and elected officials
- 10) Be consistent with your organizational values and vision<sup>14</sup>

### 3. Identify the target, your allies and opponents, and conduct a Power Analysis

The third step in campaign planning is to conduct a more focused analysis of local actors that hold power—in other words, to map out the target, your allies, and your opponents, and to conduct a Power Analysis. Note, an initial version of a Power Analysis can be a helpful step while you are defining the campaign goal since setting a realistic yet ambitious goal depends on the amount of power you have to win it. Ideally, your campaign coalition would conduct an initial Power Analysis at step two, then revisit/refine it once you have a more fully-defined campaign goal and are revisiting the specific campaign targets. This six-step sequence is a suggestion but not the rule.

**Identify your targets.** Campaign targets are the individuals or institutions with the power and authority to enact your wage theft proposal. If your campaign goal is to pass city legislation, for example, then your targets will likely include the members of the city council and the mayor.

**Map your relative power and that of your allies and opponents.** Mapping exercises help you visualize different actors' power relative to one another, and to you. You can use a conceptual tool, such as the Power Analysis Grid developed by SCOPE (available below), to chart the relative power of your organization, your coalition and its members, other allies, potential opponents, and the targets themselves.<sup>15</sup>



**Conduct a targeting exercise.** Once you have a visual representation of the local actors (based on your power analysis) you may need additional research in order to understand the relationships between relevant people and institutions, and to assess levels of influence.

Once this research has been conducted, you should answer the following questions regarding how to influence your campaign target:

- Who is your target and what do they care about? (Maybe your target is an elected official running for re-election, for example.)
- What kind of resources and power do you have? (The ability to mobilize people, to organize direct actions, to get media attention, etc.)
- What kind of resources and power do your allies have? (Maybe they have the political power to influence your target, for instance.)
- What will it take to force your target to advance your campaign goal? Are there strategies you can use that neutralize your opponents (either by speaking to their concerns or by rendering them ineffective advocates for their position)?
- Do you have the resources needed to influence your target? If not, who does? How can you leverage your resources (power, relationships, etc.) to influence your target?

#### 4. Define your Win Theory

Assessing the local landscape, doing a Power Analysis, and completing the targeting exercise all build the foundation for the campaign's Win Theory. The primary goal of the Win Theory is to answer the question: *Given the resources available to your organization, coalition, and allies, what do you need to do to achieve your campaign goal? Put another way, how can you amass sufficient power to overcome the opposition and how will you deploy that power most effectively to reach victory?*

Your Win Theory may include a number of strategic approaches that complement each other, or serve as alternatives to each other, depending how the campaign takes shape. For example, WASH NY, a campaign to address wage theft in the car wash industry in New York City, developed a Win Theory that included the following:

- A citywide movement of car wash workers organizing union drives, to exert industry-wide pressure
- Support from a broad coalition including faith leaders, elected officials, unions and community organizations
- Incentives for “high road employers” to come into compliance (e.g., public support for high road employers)
- Collaboration with government agencies to crack down on wage and hour violations
- Citywide legislation to reform the car wash industry

See their complete Win Theory in the [Appendix](#).

An optional step at this point is to craft a Strategy Narrative, which is more detailed than the Win Theory, incorporates information from your assessment of the local landscape and Power Analysis, and tells the story

of how the campaign will move from its current state to achieving its goals. A Strategy Narrative should include detailed information about:

- Who is involved
- What the campaign aims to achieve
- The projected timeline
- How the campaign will be successfully executed
- The rationale for undertaking your specific fight

The Strategy Narrative can serve as a grounding document and a guidepost throughout the campaign. It can be used to help onboard new staff and allies as the campaign generates more support, and to raise funds for the campaign. As with other campaign planning documents, the Strategy Narrative can be revisited at regular intervals and revised to reflect new political and organizational realities.

For a sample Strategy Narrative, please contact the Center for Popular Democracy.

## 5. Identify Tactics and Timeline

Before developing your Campaign Work Plan, it is helpful to identify your campaign's tactics and timeline.

### Step 1: Brainstorm tactics to achieve campaign goal

Start by brainstorming as many tactics that advance your interim and long-term goals as you can. Tactics may have different targets, and can range from public protest of employers guilty of wage theft, to placing op-eds by worker leaders in popular local newspapers, to releasing reports that document the prevalence of the problem. Then choose your top five to ten tactics based on the following criteria:

- Is this tactic based on your Win Theory? How will it help you win your campaign? For example, if your Win Theory focuses on changing the position of a potential ally in the legislature, does a tactic focused on supporting high road employers align with that goal? It may, for example, if the targeted high road employers are vocal members of that legislator's district. It may not if the employers are opponents of your target.
- Is this tactic aligned with your organization's culture and experience? Does it reflect your values? Some tactics, such as targeting legislators up for re-election, may be effective but may not fit with your organization's non-partisan mission.
- Will it build your members' leadership skills and strengthen your organizational capacity? A tactic focused on cultivating "grass-tops" leaders may help build the coalition's strength, but may not do much to build your longer-term organizational capacity or reputation, or to create space for worker leadership.

**Step 2: Sequence tactics into peaks**

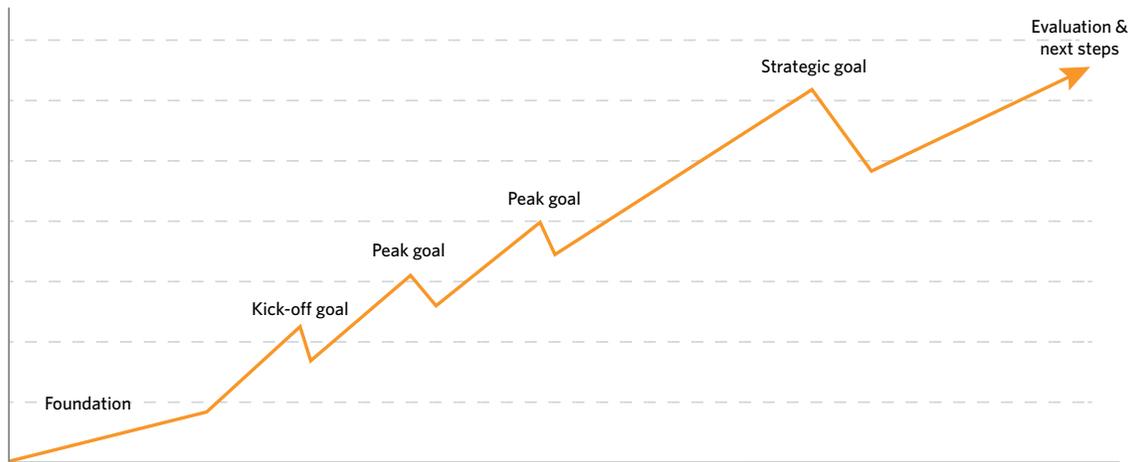
Create a campaign timeline by strategizing backwards. How will you organize your tactics over time to achieve your campaign goal?

Determine a peak goal for each tactic. A peak is often an event or action—a press conference to release a report, for example, or a march against wage theft. Each peak should have its own measurable outcome. What kind of press do you want to generate by releasing the report, for example, or how many people will participate in the march?

Your campaign should gain power and build capacity over time. Your tactics should therefore escalate over time, and each peak should build on what came before, culminating with your campaign goal.

Starting with your campaign goal (strategic goal), work backwards to sequence your peaks and tactics on a campaign timeline see example below.

**PEAKS AND TACTICS SEQUENCE**



**6. Develop your Campaign Work Plan**

Now it’s time to develop your Campaign Work Plan. This key document details how you will put your campaign strategy into practice. There are many ways to organize a Campaign Work Plan, but the primary purpose is to have a clear and shared sense of who is doing what and when, and how the different pieces of the campaign fit together. The campaign plan will be tailored to the specific needs of your campaign, but generally incorporates:

- A staffing plan and/or organizational or coalition chart, which show the personnel required to achieve campaign goals
- An explanation of the decision-making structure and/or chain of accountability
- A calendar or timeline that allows you to organize the sequence of campaign events while also visually depicting which campaign activities can be pursued simultaneously

<b>RESOURCES</b>
<ul style="list-style-type: none"> <li>■ Sample campaign plan template (see <a href="#">Appendix</a>)</li> <li>■ Make the Road New York/Wage Theft Prevention Act campaign plan (see <a href="#">Appendix</a>)</li> </ul>

## Building Worker Leadership in Campaigns

The most successful wage theft campaigns are based on workers' experiences. Workers know that wage theft is a common problem, they may be able to identify bad actors, and their ability to directly share their stories of the impact of wage theft on their families is the most powerful tool in your campaign. Wage theft campaigns often begin as direct actions against a particular employer to pressure them to pay unpaid wages, and then develop into broader campaigns to clean up an entire industry, to win legislative reforms, or to increase state and local resources for wage theft enforcement. For workers' centers and community-based organizations, it is important to integrate the meaningful participation of workers into your campaign plan materials to ensure that your campaign is truly grounded in workers' needs and demands. This is especially important if the campaign develops into a policy or budget fight that will be waged in arenas that may be less familiar to workers. Campaign plans should include clear roles for workers in developing and executing campaign strategy and tactics, decision-making, and speaking publicly about the campaign. For advocacy, policy, and legal service organizations that are part of wage theft campaigns but do not work directly with community members, it's worth considering your relationship to membership-based organizations. This will help to ensure that the overall campaign strategy prioritizes the experience and leadership of those most acutely affected by wage theft.

### Case Study:

#### Worker Participation at Make the Road New York

New York's Wage Theft Prevention Act of 2010 (WTPA) remains one of the strongest anti-wage theft laws in the country. It increased penalties and damages for violations, improved protections for workers who stand up for their rights, made it easier to collect judgments against violators, and empowered the New York State Department of Labor with new tools.<sup>16</sup> Since its passage, the New York Coalition Against Wage Theft has focused on implementation of the WTPA and on the passage of a subsequent bill (in 2014) with other key provisions, such as increased penalties for repeat offenders and personal liability for unpaid wages by a company's largest shareholders.

[Make the Road New York \(MRNY\)](#),<sup>17</sup> which led the WTPA campaign, is a membership-based organization. It first began focusing on wage theft prevention because members of its workers' committee were deeply concerned about the prevalence and severity of wage theft.

MRNY has a number of issue-based committees. In addition to workers' rights, these issue areas include immigration, education, housing, and LGBTQ justice. In addition to weekly committee meetings, leadership teams made up of the most active members of each committee meet monthly to discuss campaign planning and strategy. MRNY's legal and organizing staff also conduct regular campaign meetings, and proposals emerging from member or staff meetings can be brought from one forum to the other for further consideration. In order to ensure worker engagement in key decisions even when the campaign requires a rapid response, two members of the leadership team are elected as point people to be consulted when there is not enough time to convene the whole team.

**"It's important in any campaign to have community members leading because they're representing their own story, they have ownership and a desire to create change...I believe that every person is a leader—that they each possess leadership within."**

**—Nieves Padilla, Organizer at Make the Road New York**

Members of MRNY’s workers’ committee were engaged in almost every aspect of the WTPA campaign planning and execution. Workers’ on-the-ground experiences with wage theft served to document the problem and lend insight about which reforms could be most effective, which in turn influenced the content of the bill. When workers told their stories, it highlighted the human impact of wage theft and helped frame the issue by focusing on the worst offenders. Workers also engaged in direct action against employers and lobbied local legislators and government agencies throughout the campaign. They spoke at press conferences, were quoted in press releases, and engaged directly with the media. Workers conducted outreach and education with MRNY’s membership as well as in the broader community, both during the campaign and after the legislation went into effect, to explain the legal protections contained in the new law. Workers also demonstrated their power as constituents, signaling to elected officials that their electoral base was paying close attention to this issue. Worker participation in community outreach and education, mobilizations, press relations, research, and political lobbying was critical to the campaign’s success, as well as providing invaluable experiential learning and building organizational capacity for future campaigns.<sup>18</sup>



Credit: Make the Road New York

## Worker Profile: Rafael Navor, MRNY<sup>19</sup>

Rafael became a member of MRNY in 2007 after experiencing an accident at his construction job, where he worked 80, 90, sometimes even 100 hours per week and was never compensated for overtime, where he was denied protective equipment like masks and gloves, and where his hours would be cut as a punishment for taking sick time. Rafael was looking for a lawyer who could help him, when a friend told him about an organization in Bushwick that helped workers with these issues.

Rafael got help with his legal case, but he did not stop there. He became an active member of the organization and has since participated in a number of campaigns, including the campaigns to pass New York State's WPTA, New York City's Paid Sick Day legislation, and a fight to maintain rent stabilization. Rafael spoke to the press about his personal experiences and conducted outreach in the community to inform others about these important fights. Rafael attends weekly committee meetings even though he has to travel up to an hour

to get there, and has arrived as early as 5am to attend actions before starting his workday at 7am.

To Rafael, being a member of MRNY means that he participates actively, attending committee meetings as well as rallies and marches. Just as importantly, however, it means that he shows up to support and guide his peers. Through MRNY, Rafael has met workers in a number of different industries—including domestic workers, restaurant workers, car washers, and delivery workers—who have all experienced wage theft or retaliation at work and need information about how to recover their wages. Because Rafael received the help he needed, he is now committed to helping others in similar situations.

Rafael reflects on the wage theft win, "Before the [Wage Theft Prevention Act], we weren't really able to speak up in the workplace...Thanks to the law, now we're able to speak up."

### Campaign Planning Toolbox (see Appendix)

### RESOURCES

- [Wage Theft Landscape Questions](#), Center for Popular Democracy
- [Power Mapping Exercise](#), SCOPE
- [Win Theory](#), WASH NY
- [Tactics and Timeline Exercise](#)
- Campaign Plans
  - [Sample Campaign Template](#)
  - [Make the Road New York/Wage Theft Prevention Act Campaign](#)

# Getting Started: Building Your Coalition

It is rare for a single organization to win a campaign on its own, due to limitations in organizational resources, staffing capacity, and political influence. Working with allies in a coalition is a way to maximize local, regional, and national power, thereby increasing the ability to win campaigns beyond the organizational resources of any individual coalition member.

## Forming a Coalition

- **Build your coalition according to your campaign strategy.** Your campaign strategy and power analysis should guide you in terms of who you need in your coalition—organizations or labor unions with the political clout to move your target, faith leaders to lend moral authority, etc. You should also assess the particular skills and expertise that your coalition would benefit from. Different allies will have a variety of invaluable strengths to offer a campaign, such as a large worker membership, powerful political allies, strategic media connections, or extensive research capacity. The size and type of coalition you build will depend on what you seek to win and how much power is required to win.
- **Start with existing relationships.** Coalitions that address workers' rights typically involve some combination of worker centers, labor unions, legal advocacy groups, faith-based organizations or congregations, immigrant rights organizations, and local or national policy and research organizations. You likely have a number of these connections already, and can reach out to these organizations to begin building your coalition.

Policy and research organizations can help with campaign research, data analysis, and publicly-facing publications to make the case for your campaign demands. For example, in the midst of the campaign to pass Colorado's 2014 Wage Protection Act, the Colorado Fiscal Institute published "[Wage Non-Payment in Colorado: Workers Lost \\$750 Million Per Year.](#)" which provided estimates of unpaid wages to Colorado workers and of the local economic impact of lost sales tax, lost income tax, and lost employer contributions to unemployment insurance.<sup>20</sup> In 2012, the Oregon Center for Public Policy, a member of the Oregon Coalition to Stop Wage Theft, published a fact sheet called "[Evidence of Widespread Wage Theft.](#)" presenting local wage theft data and documenting the inadequacy of available remedies.<sup>21</sup> Some research and policy organizations will join wage theft coalitions, although it can also be strategically advantageous for them to undertake research projects and issue reports as an independent third-party validator.

- **Wage theft lends itself to building broad coalitions.** Wage theft is widely perceived as morally reprehensible, and is rampant in many industries across the country. Because of this, wage theft coalitions are uniquely positioned to draw diverse members, including groups that may not typically engage in worker issues. For example, responsible employers and unionized businesses may want to highlight their competitive disadvantage in the face of widespread wage theft. Religious leaders often view the fight against wage theft as a moral issue that speaks to the core of their faith. Religious and business leaders in your coalition can allow you to reach a broader audience, increase the campaign's political leverage, and provide new access to your target.

Connecting with groups that are pursuing adjacent goals is another way to broaden your campaign. For example, many workers who are affected by wage theft are also affected by inadequate occupational health and safety protections. See the Center for Progressive

Reform’s “[Winning Safer Workplaces](#)” to learn about local and state level laws and policies that can better protect workers from occupational safety and health hazards.<sup>22</sup>

## Coalition Structures and Systems

- **Consider “inside” versus” outside strategies.** Depending on the nature of your campaign, you may pursue a largely “inside” strategy (working behind the scenes to lobby legislators, business leaders, and other influential players), an “outside” strategy (generating media attention and public pressure on employers, politicians, and other opponents), or a combination of the two. Consider identifying which members of the coalition will lead the inside strategy, which will lead the outside strategy. For example, a “field and communications” subgroup of the larger coalition could lead the outside strategy while a “policy and politics” committee could manage the inside strategy, with regular communication between these groups.
- **Decide who will staff the coalition.** Some coalitions identify staff from several core organizations who each commit a percentage of their time to the campaign. One advantage of this structure is that core member organizations remain actively invested in campaign activities. Other coalitions hire dedicated staff to run the campaign. This could include a campaign director as well as skills-based staff, such as a full-time attorney to work on legislative drafting and lobbying, or someone with specific communications skills. An advantage of this approach is that it draws on the expertise of those with the most relevant experience.
- **Establish a decision-making body.** Some wage theft coalitions use a steering committee structure, appointing a small, clearly defined group of representatives who are charged with reaching decisions relatively quickly through consensus or by vote. Decision-making structures will also be most effective when they take into account the relative power of coalition members and their investment in the campaign. Otherwise, you may face a scenario in which the coalition’s strategy can’t be accomplished because the organizations essential to executing it are insufficiently committed to, or actively oppose, the strategy. Identifying differences in power (level of funding, constituency size, connections to those in power, etc.) and organizational investment in the campaign (in terms of staff allocation, funding, or political capital) among coalition members early, and being honest about how those differentials can—and perhaps should—impact how decisions are made, and will make the coalition more effective in the long run. Whatever the structure, it is important to have a clear process for decision-making from the beginning, as this will help minimize unnecessary conflict when important decisions have to be made quickly.
- **Establish mechanisms for internal communication.** Internal communication could consist of regular calls for all coalition members, with separate calls for certain topical subgroups. Periodic in-person meetings or email updates from coalition staff can complement coalition calls. The frequency of communication typically changes over the course of the campaign and as the legislative season gains momentum.
  - **Engage non-committee members.** One trade-off to the efficiency of a small decision-making body is that coalition members not on the steering committee often become less engaged with the campaign. To avoid this, build in mechanisms for regular communication out to the broader coalition as well as for broader engagement in strategy and coalition work.

- **Accommodate multiple languages.** Make sure to plan and budget for translation and interpretation to meet the language needs of all coalition members, recognizing that those most impacted by wage theft, and who should therefore play leadership roles in the campaign, may feel less able to engage if meetings are all in English.

### Case Study:

#### The DC Wage Theft Prevention Act: Formation of the Coalition

DC's [Wage Theft Prevention Act](#) of 2014 (WTPA, effective February 2015)

- Increases penalties for employers who violate wage and hour laws
- Provides anti-retaliation protections for workers
- Establishes a formal hearing process with enforceable judgments
- Improves access to legal representation for workers who experience wage payment violations

DC's Wage Theft Coalition, which led the campaign for the WTPA, was born out of the Just Pay Coalition, a group of nonprofits, unions, service providers, worker centers, and community organizations dedicated to promoting workplace justice in DC. The Just Pay Coalition had recently won minimum wage and paid sick time campaigns. The Wage Theft Coalition was comprised of many of the same groups but also included a number of new organizations and unions specifically interested in fighting wage theft.

The wage theft fight was led by the DC Employment Justice Center (EJC) and DC Jobs With Justice (DC JWW). These two groups were natural leaders because of their specific experience with wage theft; DC JWW had been organizing day laborers at Home Depot (who often experience wage theft), and a significant percentage of the cases received through EJC's legal clinic were related to wage theft.

As coalition leaders, EJC and DC JWW worked to ensure that there was sufficient commitment and shared responsibility among all members. However, the structure of the coalition was kept intentionally loose, which enabled varied amounts of accountability and responsibility to be distributed among members based on capacity and resources. EJC and DC JWW provided individualized support to members, tracked organizational commitments, and facilitated communication across the coalition. Strategic decisions, however, were made through consensus by the whole group.<sup>23</sup>

#### Coalition Building Toolbox

#### RESOURCES

Making the Case for Campaign Demands:

- "[Wage Non-Payment in Colorado: Workers Lost \\$750 Million Per Year](#)," Colorado Fiscal Institute
- "[Evidence of Widespread Wage Theft](#)," Oregon Center for Public Policy

Drawing from Adjacent Agendas:

- "[Winning Safer Workplaces](#)," Center for Progressive Reform

# Getting Started: Research

Strategic research is crucial to a successful campaign in a number of ways, including:

- Understanding and documenting the problem
- Identifying primary and secondary targets and how to influence them
- Identifying employers that commit egregious labor violations and uncovering their worst practices
- Developing effective messages

Some community organizations fall into the trap of thinking that research is either too difficult or not necessary for their campaign. However, strategically conducted research can be critical to a campaign's success. Your organization likely already has a great deal of institutional knowledge. Local and national policy and research organizations might be able to provide the expertise beyond your current organizational capacity, for example by locating local data to demonstrate the prevalence of wage theft in your city or state, or by accessing government documents that shed light on local enforcement practices. Your campaign will benefit from taking the time to consider the types of information you want to highlight, how you might obtain resources, and your timeline for gathering information.

## Research Approaches

### Background Research

- **Scan for readily accessible information.** As with many research tasks, spending time searching online for “wage theft” and wage theft in your state or city will quickly turn up a variety of resources. Experiment with other general terms that could yield some baseline information, such as “wages and hours” or “failure to pay overtime.” Once you have compiled a list of useful search terms for your locality, set up a “Google alert” or a similar system that can inform you whenever a relevant news story or other form of online content is published.
- **Pay particular attention to the websites of local agencies and government offices** that enforce wage and hour laws—these sites might contain useful information that you would not find through a keyword search.
- **Consult policy and research organizations.** Policy and research organizations—both local and national—may be valuable resources for your campaign. In addition to the Center for Popular Democracy, other national organizations such as the National Employment Law Project, Economic Policy Institute, the Economic Analysis and Research Network (EARN), and Demos have published resources online and are available to provide assistance to state and local campaigns. A local research institute might have access to data that is particularly pertinent to your campaign.

### State and Local Wage Theft Data

- **Leverage existing wage theft data.** Data is a powerful tool for demonstrating the pervasiveness of wage theft. Opponents who might try to minimize its impact will have a hard time arguing with strong data. One of the largest-scale worker surveys on the topic, and most commonly referenced examples of local wage theft data, is the National Employment Law

Project's (NELP) "[Broken Laws, Unprotected Workers](#)," a report documenting flagrant wage theft among workers in Chicago, New York City, and Los Angeles.<sup>24</sup> In 2017 the Economic Policy Institute released a report that looks closely at minimum wage violations and quantifies the impact on workers in the 10 most populous states: California, Florida, Georgia, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Texas.<sup>25</sup> Other smaller-scale analyses have been conducted to estimate the impact of wage theft in specific cities and states or specific industries. For example, the Colorado Fiscal Institute produced an analysis, "[Wage Nonpayment in Colorado: Workers Lose \\$750 Million Per Year](#)," that estimates the impact of wage theft in Colorado, extrapolating from the NELP study.<sup>26</sup> Before starting your own research, be sure to identify what existing efforts, if any, have been undertaken to collect wage theft data in your city or state.

### Field Research

If there is no existing local wage theft data, you may consider conducting some field research of your own. There are many research methods to consider, each with their own set of advantages and challenges.

- **Participatory Action Research (PAR).** PAR is a community-based approach to research that involves community members in all phases of the project—from formulating research questions, to gathering data, to data analysis. In the wage theft context, a PAR strategy might involve collaborating with impacted workers to draft survey questions, interview workers, and analyze the survey responses. PAR leverages the local knowledge of those impacted by a particular issue to increase the relevance of survey questions. Workers themselves may know what forms of wage theft are prevalent in a particular industry and are well equipped to formulate questions that will best elicit responses from other workers. It also may increase the accuracy and volume of responses, as workers may be more inclined to share information with their peers rather than outsiders. Funders may also be interested in supporting PAR because of its worker-driven and participatory nature. In addition to providing new data, PAR is an effective tool for organizing workers, building leadership, and developing organizational capacity. PAR is a lengthy and resource-intensive process, however. The time and expense may be well worth the outcome, but must be weighed against other priorities and with attention to the campaign's calendar.

### RESOURCES

See the Urban Justice Project Community Development Project's "[Research for Organizing](#)" for a comprehensive guide to Participatory Action Research.<sup>27</sup>

- **Polling data and focus groups.** There is little-to-no professional polling data on wage theft issues (as compared to minimum wage or paid sick leave). Though this type of data is particularly useful for persuading elected officials, it is typically far too expensive for community-based organizations to conduct polls. Focus groups are an alternative to polling, and can be conducted with or without professional assistance. If you choose to conduct focus groups, you might consider partnering with an experienced research group that frequently works with grassroots and nonprofit organizations.

- **Incorporating wage theft questions in related surveys.** Keep an eye out for organizations or institutions that are launching related surveys about workers' rights or working conditions, and ask if they would be willing to incorporate a few questions about wage theft. For example, a local policy institute might conduct a survey on health and safety, but may be willing to add an additional question about unpaid overtime. Though this research strategy will limit the amount of information gathered, it could yield useful data at little or no cost. Depending on the reputation of the organization or institution, it could also serve as a validator of the data and the campaign more generally.

#### RESOURCES

Keep tabs on the "[State Voices Network](#)"—a network of grassroots organizations that join together in their states to plan and share resources at the state level—for opportunities for collaboration.<sup>28</sup>

### Accessing Public Records

- **Freedom of information requests.** Federal and state freedom of information laws, sometimes called sunshine or open records laws, provide any person the right to access agency records that are not protected from public disclosure but may be otherwise impossible to obtain. An agency's website should contain information about the types of records they maintain, and any of these records can be requested. For example, you could make a request to the local wage and hour law enforcement agency for all records relating to investigated wage theft claims including the amount of wages, damages, and penalties collected, the number of open cases, the number of investigators and other staff, and information on the agency's budget. Keep in mind that requested documents might be hundreds of pages long and will need to be dissected for relevant information. This is often a good project to be pursued in collaboration with a law school or legal clinic. When considering filing a request, it is also important to note that you may incur fees, so budget for this in your campaign plan. In some cases, the process is lengthy and you might not receive your request quickly enough for campaign purposes. Still, the very act of making the request sends a message to local enforcers that their activities are being observed, which can in itself serve a strategic purpose.

#### RESOURCES

See the National Freedom of Information Coalition's [State Sample FOIA Request Letters](#) for sample language.<sup>29</sup>

## Examples of FOIA Requests for a Wage Theft Campaign:

When making your request, maintain a focus on what you hope to demonstrate.

### **Do you want to show that wage theft is a rampant problem?**

Ask for the total number of cases filed and resolved over the last decade and amount of any judgments issues against employers.

### **Do you want to know how widespread wage theft is in your locality, and who the worst actors are?**

Ask for lists of employers with judgments issued against them, their addresses, and the total amount of the judgment of each.

### **Do you want to demonstrate that more effective enforcement is needed?**

Ask for current and historical information about the backlog of cases, the total amount of judgments issued, the total actually collected from employers, the total enforcement budget, and the number of investigators. This information can show, for example, how funding and staffing have not kept pace with the caseload.

## Opposition Research

- **Identify your opponents.** When you did your power analysis, you should have identified organizations and individuals who oppose your position on wage theft. Opponents may range from particular local employers, to funders of your local, state, and national political opponents. You may already know a great deal about the worst offending employers or industries in your city and state, but perhaps you lack documentation beyond word of mouth. The background and legal methods already discussed will yield some of this information, but you can also research companies and industries through online tools such as the Good Job Now's [Dirt Diggers Digest Guide to Strategic Corporate Research](#)<sup>30</sup> and databases like the [Violation Tracker](#)<sup>31</sup> and [Subsidy Tracker](#).<sup>32</sup> For greater investigative expertise you may want to contact national or local unions in the industry, watchdog organizations that track sources of political and financial support for anti-worker interests, such as the [Center for Media and Democracy](#),<sup>33</sup> or social justice research hubs like CPD.

## Examples of Information on Employer Fact Sheets:<sup>34</sup>

Fact sheets can be a helpful way to organize information about a particularly egregious employer that you want to highlight. The exercise of creating a fact sheet will push you to condense large volumes of research into one or two page documents and to present information in discrete and manageable categories. Below are some elements that you might include in a fact sheet:

- Basic employer information
- Employer services and products
- Description of the workforce
- History of relationship between workers and management
- Summary of violations of workers' rights
- Details of any current disputes

## Research Partnerships

Partnerships can be invaluable to research, as published reports documenting the issue of wage theft authored by institutions not part of the coalition are more effective in persuading decision-makers.

- **Policy and research entities.** Continue to engage policy and research entities beyond the background research stage. A research or policy institute can be a valuable ally or partner in a wage theft coalition and can help draw attention to local data and the impact of wage theft on workers and the overall economy.
- **Universities and academics.** College and university professors may have knowledge of ongoing studies or existing research that is useful in the early stages of your campaign. Developing relationships with local academics might also lead to more significant research assistance down the road. Individual professors who are supportive of the campaign goals or engaged in related research may be able to produce original campaign-related research, or even design a course with an experiential or research component structured around your wage theft campaign. This type of arrangement enables a professor to focus concentrated time on your research, while offering students a unique on-the-ground learning experience. Keep in mind, though, that academics often have long timelines that do not always match the tempo of a campaign calendar. Local law school clinics, where law students provide legal assistance under the direct supervision of faculty, may offer legal research and other assistance at no cost. University labor education centers are similarly valuable resources for research and advocacy assistance. Furthermore, the participation of a college professor, academic center, or law school clinic can serve as a validator for the campaign more generally. Professors may also be aware of sources of funding for research that are less well-known outside the academic world.
- **Keep an eye on major players.** While conducting background research, keep an eye out for prominent individuals who could play a role in your campaign strategy. Who has spoken publicly about wage theft or related issues like minimum wage and paid sick leave? What has been the primary focus on their engagement with workers' rights? The answers to these questions may enable you to involve some new and well-known allies in your campaign.

## Research Toolbox

## RESOURCES

## National Research and Policy Organizations:

- [National Employment Law Project](#)
- [Economic Policy Institute](#)
- [Economic Analysis and Research Network](#)
- [Demos](#)
- [Center for Popular Democracy](#)

## Wage Theft Statistics:

- [“Broken Laws, Unprotected Workers,”](#) National Employment Law Project
- [“Employers steal billions from workers’ paychecks each year,”](#) Economic Policy Institute.
- [“Wage Nonpayment in Colorado: Workers Lose \\$750 Million Per Year,”](#) Colorado Fiscal Institute

## Research Methods and Strategies:

- [Research for Organizing](#), Urban Justice Center Community Development Project
- [State Voices Network](#) for opportunities for survey collaboration
- [State Sample FOIA Request Letters](#), National Freedom of Information Coalition
- Opponent Research:
  - [Dirt Diggers Digest Guide to Strategic Corporate Research](#), Corporate Research Project
  - [Subsidy Tracker](#), Good Jobs First
  - [Violation Tracker](#), Good Jobs First
  - [Center for Media and Democracy](#)

# **Winning The Campaign: Communications**

An effective communications strategy is a key component of a successful wage theft campaign. In general, the role of communications is to educate policymakers and the public, build support about an issue, convey a sense of urgency, signal opportunities for action, and shape an overall narrative. More specifically, a successful communications strategy around wage theft should do the following:

- Amplify your message about wage theft to build momentum for your campaign
- Reach affected workers and potential allies to bring new people into the campaign
- Influence decision-makers
- Position your organization as a leader in combatting wage theft
- Demonstrate the political importance and salience of wage theft as a galvanizing issue

As you develop your communications strategy, you should also answer the following questions:

- What is the overall narrative of the campaign?
- How will your communications strategy draw attention to the problem of wage theft and highlight your proposed solutions (campaign demands)?
- Who do you need to reach and how will you reach them?
- How will you use individual stories to generate support and coverage?

After sharing a few examples of effective messaging around wage theft, this section will walk you through shaping an overall narrative, crafting your message, deploying your message, developing communications materials, and interacting with the press.

The term “wage theft” is itself a brilliant example of well-crafted communication. It was first coined by the founding director of Interfaith Worker Justice, Kim Bobo, in her 2008 book *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid—And What We Can Do About It*.<sup>35</sup> It was an effective way to tie together a number of related labor violations (the nonpayment of wages, failure to pay minimum wage, employee misclassification, etc.) as a form of robbery, and the first time wage theft was framed as a crime warranting investigation and punishment.

The Healthy Nail Salons campaign, led by Adhikaar for Human Rights and Social Justice, provides us with a more recent example of the powerful impact of well-crafted messaging. Adhikaar is a Queens-based community organization serving the Nepali-speaking community in New York City. Its Healthy Nail Salons campaign has helped nail salon workers take legal action to fight wage theft, successfully won back stolen wages, and fought for healthy nail salon legislation in the New York City council.<sup>36</sup> In 2015, the *New York Times* ran a feature on nail salon workers that elevated a number of moving personal stories from salon workers and brought life to their challenges as victims of wage theft.<sup>37</sup> Several days later, Adhikaar released a groundbreaking report documenting long hours, low pay, health and safety risks, and immigration and language barriers in the nail salon industry.<sup>38</sup> Shortly thereafter, Governor Andrew Cuomo announced emergency protection for nail salon workers, a legislative and regulatory plan that included a number of Adhikaar’s proposed solutions. Governor Cuomo also convened a multiagency taskforce to investigate nail salons, institute new rules to protect salon workers from dangerous chemicals found in nail products, and inform workers of their rights.<sup>39</sup> In New York City, Mayor de Blasio announced that the NYC Department of Consumer Affairs would investigate the nail salon industry and inform workers of their rights.<sup>40</sup> Adhikaar’s organizing,

advocacy, and education work laid the groundwork, but obtaining in-depth coverage of the issue by a prominent news outlet was critical in galvanizing the city and state to act.

## Shaping an Overall Narrative

When you develop your communications strategy, you should consider the overall narrative you want to craft.

- This narrative should be based on your campaign strategy, including the problems you have identified, the solutions you are proposing, and your win theory.
- The narrative should:
  - Include individual stories that highlight the injustice of wage theft and make the issue come alive
  - Communicate shared values that anchor your community
  - Convey an urgent challenge that you are calling on your community to respond to
  - Include a specific call to action
- It should also connect the “head” and the “heart,”<sup>41</sup> engaging people in both the intellectual and emotional reasons why they should support your wage theft campaign.

## Crafting Your Message

### Define the Problem

An example of a topline message, or the main message you want to convey, is that wage theft is an urgent crisis that hurts us all. By emphasizing and unpacking this message, you can reach your audiences more effectively.

- **Wage theft is an urgent crisis.** Wage theft is an urgent matter affecting real people: when workers are denied their due wages, they are unable to meet basic survival needs for themselves and their families. Wage theft is also rampant. As often as feasible, include a line in your communication materials about the prevalence of wage theft.
- **Wage theft hurts us all.** Effective campaigns have framed wage theft as a problem that not only harms workers and their families but also the broader community, the economy, and responsible businesses. When wages are stolen, our economy suffers losses in consumer spending and tax revenue. High road employers who follow the law are undercut by those who cheat and steal from workers.
- **Law-abiding employers won’t face new burdens.** It is also strategic to emphasize that law-abiding businesses have nothing to fear, as cracking down on wage theft only impacts the bad actors that hurt all of us.
- **It’s a moral issue.** The moral case—that this is theft and should not be tolerated—can be especially powerful when delivered by members of the faith community.
- **Wage theft hurts workers across the spectrum.** An intentionally diverse set of “faces” for the campaign, i.e. a range of impacted workers, will help show that wage theft is an issue that affects us all, not just some groups of workers in specific areas.

Sample Messages:

“Because her wages were stolen, Susie May can’t put food on the table, buy school supplies for her children, or pay her rent. And when the worst businesses steal wages and break the law, they undercut responsible business owners, like Johnson’s Grocery, who play by the rules and pay workers fairly.”

“Law abiding businesses are at a competitive disadvantage against businesses that steal workers’ wages. Everyone in our communities is hurt when workers don’t have enough money to provide for basic things like groceries and medical care.”<sup>42</sup>

### Define the Solution

Your communication materials should always highlight your campaign demands. An effective message not only communicates the urgency of the problem, but also clearly articulates a course of action.

Sample Solutions:

“Increased funding will lead to stronger enforcement of wage and hour laws, which will help prevent wage theft and protect workers, our economy, and responsible businesses.”

“Putting a real price tag on wage theft is the only way to prevent it—protecting workers, our economy, and responsible businesses.”

### Anticipate the Opposition

As you develop your message, think ahead to what your opponents will say and anticipate their arguments in your communication strategy and materials. For example:

- Will the opposition say that wage theft is only an urban issue and therefore statewide burdens on business do not make sense? Make sure you are equipped with stories from workers in suburban or rural areas.
- Will the opposition frame wage theft as a problem of “illegal” immigrants? Make clear that undocumented workers *are* at risk, but include stories that show how workers of other backgrounds are also affected. Arm yourself with an arsenal of stories from workers across the racial, economic, geographic, and occupational spectrum.
- Will business groups trot out a few “mom-and-pop” shops to complain that your proposal will kill small business with onerous regulations? Talk about common sense rules that level the playing field for the responsible businesses of our communities who struggle to compete with the bad apples.
- Will the opposition complain that this is just an attempt by plaintiffs’ lawyers to get rich by drumming up frivolous litigation? Include stories about workers who go to the Department of Labor because there are no lawyers to take their case, and how these proposals will help government do its job better.

## Examples of Wage Theft Messaging:

- Employment Justice Center’s messaging resource, “[Protecting Wages: The EJC Fights Wage Theft in D.C.](#)”<sup>43</sup>
- CPD’s summary of best practices for economic justice messaging (see [Appendix](#))

### Develop a Robust “Story Bank”

Prepare testimonies that demonstrate the credibility of your campaign and bring the issue of wage theft alive by telling human stories. You can collect, vet, and edit testimonies from a variety of campaign supporters, including workers, small business owners, unionized businesses, faith leaders, and objective commentators (researchers, policy experts, etc.). Be sure to collect testimonies that illustrate all of your campaign’s main talking points.

Taking the time early in the campaign to craft these testimonies will help you prepare a variety of speakers so that when asked by the press, you can quickly connect them to the appropriate spokesperson. The testimonies, either in whole or in part, can be used in various ways including in press releases, as background for reporters, in conversations with legislators, or as the basis for legislative testimony. It is helpful to gather testimonies in multiple languages and/or translate your story bank into relevant languages so they can be used with both English and non-English media.

### Use Accessible Language

A vocabulary “cheat sheet” is a helpful tool for translating technical terms into concepts that are accessible to a broader audience. “Increasing penalties and liquidated damages” could, for instance, be expressed as “raising the price tag on breaking the law.” A wage lien could be described “as a way to prevent the worst businesses from hiding their money to avoid paying workers.”

Also remember that, in most instances, your job is to make the case for *why* you need to change the law, rather than to explain the technical details of what the change actually is.

## Deploying Your Message

### Attract Media Attention

- **Present a unified message.** A unified message can send a strong signal that a well-organized fight to end wage theft is underway, particularly when delivered by a diverse campaign coalition comprised of, for example, community organizations, faith-based groups, economic experts, unions, and business groups. Elected officials and policymakers are more likely to act when faced with a broad and diverse constituent base that is building momentum for reform.
- **Develop “newsworthy” events.** A successful campaign will generate ongoing press coverage throughout its duration, even during the nascent stages. To secure continued media attention, plan a series of events that can be pitched as newsworthy stories at different points along the campaign timeline. These events can highlight both inside strategies of advocating with elected officials and outside strategies of building broad support. For instance, the

coalition might have a legislative briefing in the statehouse about their bill to strengthen wage theft prevention mechanisms, and then a direct action outside an egregious employer's place of business.

When planning events:

- Identify a location for your event that highlights your campaign narrative, but should also be relatively close to media outlets or logistically convenient for reporters to travel to.
- Consider what your props and visuals will look like on camera, and make sure they are visible to the media team.
- Identify and prep two to four impacted workers or staff who have been trained as spokespeople and can give short interviews to reporters.
- Alert the press in advance of the event. Two days in advance is a good rule of thumb, but you might also want to resend your press advisory the morning of your event because many news outlets decide day by day where to send reporters.



Credit: Make the Road New York

See below for an example of a news article about a wage theft event, pitched as a news hook about two bad employers, but to draw attention to the broader wage theft campaign.

### Example of a Newsworthy Event: "Queens restaurant workers struggling with wage theft"<sup>44</sup>

February 21, 2014

By Tobias Salinger/Daily News

Wait staff and cooks in two Queens restaurants say their wages are rotten.

Restaurant workers at Elias Corner Restaurant for Fish in Astoria and Aqui en Bella Puebla in Jackson Heights often go without minimum wage or overtime, according to lawsuits.

Employees at the eateries are waiting for judgment even though the state resolved 6,794 wage complaints last year.

"These violations are rampant and there's just not enough enforcement either on the public level or the private level to make a huge dent," said Tsedeye Gebreselassie, staff attorney at the National Employment Law Project.

New York City's 300,000 low-wage workers lose \$18.4 million per week in unpaid wages, according to the advocacy group.

Three former employees of Elias Corner allege their boss Ilias Sidiroglov owes them \$350,000,

according to a lawsuit filed last year in Brooklyn Federal Court. In 2003, Sidiroglov shelled out \$460,000 in lost wages to workers.

"My only conclusion is it makes financial sense for him to handle these lawsuits every few years rather than comply with wage laws," said lawyer Justin Zeller, who represents two cooks and a waitress.

Sidiroglov declined to comment.

About three miles away in Jackson Heights, former waitress Claudia Leon says Aqui en Bella Puebla paid her just \$300 for a 48-hour week.

"The owner would say that, 'this is one of the best restaurants in the area, and if you don't like it, you can go somewhere else,'" said Leon, 36.

Leon is currently pursuing a lawsuit against owner Argimiro Hernandez and planning a protest outside the restaurant with Make the Road New York. She has yet to file the suit.

Hernandez says she received her full wages.

"No, she's lying," Hernandez said.

- **Release compelling statistics.** Leverage available data to show that billions in wages are stolen each year and to highlight the negative impact on workers, responsible businesses, and the economy. Key data points and statistics should become a consistent part of the campaign message and incorporated into briefings and meetings with elected officials, allies, coalition partners, and other target audiences, but should be used in conjunction with powerful stories and testimonies about the impact of wage theft on real people.

As mentioned previously, if local data does not already exist, a credible research or policy group may be able to help with a report or policy brief. Releasing a report may be enough to generate media coverage on its own, but can be even more powerful if the report is released in conjunction with another event that highlights wage theft, such as a protest at an employer who owes workers unpaid wages, or a lobby day at the state capitol.

### Examples of Wage Theft Statistics:

- See the [Employment Justice Center's statistics](#).<sup>45</sup>
- See the [UCLA Labor Center's statistics](#).<sup>46</sup>

- **Leverage the current political landscape.** Capitalize on related news events, which might present opportunities to deploy your own message. For example:
  - When a settlement or lawsuit alleging wage theft makes the news, issue a press statement noting the importance of strengthening the laws to prevent such abuse.
  - When official unemployment statistics are released, publish an op-ed that discusses the need not only to create more jobs, but also to ensure that new jobs actually deliver the promised wages.
  - When there is a minimum wage increase, make the case that a higher minimum wage will only be meaningful if we crack down on wage theft, because unscrupulous employers pay less than the minimum wage anyway.

### Example of Leveraging the Political Landscape: DC Wage Theft Coalition

Many members of the DC Wage Theft Coalition, led by the EJC, had previously been engaged in a fight to raise the minimum wage. The minimum wage increase was passed in 2012, three months before the WTPA was introduced, allowing the coalition to capitalize on this momentum. One of the key talking points from the minimum wage fight

was that laws were not being adequately enforced, and the coalition was able to leverage the broader conversation about enforcement to its advantage. Many elected officials were also up for reelection, so the coalition succeeded in making wage theft a campaign issue.<sup>47</sup>

- **Target top offenders.** To highlight the scope and severity of the wage theft crisis, target specific employers who have stolen large amounts of wages and/or are repeat offenders. You or your allies might already know the worst actors in your industry or geographical area. If not, you can file freedom of information requests of the local department of labor to learn of employers found guilty of wage theft throughout your state. Highlighting top offenders can also provide a tool for dispelling oppositional claims. Opponents may assert, for example, that it is only small mom-and-pop shops that are inadvertently underpaying workers. By underscoring rampant wage theft within major corporations, you could undercut that claim. Elected officials might also interpret wage theft to be purely a “big city” problem. Finding targets across your state with a track record of wage theft would dispel that myth.

### Example of Targeting Top Offenders:

See the Center for Popular Democracy’s report, [“By A Thousand Cuts: The Complex Faces of Wage Theft in New York,”](#) which highlights egregious employers.<sup>48</sup>

## Example of Targeting Top Offenders: Community Labor United and the Good Jobs, Strong Communities Coalition<sup>49</sup>

In 2014, Community Labor United (CLU) and the Good Jobs, Strong Communities Coalition won Boston's Wage Theft Executive Order. The order requires employers who wish to contract with the city of Boston to report any history of wage theft violations within the last three to five years. If violations exist, the employer must obtain a wage bond equal to one year's worth of wages for all employees. CLU has also passed wage theft ordinances in several other multiple municipalities in Massachusetts, including Chelsea, Cambridge, Quincy, Worcester, Malden, and Northampton, and continues to work towards passing them in other cities and towns.

The coalition continues to advance an ambitious agenda to build on this win. For example, they are seeking to address the misclassification of workers as independent contractors with the Act to Prevent Wage Theft and Promote Employer Accountability, which clarifies who is ultimately responsible for upholding fair labor standards at any given workplace.<sup>50</sup> In 2016, the legislation passed in the Senate 38-2.

A key tactic has been to highlight bad actors who are responsible for subcontracting and misclassifying workers in order to ensure up-the-chain accountability "from the companies that initiate the demand for the work, to the contractors coordinating the project and the subcontractors who directly hire and supervise workers."<sup>51</sup> They have pressured some of the worst-offending companies by issuing "community citations," physical notices posted to the sites of lead companies to ensure they know about the violations committed by their subcontractors. This has helped build a narrative around wage theft, create momentum for the campaign, and garner press attention. In addition, since the primary employer only can be liable if they are aware that the subcontractor is violating the law, it is a necessary precondition for liability later down the road.

For more information, see [stopmasswagetheft.org](http://stopmasswagetheft.org).<sup>52</sup>



Credit: Community Labor United and the Good Job, Strong Communities Coalition

## Demonstrate Credibility

- **Obtain support from influential figures.** Announcing public support from influential labor unions, economists, business groups, clergy, and other public figures can keep your campaign in the news and demonstrate growing support to address the wage theft crisis. This can mean formal endorsements and/or public figures joining you at a rally or other events.
- **Obtain endorsements from editorial boards.** Elected officials and policymakers tend to pay close attention to the editorial boards of top local newspapers, so it is valuable to your campaign to have editorial boards speak out against wage theft. You can provide them with materials that highlight your campaign messages and key statistics. Editorial boards are often willing to meet with advocacy groups on major policy issues. You can reach out to introduce yourself to the editor, explain why your issue is important, and request an in-person meeting. You might also adopt this approach with other columnists, opinion writers, analysts, or local bloggers to see if they will endorse or highlight your campaign goals.

### Examples of Editorial Board Endorsements:

- [“Proposed Bill on Fighting Wage Theft is Strong but Needs More Precision,”](#) Los Angeles Times Editorial Board<sup>53</sup>
- [“Wage Theft Across the Board,”](#) New York Times Editorial Board<sup>54</sup>

## Developing Communications Material

Communications material are important not only for purposes of generating momentum and sharing a message, but also because press can also help you get meetings with elected officials and move targets. They can be used to educate elected officials on the issue of wage theft, move them to action, and also reward them for strong leadership.

### Printed Media

Media advisories and press releases

- **Media advisories** are sent out in advance of a campaign event (press conference, action, etc.) and offer only basic details on who, what, where, and when. They are used by reporters and editors to plan news coverage. An advisory should be no more than half a page.
- **Press releases** are sent out after a campaign event and they read like a news story. They should have a strong headline, offer the key highlights in an opening paragraph, and then segue into quotes from your campaign leaders, workers, and allies. Reporters should be able to write their news story just from the release itself. In all materials for the press, be as clear and concise as possible, and deliver the most important news upfront.

## Examples of Media Advisories:

- [“Wage Theft Victims Rally in Protest of Stolen Pay,”](#) Employment Justice Center<sup>55</sup>
- [“News Report Shows Wage Theft Impacts Workers’ Health,”](#) UCLA Labor Center<sup>56</sup>

## Examples of Press Releases:

- [“Wage Theft Costs American Workers as much as \\$50 Billion a Year,”](#) Economic Policy Institute<sup>57</sup>
- [“Mayor of Boston Issues Wage Theft Executive Order,”](#) City of Boston<sup>58</sup>

Op-ed articles and letters to the editor

- **Op-ed articles** are opinion articles, usually 500–800 words, written by a worker or a leader or ally of your campaign. Op-eds present an argument that defines the core problem of wage theft and offers your proposed solution. Most local and statewide papers accept op-ed articles.
- **Letters to the editor** are much shorter—usually 100–150 words—and offer responses to news articles. For example, when a news story on wage theft is published, you can respond with letters to the editor from workers who reinforce that wage theft is a real problem in your community. Letters to the editor also allow you to counter coverage that lifts up the opposition’s position.
- Guidelines to submit op-eds and letters to the editor are generally available on a publication’s website.

## Example Op-Ed Article:

- [“Honoring Labor Day by Rooting Out Wage Theft,”](#) Eric Schneiderman in Huffington Post<sup>59</sup>

## Examples of Letters to the Editor:

- [“Letter to the Editor: Wage-theft by employers need legislative remedy,”](#) The Washington Times.<sup>60</sup>
- [“The moral imperative to end wage theft: Guest opinion,”](#) *The Oregonian*<sup>61</sup>

## Social Media and Online Communication

Digital platforms are an important way to communicate information about your campaign, notify followers of victories and developments, and ask supporters to take action. Consider developing several of the following tools as part of your digital strategy, being mindful of the resources required to maintain them. For example, keeping one account up-to-date might be preferable to having several poorly maintained accounts.

- **Campaign and existing organizational email lists.** Building a database of supporters and allies is crucial for keeping people informed about your campaign and mobilizing them to take action at key moments. Ask for email addresses at every opportunity (campaign actions, meetings, etc.).
- **Website.** A website with strong visuals and persuasive messaging can concretize your message and get the word out about your campaign. All campaign press releases, email blasts, and social media content should include a link to your website, and you should be sure that someone is tasked with maintaining and updating the site. In general, a campaign page that is integrated within your organizational website can help build your organization’s reputation and strengthen your other campaigns. You may consider creating a separate campaign website if, for example, you are part of several coalitions and you want to differentiate the wage theft coalition demands. For an example, see the [Good Jobs, Strong Communities wage theft website](#).<sup>62</sup>
- **Facebook.** A Facebook page is a useful tool for supporters to share content from your campaign with their outside networks. This could include photographs, graphics, news stories, and calls to action. Facebook tends to be a very visual medium, so focus on generating visual content and keep text to a minimum. The text of Facebook posts should be succinct and action-oriented. Again, someone must be tasked with keeping the content fresh and engaging. For an example, see the [Los Angeles Coalition Against Wage Theft Facebook page](#).<sup>63</sup>
- **Twitter.** An active Twitter feed can attract the attention of reporters and elected officials, and can activate supporters at key moments in the campaign. “Twitter Actions” are often used to promote a specific action—for example, you could tweet @your governor urging them to support a bill or @specific legislators requesting that they ask a specific question in a hearing. You can also live tweet, or broadcast in real time, from a rally, hearing, or other campaign events. By using specific hashtags (#wagetheft #endwagetheft #workersrights #oureconomy #alofus), you can create and contribute to ongoing conversations. Note that Twitter is not ideal for all communication needs, since messages must be 140 characters or less. For an example, see the [Los Angeles Coalition Against Wage Theft twitter feed](#).<sup>64</sup>
- **Instagram.** Instagram is a useful tool for sharing lively and action-oriented photos from your campaign’s biggest actions and events. Images that capture a memorable event and invite a response often get the most traction. Similar to Twitter, Instagram photos are easily searchable via hashtags and usernames, and clever captions can generate “likes” and “re-grams” (shares from one user to the next). It is also easy to share visual content from Instagram to Facebook and Twitter.

### Example Tweets:

89% of fast food workers have experienced wage theft. This is why LA needs to [#EndWageTheft!](#) [#FightFor15](#)

—Fight For \$15 LA

Wage Theft is a Crime! 8 out of 10 workers in LA has experienced some form of wage theft!

—End Wage Theft LA

[@MaketheRoadNY](#) Congrats **Make the Road NY!** Your NY **wage theft** law at work protecting restaurant workers from abuse!

—ROC United

## Interacting with the Press

- **Build strong relationships with the media.** It is important to develop a broad and diverse list of media contacts (including television, radio, print, and online outlets) and to establish and maintain deeper relationships with reporters who cover topics relevant to your wage theft campaign such as politics, the legislature, the economy, or labor issues in your area. You can get to know the reporters who cover related events and/or reach out directly to relevant reporters.
- **Maintain regular communication with your press contacts.** Once you have established a relationship, send your contacts regular, interesting updates so they come to think of you as a key source. Pitch them stories and keep them abreast of big developments in your campaign, but also consider what kind of story they or their editors might find interesting. By tailoring pitches to specific reporters and outlets, you will signal that you are thinking of them and that you understand their work.
- **Provide timely and compelling news hooks.** Reporters often cannot pursue a story unless there is a clear sense of immediacy. An announcement, event, or new data can serve as “hooks” for a story, and can then provide an entry point for a broader conversation about wage theft. Reporters work on tight deadlines and accuracy is highly valued, so be sure to offer credible, verifiable information along with sources who can provide interviews in a timely fashion.

### Examples of Wage Theft News Hooks:

- Worker-led protests
- Wage theft news elsewhere
- Initiation of wage theft litigation
- New data about wage theft
- Announcement of settlements

- **Be strategic about the timing of your pitch.** The best time to reach most reporters and editors is mid-morning. To get them interested in covering a story for the next day, it is best to pitch before noon. You can do this in a short email that captures the core of the story and the sources available for interviews (workers, elected officials, others) in a single paragraph. Reporters are often asked by their editors to offer pitches in one or two sentences, so be succinct and direct in your pitch.
- **Consider exclusives and embargoed news.** Media outlets like to get a scoop, so they appreciate exclusives—the chance to cover a big story before other news outlets. Just be mindful of who you give these privileges to, and how frequently, in order to avoid alienating other media outlets. Another option is to offer news “under embargo.” This means that several key news outlets are given a story with restrictions on when they can make the news public. The outlets are able to plan for coverage for the following day, and you control the timeline. For example, you could embargo a press release on a major announcement for 6 a.m. and offer it to a few outlets the evening before so they can plan for the morning. Reporters and editors appreciate the ability to plan their coverage for the following day, rather than receiving a press release with no advance warning.

## Communications Toolbox

## RESOURCES

## Wage Theft Messaging:

- [“Protecting Wages: The EJC Fights Wage Theft in D.C.”](#) Employment Justice Center
- [“Best Practices for Economic Justice Messaging,”](#) Center for Popular Democracy (see [Appendix](#))

## Examples of Wage Theft Statistics:

- [“Protecting Wages: The EJC Fights Wage Theft in D.C.”](#) Employment Justice Center
- [“What is Wage Theft?”](#) UCLA Labor Center

## Targeting Top Offenders:

- [“By A Thousand Cuts: The Complex Faces of Wage Theft in New York,”](#) Center for Popular Democracy

## Editorial Board Endorsements:

- [“Proposed bill on fighting wage theft is strong but needs more precision,”](#) *Los Angeles Times* Editorial Board
- [“Wage Theft Across the Board,”](#) *New York Times* Editorial Board

## Media Advisories:

- [“Wage Theft Victims Rally in Protest of Stolen Pay,”](#) Employment Justice Center
- [“News Report Shows Wage Theft Impacts Workers’ Health,”](#) UCLA Labor Center

**Communications Toolbox** *(continued...)***RESOURCES**

## Press Releases:

- [“Wage Theft Costs American Workers as much as \\$50 Billion a Year,”](#) Economic Policy Institute
- [“Mayor of Boston Issues Wage Theft Executive Order,”](#) City of Boston Press Release

## Op-Ed:

- [“Offering Labor Day by Rooting Out Wage Theft,”](#) Eric Shneiderman in Huffington Post

## Letters to the Editor:

- [“Letter to the Editor: Wage-Theft by Employers Needs Legislative Remedy,”](#) *The Washington Times*
- [“The Moral Imperative to End Wage Theft: Guest Opinion,”](#) *The Oregonian*

## Social Media:

- [Good Jobs, Strong Communities Stop Wage Theft Webpage](#)
- [Los Angeles Coalition Against Wage Theft Facebook Page](#)
- [Los Angeles Coalition Against Wage Theft Twitter Account](#)

**Winning  
The Campaign:  
Legislative Advocacy**

While there are various forms of advocacy used to combat wage theft, many campaigns focus on passing wage theft legislation. Changing the law can address wage theft at a systemic level, for instance by discouraging wage theft by increasing the penalties for stealing wages, strengthening workers' legal protections, or enhancing the tools to crack down on wage theft. Many successful wage theft campaigns also combine legislative advocacy with other strategies such as targeting specific employers or whole industries through direct action or collaboration with a local enforcement agency. This section focuses on the legislative battle, providing tips for groups navigating the passage of legislation at the state and local level.

## Laying the Groundwork for an Effective Campaign

### Define your Legislative Agenda

The first step in a legislative campaign, if you have not already done so, is to decide on the specific policy demands that would achieve your campaign goals. For example, if your campaign goal is to deter wage theft by cracking down on employers, you might advocate for an increase in the damages that employers must pay when found guilty of wage theft. If you want to make it easier for immigrant workers to stand up for their rights, you might decide to lobby for broader definitions of employer retaliation. As mentioned in the introduction, there are excellent resources that can help you define your policy goals. "[Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft](#)" provides in-depth analysis of possible legal reforms to pursue as part of a wage theft campaign. Also remember that wage theft legislation can include a number of policy changes within one bill.

### Examples of Wage Theft Legislation:

- [Wage Theft Prevention Act](#), New York<sup>65</sup>
  - Quadruples penalties for wage theft
  - Protects workers from retaliation
  - Adds enforcement tools that the US Department of Labor (USDOL) can use to investigate cases and collect money owed<sup>66</sup>
- [Freelance Isn't Free Act](#), New York City<sup>67</sup>
  - Requires contracts between freelance workers and hiring parties that are worth \$800 or more to be in writing
  - Requires hiring parties to pay freelance workers on or before the date in the contract
  - Protects freelance workers against retaliation by hiring parties
  - Provides freelance workers the right to file a complaint
- Provides the right to sue in court to seek double the unpaid amount, damages for retaliation, damages for failing to enter into a written contract, and attorneys' fees and costs<sup>68</sup>
- [Wage Theft Ordinance](#), Chicago, Illinois<sup>69</sup>
  - Allows the city to revoke the business licenses of employers found guilty of wage theft<sup>70</sup>
- [Cook County Wage Theft Ordinance](#), Cook County, Illinois<sup>71</sup>
  - Similar to the Chicago ordinance, businesses convicted of wage theft could risk losing their business license and can be barred from receiving contracts with the county and property tax incentives for five years.<sup>72</sup>

## Examples of Wage Theft Legislation: *(continued...)*

- [Wage Theft Prevention Amendment Act of 2014](#), Washington, D.C.<sup>73</sup>
  - Increases penalties for employers who commit wage-hour violations
  - Provides anti-retaliation protections for workers
  - Establishes a formal hearing process with enforceable judgments
  - Provides for better access to legal representation for victims of wage theft<sup>74</sup>
- [Boston Wage Theft Executive Order](#), Boston<sup>75</sup>
  - Establishes disclosure and payroll certification requirements for all vendors doing business with the city of Boston
  - Vendors with prior wage and hour violations may be required to post wage bond equal to the sum of one year’s gross wages for all employees<sup>76</sup>
- [Maryland Lien for Unpaid Wages](#), Maryland<sup>77</sup>
  - Provides that an employee who has not been paid all wages due and owing may file a lien against certain property of their employer who owes the unpaid wages<sup>78</sup>
- [California Fair Day’s Pay Act](#), California<sup>79</sup>
  - Allows labor commissioner to place lien/levy on employer’s property to collect judgment, including for attorneys’ fees
  - Prevents abuse of corporate organizational form to evade liability: a company is liable if “substantially the same” (1) work, conditions, and managers or (2) operations, products, and customers
  - Creates individual liability for wage theft violations (can place lien on owner’s personal property)
  - Offenders with outstanding judgment must post bond to continue operating, or face a Stop Work Order or license revocation<sup>80</sup>

Examples of Educational Resources on Wage Theft Legislation (found in the [Appendix](#)):

- [Wage Theft Prevention Act Comparison of Bills and Existing Law](#) Matrix, New York
- [Wage Theft Prevention Act Comparison of Bills and Existing Law](#) Summary, New York
- [Wage Theft Prevention Act One Pager](#), New York
- [Carwash Accountability Act](#) FAQ, New York

## Understand the Legislative Process

Before you launch your legislative campaign it is important to understand the legislative process in your locality. Many of the basic components are generally the same—a bill or ordinance must be drafted and introduced, pass through committee, be approved by the legislature, and signed by the executive. Advocates will often identify a sponsor who will introduce and champion their proposed legislation, and then request additional legislators to sign on as co-sponsors. Most states have two separate legislative chambers that mirror the House and the Senate at the federal level, and legislation must be approved by both chambers or reconciled. Cities generally have one legislative body.

Beyond these basic elements, however, there can be a great deal of variation in the rules and technical aspects of the process. You should seek out answers to the following questions: What is the legislative calendar? Is there a deadline early in the legislative session for introducing all bills, or can bills be introduced throughout the session? When is public testimony permitted? How and when

are amendments introduced? How does the budget process fit in? Are there opportunities to include substantive policies in the budget process if you can demonstrate a fiscal impact?

It is also important to understand the more nuanced political realities of the legislative process. For example, can you influence which committee will review your legislation and, if so, which committee will be most supportive? At what point in the process might your bill or ordinance get stuck in limbo?

### Leverage Expertise

A good deal of relevant technical information can be found online. The New York Senate, for example, has a [website](#) describing how a bill becomes a law,<sup>81</sup> as does the [California Senate](#).<sup>82</sup>

Navigating the local political waters, however, also requires information and knowledge that you will not find online, and relationships that take time to cultivate.

- **Consider hiring a lobbyist.** Many campaigns choose to work with professional lobbyists because these individuals possess knowledge of the local political terrain and have established legitimacy and trust with legislators. Experienced lobbyists know, for example, the staff members of legislators, who can be as crucial to moving your bill as elected legislators.
- **Lean on your allies.** If hiring a lobbyist is not possible because of budgetary constraints, your campaign will have to build its own knowledge and relationships. Anyone can do this effectively if they put in the time and effort. You can start with your allies—unions, influential clergy, and community organizations might all have experiences engaging with the legislature and be able to offer unique insight and/or connect you to legislators or other insiders.

### Assess Your Strengths

In any campaign, it is important to have a clear assessment of what you can win—it's good to be ambitious but also realistic. Your ability to get legislation passed will depend on:

- 1) The political landscape (the make-up of your local or state legislative body, whether there are influential legislators willing to champion your legislation, whether you have support from the executive, what other priorities are pending that session that may detract from your effort or may provide cover so your bill passes without notice, etc.)
- 2) How much power you have (your relationship with key legislators and your ability to influence campaign targets)

The Power Analysis is designed to help you make this assessment and should have given you a clear sense of your ability to win a legislative campaign.

Whatever the substance of the legislative proposal—an unpaid wage lien, increased penalties for violators, a new reporting requirement, or a combination of several different reforms—you will need to make decisions about how comprehensive and ambitious a bill you will pursue. Some campaigns choose to focus on narrow legislation that has the best chance of passage and could open the door to other reforms in the future. Other campaigns pursue more comprehensive legislation that might require a multi-year campaign, or legislation that is less likely to pass but represents longer term goals and can help shift the public debate around wage theft and workers' rights. Either way it is important to assess your own power and to have a clear understanding of what you can win.

## Case Study:

### DC's Wage Theft Prevention Act: Determination of Political Feasibility

The campaign for the WTPA in Washington, DC followed logically on the heels of the successful minimum wage campaign the previous year, not only because many of the same coalition members were involved in both fights, but because the talking points from the minimum wage campaign could be leveraged in the wage theft fight. (For more information about this legislation, and the coalition involved in its passage, see the "[Building Your Coalition](#)" section of this handbook.)

One of the minimum wage campaign messages was that current laws were not being adequately enforced, which made space for a new conversation about the enforcement of wage theft. In addition, the minimum wage bill passed in December of 2012 and the WTPA was introduced in February of 2013, at which point a number of local positions were up for election. The timing of the election, coupled with momentum from the previous wins, enabled the coalition to make wage theft a campaign issue.

The coalition drew on a number of resources to determine that the wage theft win was politically feasible. First, the coalition had developed knowledge of the local political landscape through prior campaigns. In addition, one of the unions that was a member of the Just Pay Coalition had previously conducted inside lobbying at City Hall. The coalition also worked with the legislative aide of the Metro Washington Council AFL-CIO, who provided additional insight about political opportunities.<sup>83</sup>

## Develop Your Approach

It can be helpful to define your approach from the outset of your legislative campaign because this will impact how you communicate with legislative allies and opponents, and will shape your campaign plan. This includes defining whether you will have a predominantly "inside" or "outside" strategy.

- **An outside strategy** builds public pressure on legislators. It employs oppositional tactics that demand public accountability, and usually requires significant people power to win. When planning your outside strategy it is worth considering how your targets, your allies, and the general public might react; if you want to cultivate relationships with relevant legislators, you will want to be thoughtful about how your actions affect them. However, the reality is that oppositional tactics can be a powerful way to influence targets and advance your campaign goals. Outside tactics might include:
  - Rallies and direct actions against your campaign target
  - Media coverage on a legislator's wavering position
  - "Grinch of the Year" awards to the worst employers in your area or business organizations that have committed wage theft
- **An inside strategy** is a plan to introduce and champion legislation without a public campaign. The success of an inside game depends on an understanding of the legislative process in your city or state, knowledge of legislators' interests and concerns, and strong relationships with key legislators. If you do not have this knowledge and experience yourself, you might want to connect with an experienced lobbyist or a coalition partner who does. Inside tactics might include:
  - Small meetings with legislators and regulators

- Testifying at committee hearings
- Leveraging allies' influence with key legislators
- Most campaigns pursue a combination inside/outside strategy. Through the strategic coupling of inside and outside tactics, at times delivered by different “messengers,” you can use the legislative process to champion your bill and also demonstrate the urgency of your campaign with mounting public pressure. For example, you could line up your legislative champions and turn out several hundred people at a public hearing.

### **Case Study:**

#### **The DC Wage Theft Prevention Act—An Inside/Outside Campaign**

The DC Wage Theft Coalition pursued a number of inside and outside tactics to advance the WTPA within city council. The coalition raised the issue of wage theft at mayoral candidate forums as well as in union endorsement processes. It also met with individual council members and the Mayor's Office closer to the vote. Part of the coalition's strategy was to identify which council members the Chamber of Commerce spoke with and reach out to them immediately to make their own position known. Coalition members frequently dropped by council members' offices to ensure that there were no new unexpected amendments to the bill.

Some of these relationships with council members yielded key information that enabled EJC to anticipate the opposition. For instance, EJC got a tip that a hostile amendment was going to be raised, allowing them time to mobilize effective opposition. They also learned that a council meeting might not reach a quorum, which would delay action on the bill. The coalition generated more than 100 turnout calls to council members, ensuring full attendance.

In addition to effectively navigating the inside strategy, the coalition organized a number of direct actions and events to draw public attention to the issue and further elevate the voices of workers themselves. In the initial stages of the campaign, the coalition organized “bad actor” actions to put pressure on egregious employers. For example, coalition members held a protest at a restaurant and issued a press release about it. This tactic led to direct negotiations with the employer and a subsequent victory rally. The coalition also organized rallies before each major stage of the bill, all of which were led by a committee of workers. Each rally featured some type of creative action. At one rally, workers performed street theater about wage theft and shared their personal stories. One member of the worker committee wrote and performed an original song about wage theft and its impact. Finally, coalition members hosted public forums on the topic of wage theft. A council member that attended one of the events publicly credited the event with raising his awareness about the severity of the problem.<sup>84</sup>

## Building Relationships with Legislators

- **Set up a meeting.** The surest way to connect with a legislator is to leverage allies with existing relationships, but making a first contact can also be as simple as calling their office to schedule a meeting. Legislators often have a scheduler and, in many instances, issue specialists. Staffers are sometimes more accessible than legislators themselves, and may provide a good entry point. You can ask if the legislator has a staff person working specifically on wage theft, labor issues, or workers' rights, and request to speak with this person.
- **Do background research.** If wage theft has not been a very public issue in your area, you may still be able to determine where legislators stand by examining their voting history and public statements on related issues. For example, they may have made statements on the minimum wage or paid sick leave that could give you a sense of their likely stance.

### Make a Strong Case

- **District data.** Legislators will likely want to understand the prevalence of wage theft in their district. You could produce local wage theft data using some of the methods described in the “[Research](#)” section of this handbook. Your ability to provide district-specific data will depend on the size of the district (for the likely impact of wage theft) or having collected enough enforcement data to provide profiles of offending businesses by district.
- **Worker Stories.** Legislators are invariably moved by stories of constituents who have faced wage theft and are advocating for the bill. Putting a human face on wage theft, and particularly one of a constituent of the legislator, is a powerful way to demonstrate the human cost of wage theft and move legislators to action.
- **Polling data.** Elected officials are most influenced by their own constituency, so relevant polling data from their districts could help to make the case that wage theft is worthy of their attention. If polling data on wage theft is not available, data on a related issue or from a different but comparable district could be of use. Be forthcoming about any major limitations of your data—you are building a relationship of trust and you risk undermining that trust if you try to stretch the truth.
- **Outcomes from other jurisdictions.** Evidence from other jurisdictions that have passed similar legislation provides invaluable support for your case. If you can demonstrate positive outcomes that have resulted from the passage of wage theft legislation—or even the absence of negative outcomes—you might be able to temper a legislator's potential concerns. But beware of legislators' tendency to dismiss models from more progressive states (New York or California for instance) as relevant comparisons for their state and political landscape.

### Get a Commitment

- **Find a champion to sponsor your legislation.** The ideal legislative champion is passionate about the cause of fighting wage theft and well positioned to move your legislation forward. Finding the right sponsor might require mapping out the power relationships within the legislature, because the person most committed to the cause is not always the right choice if they are not able to forge the path to passage. In some instances, a junior “rising star” legislator looking to make a “mark” for him or herself may make an excellent choice as a sponsor. In other instances, sponsorship by a very established legislator, with extensive

and strong relationships in the legislature, may be more useful to your campaign. Analyze the relationship of potential sponsors to the leadership in their house and in their party, as those relationships can have a significant impact on their ability to move a bill. Consider, too, the relevant staff of potential sponsors. Are they at ease navigating complicated policy? Do they have good working relationships with the staff of key legislators you are hoping to get as co-sponsors?

Once you have identified a champion, that person can become an invaluable partner in deciding how to frame the issue. Should wage theft be framed as a law-and-order issue or as an important corollary to a recently increased minimum wage? Friendly reporters can also help you obtain a commitment from a champion by getting policymakers to commit on record at press conferences, meetings, or events.

While a champion can help identify which angle might help move the process along legislatively, keep in mind that this frame needs to be compatible with the campaign narrative that you and/or your coalition have already identified.

- **Offer different levels of engagement.** In addition to the legislation’s sponsor, your campaign will always benefit from additional champions who will engage in heavy lifting when it comes to the legislative process. Not every legislator will be willing or able to participate at that level, however, so you may want to provide potential co-sponsors with a “menu” of various options and levels of engagement.

Within the legislative process, you could ask legislators to:

- Sign on as co-sponsors of the legislation
- Organize or participate in a legislative hearing
- Reach out to other targets for co-sponsorship

Campaign activities for legislative supporters could include:

- Participating in a public forum or listening session
- Attending a march, rally, or other event
- Speaking at a press conference
- Writing an op-ed or provide a quote for an op-ed or blog post
- Engaging the issue via social media

## RESOURCES

See the [Interfaith Worker Justice’s guide to organizing legislative visits](#).<sup>85</sup>

## Navigating Passage

- **Continue to build legislative support.** You should plan to continue lobbying legislators throughout your campaign. You might want to focus on legislators in the following categories:
  - **Influential legislators.** Consult your lobbyist or allies with legislative experience if you don't already know who these people are. Keep in mind that this includes legislators with institutional power (the speaker, committee chairs, etc.) as well as legislators who wield influence because they have gained the respect of their peers, because they represent swing districts, etc.
  - **Caucuses.** Many legislatures have caucuses that might represent an important group of potential allies (progressive caucuses, African-American and Latino caucuses, etc.).
  - **The committee that will review your bill or ordinance.** If your wage theft bill will go through the labor committee, for example, then you will want to meet with as many members of that committee as possible.
  - **Maximize opportunities to provide public testimony.** Committees often hold public hearings as part of the legislative process. This is an important opportunity to make a strong case for your wage theft legislation. Testimony should cover all the key elements of your campaign narrative, and should come from a variety of voices: impacted workers, business owners, legal experts, labor allies, and faith leaders, among others.

### RESOURCES

See the [National Employment Law Project's 2014 testimony](#) regarding Maryland's lien for unpaid wages.<sup>86</sup>

- **Consider what might happen in negotiations.** A bill or ordinance can change significantly as it makes its way through the legislative process. One strategy is to draft a comprehensive bill with the assumption that some provisions may have to be removed in order to achieve passage. Legislative campaigns can also be coupled with budget advocacy (to strengthen wage theft enforcement, for example) and the two sets of campaign demands can exist in a dynamic relationship, for instance if you need to negotiate something away or trade one set of campaign demands for another.
- **Be prepared to respond to amendments.** When amendments to the bill are proposed, whether by friends or foes, attempt to identify the underlying concern and to think creatively. There could be an alternative to either the original text or the proposed amendment that achieves the provision's purpose and also addresses the concern.

## Alternatives to Wage Theft Legislation

Even if wage theft legislation is not feasible in the short-term, building relationships with legislators can still have important benefits for the campaign.

- A legislator could commission a local study on wage theft, producing findings that could be used to increase public awareness.
- The executive branch (e.g., mayor or governor) may also have authority to address wage theft, for example issuing regulations that provide for stronger enforcement or close loopholes under existing legislative authority or issue executive orders that better protect government contractors.
- Legislatures can also pass “message” bills and resolutions, which do not create new law but can serve to draw media attention and build public support.

You can also pursue alternative paths to legislative reform. For example, other workers’ rights or related bills may be moving forward that could incorporate some wage theft provisions.

### Example of an Alternative to Wage Theft Legislation:

The Kentucky Equal Justice Center was able to collaborate with allies to include a treble damages wage theft provision in the 2013 [Human Trafficking Victims’ Rights Act](#).<sup>87</sup> While the enhanced penalties are only triggered when elements of

human trafficking are also present, the inclusion of wage theft claims in these cases can serve to provide documentation and education around the issue of wage theft, while providing actual remedies to victims of human trafficking.

### Case Study:

#### Maryland’s Lien for Unpaid Wages

The Maryland Lien for Unpaid Wages, which took effect in 2013, established a procedure by which an employee can attach a lien to the real or personal property of an employer for the amount of unpaid wages claimed before a final judgment has been entered against the employer. This lien prevents employers from transferring or otherwise hiding their assets in anticipation of a judgment, or simply ignoring workers’ efforts to collect on a judgment. For more information on Maryland’s Wage Lien, see Maryland’s Department of Labor, Licensing, and Regulation at [dllr.state.md.us](http://dllr.state.md.us).<sup>88</sup>

[The Public Justice Center’s](#) (PJC)<sup>89</sup> Workplace Justice Project and key allies led the campaign to pass the wage lien bill. After failing in its first year, Maryland’s wage lien law passed with surprisingly



A worker who recovered his wages under the Wage Lien Law.  
Credit: Public Justice Center

little controversy in its second year, when there were two other important workers' rights-related bills—minimum wage and paid sick leave—before the legislature. The fact that Maryland law already contained 23 other types of liens aided the drafting of the legislation and helped neutralize the opposition. The bill that ultimately passed was modeled on the pre-existing state contract lien, which had been upheld in court as providing sufficient due process to the property holder.

Numerous factors contributed to its passage. A professional lobbyist offered expert advice and advocacy, and the bill sponsors provided effective support for the bill. After it failed to pass in its first year, advocates reframed the lien as comparable to a contract lien (instead of comparing it to a mechanic's lien, which is more cumbersome and had proven less effective the year before) and reintroduced it in a committee that had more experience with lien laws.

Strategic steps were also taken to neutralize anticipated arguments against the bill. One such argument was that employers might have their property encumbered by liens attached in relation to frivolous claims. A provision was added to protect employers by allowing the court to award court costs and reasonable attorney's fees in the event that a claim is found to be frivolous. Advocacy for the bill also stressed the impermanence of the lien, highlighting that it is a "temporary hold" on property until the outcome of a dispute is decided. Just before the introduction of the bill, the *Baltimore Sun* published an article about wage theft that explained the proposed wage lien and included a quote from the Maryland Chamber of Commerce stating that law-abiding businesses are at a competitive disadvantage when forced to compete with companies that violate wage and hour laws. Advocates also worked with the *Baltimore Sun* to provide worker stories exemplifying the need for a new tool for wage theft.

Campaign research was used effectively to support lobbying efforts. Professional polling produced strong evidence of popular support for new wage theft remedy. Meanwhile, the Immigrant Rights Clinic at the University of Baltimore School of Law helped research and draft a report on the scope of wage theft in Maryland and the challenges to collecting unpaid wages. A Freedom of Information request to the state wage and hour enforcement agency, the Department of Labor, Licensing and Regulation (DLLR), produced statistics revealing low rates of collecting on DLLR's orders to pay unpaid wages. These numbers provided the basis for a forceful argument that the bill would aid both the government and the private bar in enforcing state labor laws regarding wages and hours.

The DLLR and NELP submitted testimony in support of the bill, as did workers with powerful stories about their experiences as victims of wage theft and their inability to collect on judgments against their employers. Testimony emphasized that, rather than increasing litigation, the wage lien process would encourage employers to settle claims quickly to avoid the lien and would thus reduce lengthy, costly litigation over relatively small sums.<sup>90</sup>

## Legislative Advocacy Toolbox

## RESOURCES

## Wage Theft Policies:

- [“Winning Wage Justice: An Advocate’s Guide to State and City Policies to Fight Wage Theft,”](#) National Employment Law Project

## Wage Theft Legislation:

- [Wage Theft Prevention Act](#), New York
- [Freelance Isn’t Free Act](#), New York City
- [Wage Theft Ordinance](#), Chicago
- [Cook County Wage Theft Ordinance](#), Cook County
- [Wage Theft Prevention Amendment Act of 2014](#), Washington, DC
- [Boston Wage Theft Executive Order](#), Boston
- [Maryland Lien for Unpaid Wages](#), Maryland
- [California Fair Day’s Pay Act](#), California

## Examples of Educational Resources on Wage Theft Legislation (found in the Appendix):

- [Wage Theft Prevention Act Comparison of Bills and Existing Law](#) Matrix, New York
- [Wage Theft Prevention Act Comparison of Bills and Existing Law](#) Summary, New York
- [Wage Theft Prevention Act One Pager](#), New York
- [Carwash Accountability Act FAQ](#), New York

## Wage Theft Provision:

- [Human Trafficking Victims’ Rights Act](#), Kentucky

## Navigating Passage:

- [“How to Organize a Delegation,”](#) Interfaith Worker Justice
- [Testimony on Maryland Wage Lien](#), National Employment Law Project
- How a Bill Becomes a Law in [New York](#), New York Senate
- How a Bill Becomes a Law in [California](#), California Senate

# **Implementation:** Strengthening Enforcement

As wage theft campaigns succeed in increasing the legal consequences for employers who break the law, the successful enforcement of new laws or policy is equally critical.

In recent years, advocates have begun to analyze and collect best practices in agency enforcement efforts against wage theft.<sup>91</sup> For example [Just Pay: Improving Wage and Hour Enforcement at the United States Department of Labor](#), developed by NELP for the Just Pay Working Group, offers recommendations for improvements to the USDOL.<sup>92</sup> (The Just Pay Working Group was a 2009 national convening of worker centers, unions, local officials, academics, and attorneys with expertise on wage theft issues.) The USDOL and state departments of labor have also funded studies and audits aimed at evaluating and making recommendations regarding enforcement practices.<sup>93</sup>

It is important to consider these best practices because relatively minor adjustments in agency practice can yield dramatic improvements in their effectiveness and increased recovery of stolen wages. This section shares some considerations from the field that can inform ongoing enforcement efforts and tips for how to think about equipping our state enforcement agencies with the tools, strategies, and resources needed to be effective.

One note of caution: state enforcement systems vary greatly across the country and are dependent on the local context, which includes the existing structure of the state's wage and hour laws, the resources available, the existence of community-based organizations that can support enforcement, and the political climate. In other words, administrative reforms necessary in New York, for example, which has a relatively large investigatory staff, may not make sense for a state with a smaller agency staff.

## Budget Advocacy

Strong enforcement of wage and hour laws is often hindered by the limited resources available to government enforcement agencies. Budget advocacy can be crucial during a wage theft legislative campaign, and as a new wage theft law takes effect. Some budget proposals for additional enforcement funding include:

- Increasing the state budget for investigators
- Increasing the number of investigators specifically dedicated to wage theft
- Directing fines back to enforcement agencies (Note that this has a potential disadvantage, if legislators point to this source of revenue as a reason *not* to ensure stable funding from general funds.)
- Authorizing enforcement agencies to collect investigatory and enforcement costs from employers found to have violated the law

If your campaign decides to advocate for additional resources for wage theft enforcement in your state or local budget, it is important to understand the relevant budget process. Like the legislative process, the budget process varies from place to place. However, generally speaking, the process begins when the executive proposes a budget, which is often followed by budget hearings and other opportunities to apply public pressure, and then, after a series of negotiations, the legislature passes a budget. Also similar to the legislative process, technical information about the budget calendar and approval process can likely be found online, although inside information from allies, advocates, or lobbyists who are familiar with the political reality of the budget can be just as important.

Local institutions may have knowledge of, and experience with, this type of budget advocacy. The Advocacy Institute, for example, supports the legislative advocacy of social justice and movement-building organizations in New York City and State, and has excellent resources regarding the budget and how it intersects with the legislative process. For instance, their 2015 legislative and budget maps (available in the [Appendix](#)) can serve as models for the type of information you will want to collect for your own state’s process.

## RESOURCES

Additional examples of budget advocacy resources in New York State, California, and Washington DC:

- [“A School Board Member’s Guide to the New York State Budget Process,”](#) New York State School Boards Association
- [“Influencing the Budget in California,”](#) Bolder Advocacy
- [“Budget Toolkit,”](#) DC Fiscal Policy Institute
- Just Pay Coalition Budget Hearing Talking Points in the Appendix, Washington, DC (see [Appendix](#))
- DC Employment Justice Center’s 2013 Oversight Testimony on the Department of Employment Services, Washington, DC (see [Appendix](#))

## Improving Agency Practice

There are often numerous ways to ensure more effective enforcement of new wage left laws that do not require further legislative action, but only changes to how enforcement agencies approach their work. As coalitions shift from the fight to win a law to the work of monitoring implementation and enforcement, it is important to track how the enforcement agency (typically a department of labor) is interpreting and using the new policies. Below are several ways that agencies can maximize their impact within their existing authority.

- **Targeted and proactive enforcement.** Agencies can increase their impact by targeting the industries with the highest rates of violations, and reaching the workers who are most likely to suffer violations but who may be least likely to come forward. Agencies can:
  - Identify industries with high violation rates by consulting with labor advocates and other labor standards enforcers (ensure the agency has the authority to do affirmative investigations without waiting for a complaint)
  - Conduct unannounced sweeps of particularly egregious employers, or of entire regions or industries
  - Identify high-level priorities (for example cases where large numbers of workers are involved, or priority violations, such as cases that include retaliation) and create a task force for these high-priority cases
  - Conduct workplace-wide investigations, rather than simply resolving a single worker’s complaint (confirm that there is legislative authority for the agency to do this)—this both protects claimants from retaliation, while increasing the pressure on employers to comply rather than face increased fines

- **Accessibility to low-wage workers.** Agencies can take many steps to increase their accessibility to workers most at risk for abuse, but often least likely to come forward. Agencies can:
  - Ensure quality translation for limited English proficient claimants and translation of all relevant forms into the most common languages for that state
  - Provide office hours on some evenings to make the agency more accessible to low-wage workers who often cannot file complaints during regular business hours
  - Train investigators to understand the challenges facing low-wage workers (e.g., lack of pay stubs or documentation of wages)
- **Maximizing agency impact.** Agencies can take a number of steps to maximize the impact of their work in the context of limited resources. They can:
  - Assess the full range of fines and liquidated damages against egregious employers, to increase the incentives for employers to comply at the outset (e.g., fines for record keeping violations or falsified records, rather than just fines for wages owed)
  - Investigate for the full statute of limitations period
  - Cross-refer cases to other agencies (an employer who is underpaying workers is also likely to be skirting health and safety laws, falsifying workers' compensation coverage, violating health and environmental codes, etc.)

### Case Study:

#### Increasing Private Enforcement While Increasing Revenue in California

California has taken some novel approaches to encouraging private enforcement, increasing agency revenue, and contracting community organizations to expand worker education and judgment collection operations.

#### The Problem

As is true nationwide, wage theft claims in California have an abysmal rate of collection. A study conducted by the NELP and the UCLA Labor Center, called "[Hollow Victories: The Crisis in Collecting Unpaid Wages for California Workers](#)," found that from 2008 to 2011 only 17 percent of claims for back pay and penalties awarded by the Division of Labor Standards Enforcement (DLSE) were ever collected in California.<sup>94</sup> Only \$42 million of the more than \$282 million in awards for unpaid wages issued by DLSE were ever collected from employers.<sup>95</sup> Lawyers and collections agencies often refuse to take on these claims because the potential pay-out simply does not compensate for the resource-intensive procedures involved, nor the low likelihood of success.

#### The Solution: Encouraging Private Enforcement While Increasing Revenue

Most state agencies that enforce workers' rights are too underfunded to conduct comprehensive and timely investigations of all complaints, leaving some workers waiting months or longer for assistance. Lack of resources also prevents agencies from vigorously litigating suspected violations, forcing them to settle complaints for amounts unlikely to deter future lawbreaking. California's Labor Code Private Attorney General Act of 2004 (PAGA) was enacted to help fill this gap in government enforcement capacity and provide an avenue for worker-initiated enforcement outside the wage and hour claims procedure. Under PAGA, an employee is essentially deputized to sue for penalties that could previously

only be recovered by a state agency such as the Labor Commissioner or the Attorney General. Acting as a private attorney general, the employee can file a suit pursuing civil penalties on behalf of the California Labor and Workforce Development Agency (LWDA). Importantly, PAGA suits can pursue penalties on behalf of other current or former employees of the employer, not just for the plaintiff, in a “representative action” that does not require the extensive procedural litigation of a class action.<sup>96</sup>

If penalties are awarded beyond the damages owed to the workers (for example, their unpaid overtime), the employees receive 25 percent of those fines and must turn the other 75 percent over to the LWDA. PAGA specifies that the funds turned over the LWDA are earmarked for the enforcement of labor laws and the education of employers and employees and should “not supplant the funding to the agency for those purposes.”<sup>97</sup> In other words, funds collected from PAGA suits should increase the agency’s resources but not replace public funding. Importantly, PAGA provides attorney’s fees to the employee in the case of a successful suit, thus creating an incentive for attorneys to represent employees in PAGA cases.

By providing a default penalty for all labor code violations of \$100 per aggrieved employee per pay period (double for repeat violators), PAGA dramatically increased the potential consequences of violating the law, prodding employers to take Labor Code compliance more seriously. It has also been construed to permit recovery for wage orders, including historically under-enforced health and safety standards such as California’s “suitable seating” requirement.<sup>98</sup> Since its enactment, PAGA has been amended to prevent plaintiffs from recovering for inadvertent technical violations of notice and paystub requirements, allow employers an opportunity to cure certain less serious violations, increase LWDA oversight of PAGA cases, and authorize judges to reduce penalties where appropriate. These modifications addressed employer grievances about “abuse” of PAGA by the plaintiffs’ bar (attorneys who represent workers in suits against employers), while preserving the core elements that have made PAGA a powerful tool in enforcement of workplace rights.

### **The Solution: Collaboration with Community Groups**

California’s Labor Commissioner has used some of its increased resources to contract with non-profits to provide worker education and to aid workers in collecting from employers under outstanding judgments in ways that may provide a model for other jurisdictions facing similar challenges.

In January 2013, the Labor Commissioner contracted with the Wage Justice Center, a non-profit organization in Los Angeles supported by law-student and attorney volunteers with extensive experience with collections actions against employers. Their aim was to collect on outstanding judgments issued by the DLSE. The Wage Justice Center uses innovative legal strategies—including regular mechanics’ liens clinics, which have succeeded in collecting on 85 to 95 percent of judgments—to collect on awards and to pursue bankrupt businesses, businesses that have been fraudulently transferred to another corporate entity, and employers who never actually had sufficient funds to pay the employees they hired.<sup>99</sup>

This contracting of enforcement functions to worker centers or other advocacy organizations with extensive knowledge of workers, employers, and patterns of wage theft may prove a useful trend moving forward. To be certain, organizations with trusting relationships in worker communities are well-positioned to provide access to education and other services in settings and with an approach more attuned to workers’ needs and concerns.

**Case Study:****When Collaboration Doesn't Work: Leveraging Litigation Against the Department of Workforce Solutions in New Mexico<sup>100</sup>**

Several years ago, advocates in New Mexico began to identify problems with the way the State Department of Workforce Solutions (DWS) enforces New Mexico's minimum wage, wage payment, and overtime payment laws. For example, DWS did not create bilingual materials despite the large population of Spanish-speaking workers in the state. In addition to corresponding solely in English, the agency gave workers only a ten-day window to respond to agency communications about their claims, leaving little time for workers to obtain translation services needed to pursue complaints.

Advocates and worker center partners soon discovered that cases were being closed for reasons beyond a lack of language access and that DWS had established a number of internal policies that were out of compliance with state law. For example, DWS was automatically rejecting complaints when claims took place more than a year before the complaint was made, even though the law mandated that claims can go back three years. DWS was also automatically rejecting complaints that exceeded \$10,000, claiming that workers should file these cases in court themselves. Finally, DWS was not applying the state's treble damages law, and instead never sought damages. Advocates learned of these policies by representing workers in the DWS wage claim process and by filing public records requests for hundreds of case files, which demonstrated that these policies applied to all wage claims.

In 2017, attorneys and workers' rights organizations in New Mexico—including the New Mexico Center on Law and Poverty and membership organizations Somos un Pueblo Unido, El CENTRO de Igualdad y Derechos, Organizers in the Land of Enchantment, and Comunidades en Accion y de Fe—banded together in coalition to sue DWS after efforts to persuade it to abandon these policies failed. The coalition argued that DWS's non-enforcement policies and failure to provide language access violated its mandatory statutory duty to investigate and enforce the wage statutes. The class action lawsuit, which is still pending in state court, covers any worker whose case was closed under one of the agency's illegal policies, and seeks an order permitting any worker who has experienced a violation to have their case reopened and investigated. DWS moved to dismiss the lawsuit shortly after it was filed, arguing that it has discretion as an administrative agency to adopt its policies. The judge denied this motion, ruling that the wage statutes impose a mandatory duty to investigate wage claims.

When worker cases are being closed for policy or jurisdictional reasons that appear to have no basis in law or regulation, or when enforcement agencies refuse to provide language access in a way that can be tied to claim closure, it may be worth investigating whether there is a violation in the agency's statutory duty to investigate wage and hour claims, and exploring litigation as a strategy.

**RESOURCES**

See the [Appendix](#) for an example of an informational flyer for workers regarding their rights under the New York WTPA.

### **Case Study:** **Collaborating with Local Enforcers in Chicago**<sup>101</sup>

After a two-year campaign led by the Illinois Just Pay for All Coalition, the Illinois Wage Protection Act was signed into law in July 2010 and went into effect in January 2011. The Act created some of the strongest protections against wage theft nationwide.

Along with creating increased civil and criminal penalties for wage theft, the Act focused on giving the Illinois Department of Labor (IDOL) increased authority and more effective tools for enforcement. The Just Pay for All's member organizations—including the Chicago Workers Collaborative, the Latino Union of Chicago, Centro de Trabajadores Unidos, and Working Hands Legal Clinic—worked collaboratively with IDOL to identify the main challenges to enforcement and assess how they might be overcome.

Prior to the Act's passage, if an employer chose to ignore IDOL, which occurred in 40 percent of cases, IDOL's only recourse was to close its administrative case and refer it to the state Attorney General's office for enforcement. The Attorney General would then have to file a complaint in state court and essentially begin the entire case anew, if it were to pursue the claim at all, which was unlikely given with the large number of wage theft claims and the fact that 60 percent of all claims were for less than \$3,000. In response to this, the legislation created an administrative process to allow IDOL to adjudicate claims of \$3,000 or less administratively, and to issue default judgments, including penalties of up to 20 percent when employers fail to respond. IDOL's judgments in such cases were binding and enforceable agency decisions.

The collaboration between the coalition and state agencies allowed them to draft legislation aimed at strengthening enforcement without requiring additional agency funding. In fact, the legislation increased agency resources by creating an earmarked fund with penalties paid by employers. The Act also allows those workers who prefer to forego the administrative procedure to proceed directly to state court and even to file state court claims on behalf of themselves and others similarly situated, with those who prevail entitled to attorneys' fees and costs.<sup>102</sup> This further encouraged the supplementation of IDOL's efforts with private enforcement efforts. Collaboration with the Attorney General's office informed the drafting of criminal provisions, including the inclusion of a Class 4 felony for repeat violators.

This collaboration continued into the implementation phase. Regular meetings with IDOL helped worker center members of the coalition to highlight worker needs and suggest effective regulatory language. Worker centers were involved in drafting the implementing regulations which included, for example, the right to have a representative accompany workers to investigative hearings and default proceedings.

The coalition has continued to work closely with IDOL to ensure successful implementation and enforcement, and has helped to educate low-wage workers across the Chicago area about how to access the administrative process at IDOL. In 2014, IDOL's Fair Labor Standards Division successfully recovered more than \$5.3 million in lost wages.<sup>103</sup>

This case study was adapted from a case study, "[Amending the Illinois Wage Payment and Collection Act](#)" by Alvar Ayala of the Working Hands Legal Clinic.<sup>104</sup>

**Strengthening Enforcement Toolbox****RESOURCES**

## Best Practices for Enforcement:

- [Just Pay: Improving Wage and Hour Enforcement at the United States Department of Labor](#), National Employment Law Project for the Just Pay Working Group
- “A Vision for Meaningful Enforcement,” Center for Popular Democracy, adapted from the National Employment Law Project (see [Appendix](#))

## Budget Advocacy:

- Legislative and Budget Maps, Advocacy Institute (see [Appendix](#))
- [“A School Board Member’s Guide to the New York State Budget Process,”](#) New York State School Boards Association
- [“Influencing the Budget in California,”](#) Bolder Advocacy
- [“Budget Toolkit,”](#) DC Fiscal Policy Institute
- Just Pay Coalition Budget Hearing Talking Points (see [Appendix](#))
- DC Employment Justice Center’s 2013 Oversight Testimony on the Department of Employment Services (see [Appendix](#))

## Working with Community-Based Allies:

- Informational flyers for workers (see [Appendix](#))

## Enforcement Challenges:

- [Hollow Victories: The Crisis in Collecting Unpaid Wages for California Workers,](#) National Employment Law Project and the UCLA Labor Center

## Conclusion

Across the country, vibrant coalitions are fighting against wage theft and winning major victories. They are strengthening state and local laws that protect low-wage workers from wage theft and retaliation, while at the same time building lasting coalition infrastructures and capacities within the community. This Handbook was intended to provide organizations committed to fighting wage theft with tools to help build stronger, more effective, and more powerful coalitions poised to win ever-more ambitious campaign victories. As states and localities pass higher minimum wages, the incentives for employers to skirt the law grow. So too do the incentives to “restructure” work by turning “employees” in to “entrepreneurs” who then lose hard-won protections. It will be critical for those committed to winning justice for low-wage workers to evolve our strategies, coalition infrastructure, and sophistication to protect the victories we have already won, and position ourselves to win more.

The Center for Popular Democracy operates as a hub of campaign support to a range of organizations engaged in wage theft fights around the US. We welcome the input, lessons, and stories from wage theft warriors, both to add to this resource, and expand the shared knowledge of allied organizations across the country.

For more information or to solicit support, please contact Rachel Deutsch at [rdeutsch@populardemocracy.org](mailto:rdeutsch@populardemocracy.org) or Tony Perlstein at [tperlstein@populardemocracy.org](mailto:tperlstein@populardemocracy.org)

## Appendix I: Wage Theft Landscape Analysis

The analytic framework sketched out below is framed for use by advocacy organizations to explore the what, where, how and why of a potential new campaign or initiative, and may be applied to a wage theft campaign.

When any organization considers taking on new work or building a new initiative, there are a number of relevant questions to explore. Organizations can map the current and emerging local/state landscape to make smart decisions about where and how to focus resources. Who is already in the field? What legal issues are emerging that might provide leverage? What other powerful actors (e.g., unions) have stakes in these issues, or have competing priorities?

This outline of questions and factors is designed to help groups begin this type of inquiry. Of course, this document is but a starting point – there are likely dozens of other questions relevant to your particular analysis.

### CURRENT CONTEXT IN YOUR STATE

As a starting point, sketch out your understanding of the current context for your organization's consideration of new member organizing and expansion. Some of your initial questions should include the following:

- What are recent relevant political and/or policy wins or losses?
- How are politics and demographics shifting in your state?
- What is the nature of your existing relationships with key state-wide elected officials?
- Who comprises your existing leader and member base? Is your existing base primarily online, or is it engaged in offline activity as well?
- What is the level of interest among local groups, in particular the existing local worker centers and unions, in expanding capacity/infrastructure to support new worker organizing?
- What is the level of interest from the local labor movement in tackling low-wage worker issues?
- What is the level of interest from key foundations in building capacity and strength in your state to help anchor state-wide progressive movement around a variety of issues?

### ORGANIZATIONAL GOALS AND/OR INTERESTS

Throughout the overall analysis, each organization must, of course, regularly revisit its own interest in the substance, structure, and goals of the potential campaign or initiative. Below are some questions to determine possible organizational goals.

- Does your organization seek to:
  - Win the change you envision to protect workers and ensure accountability for employers? Build the power of workers to promote, defend, and expand their rights?
  - Build the power of your organization through the leadership and participation of workers and members? Elevate the profile of the organization as a “key player” on the local, regional, state, or national stage?
  - Elevate the role of the organization as leader or expert on the particular issue?
  - Take advantage of strategic opportunity in the field?
  - Reach and integrate a new constituency within existing organizational framework?
  - Build new infrastructure (i.e. a new component to the existing organization, a new coalition, or wholly new entity to house the work)?
  - Build new or deeper relationships with other organizations?
  - Generate resources (foundation funding, grassroots funding, etc.)?

### INDUSTRY & SECTOR ANALYSIS

New initiatives often focus on particular sectors or industries that offer strategic advantages. (For example, particular sectors or industries may be growing, deeply rooted and hard to relocate, feature rampant legal violations, etc.) Some recent worker organizing initiatives have focused, for example, on car washes, fast food restaurants, the logistics industry (warehousing), domestic workers, home care workers, and more. Whether or not an organization intends to organize members in a particular industry, or more broadly around issues, it is helpful to analyze the industries in the region. Below are but a few of the questions to consider when analyzing the region's economy and key industries.

- What are the industries or economic sectors in the region that are:
  - Established and core for the region?
  - Expanding and growing?
  - Heavily or modestly unionized, and by whom?
  - Profitable and/or have a large market share (so have the resources to improve conditions and wages)?
  - Low wage?
  - Noncompliant with minimum wage and overtime laws, environmental regulations, consumer protection laws, or other existing laws?
- Are there industries or sectors in transition, that are:
  - Being privatized?
  - Facing increased subcontracting?
  - Shifting to use of temp agencies?
  - Consolidating (e.g., banking)?
  - Fragmenting?
- Are there industries that are dominated by:
  - Workers of color?
  - Women?
  - Immigrants (documented and undocumented)?
- Are there industries that are the subject of existing attention or mobilization (e.g., the financial sector)?
- Are there industries or sectors that contract with or do business with local or state government? Are there potential campaigns for growing sectors that would require an expansion of public employee bargaining rights such as in homecare or childcare?

Related to structural economic questions, you might explore whether “workforce development” issues (rebuilding career ladders in currently deskilled or low-wage jobs, ensuring public monies are spent to create quality living-wage jobs, etc.) offer potential organizing, advocacy, or other hooks for work. These issues may be tied to a particular industry, or cut broadly across sectors in the area. In addition to connecting to structural economic issues, a workforce development focus may open sources of funding that can be used to support/subsidize low-wage worker organizing in general.

## EXISTING LEGAL FRAMEWORK

Existing laws provide points of leverage in a campaign. High-profile litigation or government enforcement actions can draw public support, media attention, government scrutiny, and create economic incentives for an industry to improve industry conditions. It is helpful to consider both the potential substantive issues relevant to an industry or worker population as well as the strategies that may be appropriate. Below are a number of questions to ask as you assess substantive legal issues and appropriate strategies.

### Substantive legal issues

- What minimum wage and overtime laws (under-payment or nonpayment of wages; being forced to “clock out” but continue working without pay; misclassification of workers as “management” or “independent contractors” and improperly exempt from overtime pay; etc.) are being violated?
- Is there discrimination occurring (typical categories, as well as based on criminal records in some jurisdictions)?
- Are there workers who could qualify for U visas? (Undocumented workers who help government officials investigate an enumerated crime may be eligible for a visa to regularize their status.)
- Has there been fraud against the government (for example, nonpayment by employers of payroll taxes or unemployment or workers’ compensation premiums)?
- Are there other non-labor related legal violations, such as:
  - Consumer laws?
  - Tort or personal injury?
  - Environmental regulations?

### Strategies

- Should you pursue private litigation (either through a legal services office or private law firm, or through individual actions or class actions)?
- Should you pursue administrative advocacy? Depending on the nature of existing legal violations, you may be able to build a component

of a campaign around advocacy with/against the state or local enforcement agency to do a better/more strategic job enforcing existing laws.

- Should you engage in budget advocacy?  
As a piece of a campaign, it can be useful to include budget advocacy for increased resources to enforcement.
- How do you plan to engage press and media?  
Depending on the target, public pressure through earned media and new media can help force a beneficial settlement, align political players against a bad actor, or push a public agency to act on behalf of its constituents.
- How can you leverage direct action?  
Engaging members and supporters in mobilizations and direct activity to create a crisis and force a settlement or generate additional public attention.

## EMERGING OR RIPE LEGAL ISSUES

Organizing around local or state policy changes is an important way to build support for the changes you're trying to win. Below a few of the many considerations when taking on policy work.

### Scope of policy work, including state versus city level legislation

- Which provides better tools to fix the problem? (Cities often have narrower authority than the states.)
- Do you have the resources to mobilize at the state level for particular legislation?
- How easy will it be to integrate worker or member leadership in the campaign? (For example, trips to the state capitol are challenging for members outside of major metropolitan areas.)
- What other potentially competing proposals are pending that session?

### Narrow vs. broad legislation

- What are pros and cons of moving legislation targeted just to a particular industries, for example, versus legislation that is more broadly applicable to workers?

### State-specific context

- How recently have major cities in your state passed or amended laws in the area you are considering?
- What legislation has been introduced and has it moved? Why or why not?

In terms of substantive issues to consider, there are many. Included here are a few:

### Regulatory fixes/enforcement re labor standards

- Does it make most sense to pursue:
  - Local wage theft regulation?
  - State wage lien bill (which permits worker to obtain a "lien" for the wages owed in the employer's personal or real property prior to winning judgment in court; game-changer on collections)?
  - A state law that permits workers to sue "up the chain"?
  - Regulation of scheduling/forced part-time? (This prevents employers from last-minute changing workers' schedules, which is major problem in retail and restaurants.)
  - Temp agency regulation?
  - Fixes on subcontracting?
  - Anti-discrimination protections for credit history? For unemployed status? For criminal history?

### Substantive/new rights

- Do you seek to expand rights in the areas of:
  - Paid sick?
  - Minimum wage?
  - Living wage?
  - Child Care?
  - Restoring a fair workweek?

### Non-labor policy or legislative hooks

- Are there new policy or legislative hooks to pursue, such as:
  - Environmental regulation?
  - Land use?
  - Consumer protection?

- Financial regulation?
- Corporate accountability/sunshine/transparency for large corporate actors? (For instance, disclosure of employment practices for local outlets and national data or new requirements in city or state public benefits to disclose employer and industry, to permit data collection on extent of worker reliance on public subsidies because of poor wages/lack of benefits.)

- Can you integrate new members into existing base-building organization, or do you want to build an independent “committee,” program area, or entity to house the organizing?
- Should you integrate online and new media organizing into membership structure and leadership training programs?
- Do you wish to pursue joint membership with union local and community-based organization?
- How can you structure relationships between allied c3/c4/c5 organizations?
- Are you tracking lobbying restrictions?
- Are you considering funding restrictions on the work?
- Are existing staff, supervision, and management resources adequate to cover the new work and capacity to handle growth?
- How can you best leverage your resources (power, allies, etc.) to get what you want (i.e. moving the state legislature)?

## ALLIES AND OPPONENTS

Think through the existing landscape and potential allies and opponents. It also might be helpful to prioritize the relationships you want to deepen or create. Allies and opponents might include the following:

### Allies

- Existing worker centers
- Public health advocates
- Poor people’s organizations
- Latinx organizations
- Civil Rights organizations
- Community-based organizations that organize/mobilize a base
- Progressive political parties
- Labor (including relevant locals)
- Advocacy organizations
- Legal clinics

### Opponents

- Business owners
- Business associations
- Chambers of Commerce

## STRUCTURAL QUESTIONS

As you consider building new member organizing, there will be extensive structural questions to explore, including the following:

## SERVICE PROVISION TO SUPPORT THE ORGANIZING

It is helpful to keep in mind that there may be service-provision opportunities to develop that can support the organizing work.

- Are members and workers in need of:
  - Legal services, either on workers’ rights cases or more broadly (public benefits, housing, etc.)? Adult education, including GED-prep or ESOL classes?
  - Workforce development and job placement supports, including “soft skills” courses (resume prep, etc.) and “hard skills” (OSHA health and safety training, technical skills for particular types of jobs)?
  - Health care access/health services, including enrollment in public health insurance options or potentially the creation of health benefits for members?
  - Other goods and services, such as low-cost membership benefits, banking services, or other “bundled” services for members?

Implementing a service component may be a much larger undertaking, but may be something to consider

when engaging in longer-term planning. In addition, partnerships with existing service providers can be a smart approach for meeting immediate needs.

## FUNDING & RESOURCES

Finally, new campaigns and initiatives require resources. Some questions to consider include:

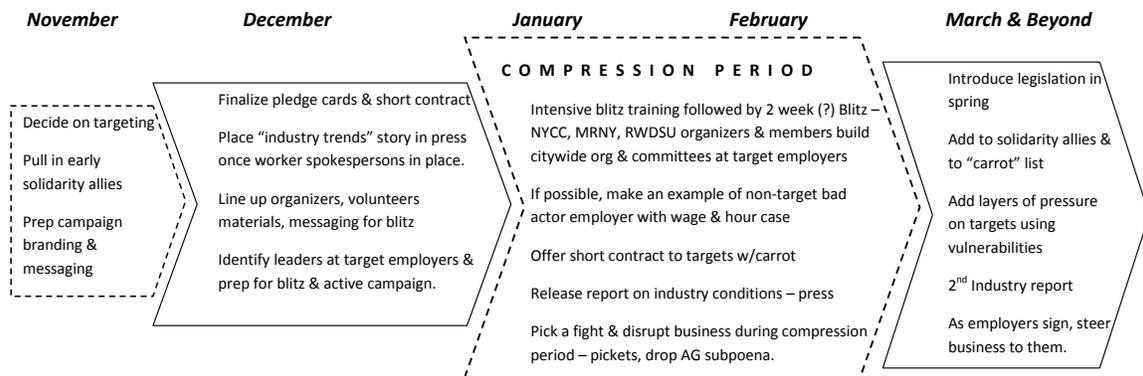
- Can you generate resources from foundations, unions, grassroots/individual donor programs, etc.?
- Is revenue-generation possible through membership dues (including potential collaboration with credit unions or local banks to ease collection of dues)?
- Are funders interested in:
  - The precise issues you want to target?
  - Secondary or subsidiary aspects of the problem? (This can give you a chance to leverage those resources to support the primary work--e.g., city or county funding for adult education or legal services that might help fund a broad worker mobilization effort; civic engagement funding; workforce development, etc.)

## Appendix II: WASH NY Win Theory

### “Carwasheros Taking Down the Boss Man” Campaign

#### Win Theory Basics:

- We build citywide movement of car wash workers supported by solidarity allies – clergy, community organizations, unions, electeds – who can disrupt the business of car washes and press employers to sign union contract.
- We create incentives (“carrots”) for cooperative car washes to become our “high road” employers – they sign contract, and we steer business their way (unions, taxiworkers, anyone with numerous vehicles that is willing to commit their business to signatory car washes).
- We use wage & hour violations as hammer – AG complaints & possible litigation – to make an example of some uncooperative employers and then to pressure our primary targets to sign contract in exchange for reduction in \$\$\$ owed.
- We add comprehensive campaign strategies to pressure uncooperative employers – hitting other businesses, financing sources, etc.
- We move legislation (presumably city-level) to add pressure, push employers to coalesce into a group we can negotiate with, and/or improve conditions for organizing going forward (bond, registration, environmental / health & safety rules, etc.)



#### Targeting matrix – our ideal target has:

- Hot worker organizing
- Legal leverage – big-\$\$ wage & hour violations
- The financial resources to pay for a union contract
- Locations in MRNY & NYCC’s geographic areas of strength
- Environmental – violations, bad practices to use in messaging with public and workers
- Interesting \$\$ stuff – political contributions, money from a specific bank that we are going after, other businesses owned that make them vulnerable
- An owner who is a good “face of evil” poster child – house in the Hamptons, unsympathetic, etc.
- Own their own equipment vs. renting
- Own their own land vs. renting
- Ownership structure – independent vs. small chain vs. big chain –
- A customer base that we can move – unions, organized community groups nearby, sympathetic community base

# Appendix III: Sample Campaign Template

**Campaign Goal:**

**Decision Makers/Targets:** (politicians, company execs, etc)

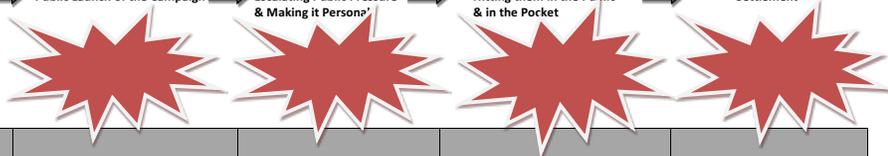
Primary Target:

Secondary Targets:

- 1)
- 2)



**Key Compression**



	Month:				
Members					
Actions/Public Events					
Research/ Policy					
Community/ Allies					
Communications					
Politics					
Legal/ Regulatory					

# Appendix IV: Make the Road New York WTPA Campaign Plan

<p><b>Core demand</b></p>	<p><b>Pass the Wage Theft Prevention Act and make it law in New York.</b></p> <p>The Wage Theft Prevention Act is a broad-reaching bill that increases penalties for violations of existing minimum wage and overtime law; tightens up protection for workers who are retaliated against by employers trying to keep them from speaking up for their rights; and adds tools to improve the ability of the DOL and courts to enforce wage and hour law.</p> <p>Key provisions include:</p> <ul style="list-style-type: none"> <li>■ Increasing liquidated damages from 25% to 100% (liquidated damages = the extra amount that workers can collect when they finally win a wage and hour case, in addition to the original unpaid wages);</li> <li>■ Adding real teeth to retaliation protections –             <ul style="list-style-type: none"> <li>■ closing loopholes by, for example, making it illegal to threaten employees in order to keep them from standing up for their rights</li> <li>■ adding a special category of damages that employers must pay if found to have retaliated against workers for exercising their rights</li> <li>■ giving the Department of Labor the power to order the reinstatement of fired workers</li> </ul> </li> <li>■ Giving new tools to courts and the Department of Labor to help actually collect wages that are due so that employers found guilty of wage theft can't so easily hide their assets from workers.</li> </ul>
<p><b>Target</b></p>	<ol style="list-style-type: none"> <li>1) Sheldon Silver / Assembly Leadership</li> <li>2) Senate Republicans &amp; borderline Democrats</li> <li>3) Governor Patterson</li> </ol>
<p><b>Intermediate Demands</b></p>	<p>Assembly &amp; Senate –</p> <ul style="list-style-type: none"> <li>■ reconcile the two versions of the bill that passed the Senate &amp; Assembly,</li> <li>■ come to two-way agreement on something that will not draw a veto, and bring it to the floor of both houses for a vote.</li> </ul>
<p><b>Intermediate</b></p>	<ul style="list-style-type: none"> <li>■ Susan John, Labor Committee Chair in Assembly—has substantial influence over “ok-ing” the substance of any bill that the Assembly leadership will bring to a vote.</li> </ul>
<p><b>Targets</b></p>	<ul style="list-style-type: none"> <li>■ Dean Fuelihan—has veto power over any problematic substance from Assembly leadership perspective.</li> <li>■ David Weinstein—staff person who has been negotiating with advocates on behalf of the Exec. Very conservative perspectives on many points + disclaimers that he is not promising whether Paterson will sign or veto, make it difficult to predict the Governor’s positions</li> <li>■ Upstate or marginal Assembly and Senate members—will help to ease leadership fear of weakening their members who are in conservative districts.</li> </ul>

## Appendix IV: Make the Road New York WTPA Campaign Plan *(continued...)*

<p><b>Allies</b></p>	<p><b>Steering Committee:</b> Make the Road New York, UFCW Local 1500, RWDSU, New York Communities for Change (NYCC), Working Families Party, Laborers / Mason Tenders PAC</p> <p><b>Elected Officials and Staff:</b></p> <ul style="list-style-type: none"> <li>■ Assembly—Carl Heastie, sponsor; Bronx assembly members allied with Heastie; Hakeem Jeffries; Brian Kavanaugh; Jeffrion Aubry; Dallas Trombley (Assembly Labor Committee staff)</li> <li>■ Senate—Diane Savino, sponsor; John Sampson; Kathrine Grainger &amp; Shelly Maier, Central Staff; Jose Peralta; Toby Ann Stavisky</li> </ul> <p><b>Supporters:</b></p> <ul style="list-style-type: none"> <li>■ Business: Morton Williams Supermarket (RWDSU employer), some supermarket owners with contracts with Local 1500, Small Business United—a project of MRNY, NYCOSH, Drum Major Institute,</li> <li>■ Labor: New York State AFL-CIO (“State Fed”), SEIU Local 32bj, Hotel Motel Trades Council, SEIU Local 1199, National Employment Law Project, Communications Workers of America District 1</li> <li>■ Legal Services Providers: MFY Legal Services, Urban Justice Center—Community Development Project</li> <li>■ Stimulus Alliance: Common Cause, Community Voices Heard, NYIC, PUSH Buffalo, Gamaliel, Northwest Bronx Community and Clergy Coalition; NYCAHN (New York City Aids Housing Network)</li> <li>■ NYS DOL leadership</li> </ul>
<p><b>Opponents</b></p>	<ul style="list-style-type: none"> <li>■ Business Council and NFIB—the only two organizations that have submitted memos in opposition.</li> <li>■ Senate Republicans—one Republican [REDACTED] voted in favor of the legislation in the Senate.</li> </ul> <p>NOTE—opposition has been weak—neither organization has really dug in on the substance of the WTPA, and both memos primarily complained of burdens being placed on employers to provide information to employees in languages other than English... the provisions containing those requirements have since been substantially altered to minimize the burden on law-abiding employers; the NYS DOL will provide all translated materials for employer’s ease of use.</p>
<p><b>Potential Allies</b></p>	<ul style="list-style-type: none"> <li>■ The Partnership for NYC (we reached out to try to get support—got no response, but may at least be an indicator that for now the Partnership will sit this one out.</li> <li>■ Business Council and NFIB could get wise and oppose the most recent version in a more intelligent way.</li> </ul>

## Appendix IV: Make the Road New York WTPA Campaign Plan *(continued...)*

### Campaign Strategy

- Position the legislation as a “no brainer” to support—no good faith opposition / who can oppose it besides wage thieves?? It targets bad actors!
- Position the legislation as HELPFUL to law-abiding employers:
  - Get support from small and large businesses willing to go on record—union supermarkets, small businesses that are part of MRNY’s Small Businesses United committee
  - Be disciplined with messaging—law-breaking employers are making it hard for responsible businesses to compete, and that we have to have real enforcement of wage & hour law in order to create a level playing field for employers who want to treat their workers properly.
- Show broad labor support—
  - Use UFCW Local 1500 and RWDSU to work with the State Fed to help move the legislation, despite the fact that it may compete with other labor priorities, like passing UI reform.
  - Pull in broad coalition of labor for limited action on campaign— memos in support, limited asks of target politicians (i.e. 32bj to get commitment from particular targets.)
  - Make sure labor support seems unanimous, even if some sectors were less engaged—use deeply committed unions (Local 1500 & RWDSU especially) to line up CLC and other support. Work through Laborers and our own relationships with 1199 to ensure that construction unions, 1199 and others understand that we are in no way complicating misclassification-related work they have ongoing.
- Attract press attention to wage theft epidemic (\$1 billion annually stolen from workers in NYC alone; 15% of the average worker’s income stolen by his/her employer; workers terrified to come forward), resulting from low likelihood that wage violators will be caught and tiny penalties, creating perverse incentive: it’s cheaper to break the law and include the small risk of getting caught into normal cost of doing business.

### Current state of the campaign

- in the final days of June and the first day of July, the Senate and Assembly BOTH passed strong versions of the WTPA. Assembly and Senate staff are working hard to reconcile the two bills, with ██████████ very involved in conversations.
- Shelly Silver has indicated an interest in passing the bill—if we can come up with a reconciled bill—after the general elections. Senate leadership has been consistently supportive and will likely pass it if they can get a quorum.

NOTE—opposition has been weak—neither organization has really dug in on the substance of the WTPA, and both memos primarily complained of burdens being placed on employers to provide information to employees in languages other than English... the provisions containing those requirements have since been substantially altered to minimize the burden on law-abiding employers; the NYS DOL will provide all translated materials for employer’s ease of use.

- **Member Roles:**
  - MEMBER R's—consult with other members to determine priorities; help plan and implement press actions, legislative visits, post card collection, and other tactics; participate in leadership team meetings and, when necessary, emergency phone calls to make key decisions during campaign.
- **Needed Research and Analysis:**
  - Completed during early phases of campaign. Will need to be reassessed before 2011, if we don't win the bill during 2010.
- **Base-Building Activities:**
  - Mobilization for press events / protests targeting individual employers as examples of why we need the WTPA
  - Legislative visits—in district and in Albany.
  - Post card signing & collection
  - Press interviews
- **Leadership Development Activities (training, ideological development, etc.)**
  - Legislative visit trainings
  - Member-led legislative visits
  - Workshop discussions in member meetings about what we might win and why / what we can't win and why not
- **Activities to move allies and/or potential allies:**
  - Use unions to get other unions on board
  - Briefings
  - Use JWW to reach upstate labor allies
- **Activities to move or neutralize opponents and/or potential opponents:**
  - Get ahead of small business opposition by putting forward pro-business messaging and allies.
- **Activities to move targets:**
  - Get ahead of small business opposition by putting forward pro-business messaging and allies.
- **Activities to move intermediate targets:**
  - Get ahead of small business opposition by putting forward pro-business messaging and allies.
- **Direct Action and Mobilization Activities**

## OBJECTIVES FOR OCT & NOV

- Ramp up energy & buzz around WTPA
  - Expand list of allies weighing in (upstate, legal services providers, faith groups, etc...) + gather/distribute memos in support
  - Generate flurry of contacts by existing allies to up the sense of urgency to pass it this year: Legislative visits in district, Visits to candidates, Post cards, Crew on site in Albany the moment the legislature returns
- Send message through press that WTPA did NOT pass and needs to this year.
  - Get NY Times to do follow-up editorial (post-general election?)
  - Press events on cases that demonstrate need for WTPA—MRNY targeted employers + Associated supermarkets (NYCC)
- Get 2 versions reconciled
  - Facilitating 2-way negotiations between Senate & Assembly [MRNY]
  - Supporting Carl Heastie in pushing Assembly leadership to pass something THIS year that can become law.
- Make sure we can pass in Senate again—Pedro Espada (MRNY members); ████████—32bj or building trades;
- Lobby Paterson to sign bill
- Prepare candidates / prep landscape for 2011 session—Folks who may join legislature in 2011; Cuomo; Schneiderman

## WEEKLY WORKPLAN OCT & NOV

		NOTES	Staff Tasks	Member Tasks
1	Mon Oct 11- Sun Oct 17		<ul style="list-style-type: none"> <li>■ Facilitate weekly call of allies— monitor their calls &amp; visits to electeds &amp; post card collection</li> <li>■ Determine target employers for press events.</li> <li>■ Get proposed compromise language to Assembly Labor staff</li> </ul>	
2	Mon Oct. 18- Sun Oct 24	Post cards should start arriving in LOB.	<ul style="list-style-type: none"> <li>■ Facilitate weekly call of allies— monitor their calls &amp; visits to electeds &amp; post card collection</li> <li>■ Follow up with 32bj</li> <li>■ Reach out to elected officials to be included in post-election protests</li> <li>■ Set up member leadership team mtg for immediately post-election</li> <li>■ Coordinate and accompany members on Legislative visits</li> <li>■ Prepare for press events post-election</li> </ul>	District office legislative visits
3	Mon Oct. 25- Sun Oct 31		<ul style="list-style-type: none"> <li>■ Facilitate weekly call of allies— prep for post-election press event participation, monitor post card (schedule next call for post-election)</li> <li>■ Coordinate and accompany members on Legislative visits</li> <li>■ Prepare for press events post-election</li> <li>■ Prepare press advisory and packets for press events post-election</li> </ul>	District office legislative visits

## WEEKLY WORKPLAN OCT &amp; NOV (continued...)

		NOTES	Staff Tasks	Member Tasks
4	Mon Nov. 1– Sun Nov 7	ELECTION DAY TUES NOV 2 Somos in P.R. Nov 4–7  Not good week to get Albany’s attention	<ul style="list-style-type: none"> <li>■ Facilitate post-election call of allies—prep for post-election press event participation, monitor post card</li> <li>■ Confirm members for Albany visits when leg session resumes.</li> <li>■ Meet with member leadership team to strategize post-election</li> <li>■ Reach out to NYTimes &amp; Daily News as soon as election press dies down to try to get real attention &amp; follow up on NY Times summer Op-Ed</li> <li>■ Draft post-vote press releases with quotes from allies and MRNY members</li> </ul>	Meet with member leadership team to strategize immediately post-election
5	Mon Nov 8– Sun Nov 14	Possible vote? Post cards arrive in LOB. All principals / EDs of Allies call Silver & Sampson.	<ul style="list-style-type: none"> <li>■ Facilitate weekly call of allies—monitor their calls &amp; visits to electeds &amp; post card collection</li> <li>■ Do turnout for Press events <ul style="list-style-type: none"> <li>■ MRNY hosting 1</li> <li>■ participating in NYCC’s Associated Supermarket event!!</li> </ul> </li> </ul> <p>Be ready to visit Albany. Resend Memos in Support to legislators when session resumes</p>	Press events—MRNY hosting + NYCC’s Associated Supermarket event!!  Visit Albany if leg session happens.
6	Mon Nov 15– Sun Nov 21	Possible vote Post cards arrive in LOB. All principals / EDs of Allies call Silver & Sampson.	<ul style="list-style-type: none"> <li>■ Do turnout for Press events <ul style="list-style-type: none"> <li>■ MRNY hosting another</li> <li>■ Participating in NYCC’s Associated event if not prior week</li> </ul> </li> </ul>	Press events—MRNY hosting + NYCC’s Associated Supermarket litigation filing!!  Visit Albany if leg session happens.
7	Mon Nov 22– Sun Nov 28	Thanksgiving Week	Thanksgiving Week	
8	Mon Nov 29– Sun Dec 5	Possible session	Visit Albany?	Visit Albany?

## Appendix V



# Best Practices for Economic Justice Messaging

An effective message—one that reaches allies, stakeholders, policymakers, elected officials, and the press—is key to a successful wage theft campaign. Effective messages work to persuade, to convey a sense of urgency, highlight a crisis, and signal opportunities for action. In recent years, advocates have developed highly effective messages that have built real momentum around worker issues:

- In the Fight for \$15, for example, workers mobilized to demand fairness, pitted against mammoth corporations that could easily afford to provide a raise. In addition to drawing attention to companies' profit margins, the Fight for \$15 highlights in a deeply relatable way what a \$15 hourly wage means in the life of a fast-food worker.<sup>1</sup>
- Another strong example, a 2015 feature in *The New York Times* on nail salon workers, elevated a number of personal stories from salon workers which vividly brought to life the challenges they faced as victims of wage theft.<sup>2</sup>

This brief aims to help advocates leverage the growing energy around economic inequality to generate traction on the issue of wage theft. Wage theft is the illegal nonpayment of wages and benefits workers are owed, including the failure to pay minimum wage or overtime, illegal deductions from pay, work off the clock, or the misclassification of employees as independent contractors.<sup>3</sup> These unlawful deductions chip away at workers' hard-earned wages and make it difficult for families to meet their basic needs. Across the country each year, millions of workers experience wage theft. A 2009 study by the National Employment Law Project in three major cities found that total annual wage theft from front-line workers in low-wage industries approached \$3 billion.<sup>4</sup> If these findings are generalizable to the rest of the population, the Economic Policy Institute estimates that wage theft costs America's low-wage workers more than \$50 billion each year.<sup>5</sup>

Recently, a number of organizations have worked to identify the most promising messaging frames to advance a strong economic justice agenda. However, these findings have not been widely circulated among the advocates and organizations driving wage theft campaigns. This brief aims to link these two worlds and to distill some key findings for use by advocates fighting wage theft. The following is a synthesis of best practices from several recent studies that may be adapted to fit the needs of a wage theft campaign.

### Engaging the Base, Persuading the Middle, Alienating the Opposition

Two recent studies, one conducted by the AFL-CIO with ASO Communications and Lake Research<sup>6</sup> and another conducted by the Center for Community Change (CCC), also with ASO Communications and Lake Research,<sup>7</sup> identified language for effective economic justice messaging. Both studies found that a successful economic justice message accomplishes three simultaneous goals:

- *Motivates the base.* A successful message resonates with those who are ready to embrace progressive solutions as well as economic justice advocates and activists.<sup>8</sup>
- *Convinces the persuadable.* A successful message activates people's progressive instincts and makes solutions seem commonsense.<sup>9</sup>

- *Alienates the opposition.* Conventional wisdom measures success by how much of the opposition agree, when isolating the opposition is actually a more effective strategy.<sup>10</sup>

### Key Principals for Effective Economic Justice Messaging

Below are a number of key principals for effective messaging, adapted from the AFL-CIO, CCC, and Topos Partnership.

- **Tell a story.** Ideally, a message would open with a big picture narrative and then zoom in on a particular individual to clearly illustrate the argument. Best practices include the following:
  - *Make affected groups agents in their own story.* Focus on removing the barriers that impede people's efforts to do right and thrive. Don't focus on how people are passive victims of poverty or position advocacy organizations as saviors.<sup>11</sup>
  - *Provide context for close-up stories.* Big picture stories put policy recommendations in context, while close-ups of individuals can attract attention but can also obscure the broader context if broader themes are not introduced. When using close-up stories, it is helpful to first establish broader themes and then focus on the solutions.<sup>12</sup>
- **Talk about the basics.** Show that workers are unable to afford basic necessities.<sup>13</sup>
  - *Example:* "For our communities and economy to thrive, workers need to take home all of their hard earned wages so that they have at least enough to spend on the basics/ necessities. When employers steal wages, people can't afford food, or to go the doctor, or to make basic repairs. It hurts all of us, as the economy slows down."<sup>14</sup>
- **Provide an aspirational call to better lives that goes beyond purely financial issues.**<sup>15</sup> Embrace and lead with progressive values. For example:
  - *Family Comes First:* Every working person deserves to be paid enough to set their kids up for a bright future.<sup>16</sup>
  - *Community:* Society is at its best when every striver has the opportunity to fulfill their potential.<sup>17</sup>
  - *Value Work:* People's hard work should be recognized and rewarded.<sup>18</sup>
  - *A New Venture:* America is a land of entrepreneurs, but people need a secure foundation to pursue opportunities.<sup>19</sup>
- **Name problems in an active voice.** The passive voice obscures where poverty comes from and what can be done about it.<sup>20</sup> Make clear that economic hardship results from deliberate policy choices<sup>21</sup>—that human action deliberately created problems and that only deliberate human action can fix them.<sup>22</sup>
  - *Example:* "Profitable, powerful companies have been able to use their influence to avoid accountability when they break the law."<sup>23</sup>
- **Focus on the outcomes instead of policies and programs.** For example, highlight "working people take home all of the wages they've earned to their family," over "new wage lien laws."<sup>24</sup>
- **Emphasize the role of employer.** Make clear that thriving communities and a strong economy depend on employers providing reasonable compensation for work.<sup>25</sup> Remind people that profitable companies could be better compensating their employees.<sup>26</sup>

- **Be strategic when mentioning the economy.** Advocates have different approaches about the best way to discuss the economy. Some suggest that “economy boosting” messages should take a backseat to messages focused on “helping the family,” while others believe that showing how a policy will strengthen the economy is a useful approach. Tips for striking a balance between the two messages include the following:
  - When mentioning the economy, describe it as something out of balance that we can fix.<sup>27</sup>
  - Relate the economy to thriving communities, which depend on employers providing reasonable compensation for work.<sup>28</sup>

**Examples of Wage Theft Messages used by Advocates**

The following wage theft messages have been used by community groups and advocates in talking points, campaigns, and materials:

Message	Best Practice
<p>“Employers steal workers’ wages by failing to pay overtime, failing to pay the minimum wage, taking illegal deductions in paychecks, telling them to work off-the-clock, calling employees freelancers or independent contractors—or not paying them at all.”<sup>29</sup></p>	<p>✓ Emphasize the role of employer</p>
<p>“My boss refused to pay me my wages and tried to lie about it, and I decided to file a claim. I had to wait one year and five months to get my money. I had to rely on my credit cards to survive. I had to pay interest on those credit cards—why didn’t my boss have to pay money on the money he owed me? If employers had to pay interest on the money they owed workers, they might think twice before stealing our wages.”<sup>30</sup></p>	<p>✓ Tell a powerful story from the victim’s/worker’s perspective</p>
<p>“Workers suffer when they don’t get paid. Workers in low-wage industries in the three cities of New York, Chicago and Los Angeles lose over \$56 million per week in unpaid wages. That means bills go unpaid, housing is unstable, and families have less food on their tables.”<sup>31</sup></p>	<p>✓ Talk about the basics.</p> <p>✓ Mention the economy (with caution).</p>
<p>“Local economies also suffer when wage theft becomes a way of doing business. Well-meaning businesses often can’t compete with wage cheats that shave their operating costs by breaking the law. And the less money wage earners bring home, the less they have to spend at local businesses, dealing a further blow to local economies already suffering the effects of the Great Recession.”<sup>32</sup></p>	<p>✓ Emphasize the role of employer</p> <p>✓ Mention the economy (with caution).</p>

**Effective Language from AFL/CIO and CCC Studies<sup>33</sup>**

Words to Avoid	Words to Embrace
Poor; working poor; low income	Can't make ends meet; living on the brink; working to provide for family
Safety net	Basic living standards; resources for our seniors
Entitlements	Your health and retirement security
The top; the bottom	Wealthiest; poorest
Unemployment rate rose	CEOs fired more Americans; X handed out pink slips
Workers	People; mothers; fathers; servers; cooks, nurses, etc. Working people
Gap between the rich and poor	Barriers between rich and the rest of us; obstacles for those struggling
Reform social security/Medicare/welfare/etc.	Improve, enhance, shore up social security/Medicare/welfare
We	You and I
America's children; future generations; seniors on Medicare	"that newborn you swear already smiles"; "your mom fighting hard against cancer" <sup>34</sup>
Systemic inequities	Greedy few rigged the game; corporations/CEOs have taken advantage
Fight poverty; war on poverty; casualties of poverty	Barriers to success, obstacles to economic stability
Economic inequality	Economy off kilter; out of balance
Good for the economy	Good for families/the nation
Bargain	Speak up together
Wages to raise a family on	Wages to sustain a family on
Low pay is bad	Get paid for the work you do
Enact these policies	Change the rules
Jobs	Work
Falling wages	Employers denying your pay
Economic opportunity	Economic stability
Economy is rigged	Rules are manipulated

## Notes

- 1 "Breaking Now: New York Fast Food Workers Poised to Make History," *The Fight for \$15*, accessed June 17, 2015, <http://fightfor15.org/>
- 2 Sarah Maslin Nir, "The Price of Nice Nails," *The New York Times*, May 7, 2015, <http://www.nytimes.com/2015/05/10/nyregion/at-nail-salons-in-nyc-manicurists-are-underpaid-and-unprotected.html>
- 3 Aditi Sen, "By a Thousand Cuts: The Complex Face of Wage Theft in New York," *The Center for Popular Democracy*, November 2015, <http://populardemocracy.org/sites/default/files/WageTheft%2011162015%20Web.pdf>.
- 4 Annette Bernhardt et al, "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Project, 2009, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>.
- 5 Brady Meixell and Ross Eisenbrey, "An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year," September 11, 2014, <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>
- 6 "Words that Work," AFL-CIO, 2015
- 7 "Messaging for Economic Justice," Center for Community Change, 2014, <http://www.communitychange.org/wp-content/uploads/2014/07/CCC-Research-Brief.pdf>
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- 9 Ibid.
- 10 "Messaging for Economic Justice," Center for Community Change, 2014, <http://www.communitychange.org/wp-content/uploads/2014/07/CCC-Research-Brief.pdf>
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- 12 "Framing Checklist for Job Quality Policy Communicators," Topos, [http://boostorbustresources.topospartnership.com/uploads/post/attachment/130/Framing\\_checklist\\_Boost\\_or\\_Bust.pdf](http://boostorbustresources.topospartnership.com/uploads/post/attachment/130/Framing_checklist_Boost_or_Bust.pdf)
- 13 Ibid.
- 14 Adapted from "Framing Job Quality: Scheduling, Paid Leave, and More," Topos, April 2015, <http://www.topospartnership.com/wp-content/uploads/2015/04/Framing-Job-Quality-Final.pdf>
- 15 "Words that Work," AFL-CIO, 2015
- 16 "Words that Work," AFL-CIO, 2015; "Messaging for Economic Justice," Center for Community Change, 2014, <http://www.communitychange.org/wp-content/uploads/2014/07/CCC-Research-Brief.pdf>
- 17 "Messaging for Economic Justice," Center for Community Change, 2014, <http://www.communitychange.org/wp-content/uploads/2014/07/CCC-Research-Brief.pdf>
- 18 "Words that Work," AFL-CIO, 2015
- 19 Ibid.
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- 21 Ibid.
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- 29 NY Coalition Against Wage Theft, Accessed December 2015, <http://coalitionagainstwagetheft.org/>; As with any written material, it is important to be attentive to the accuracy of the claims you make and the support you have for your claims. This will be critical if you are sued for defamation by an unhappy employer.
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## Appendix VI: WTPA Comparison of both bills and existing law

### Wage Theft Prevention Act ■ S8380 (Savino) ■ A10163-b (Heastie)

<b>Current law</b>	<b>Assembly Version</b>	<b>Senate Version</b>
Meal Breaks & Day of Rest <ul style="list-style-type: none"> <li>Current Law: Workers can go to DOL to enforce meal breaks &amp; day of rest - but don't get \$\$ themselves.</li> </ul>	Private right of action for employees to enforce rights themselves.	Removes this provision b/c too complicated in practice and many employees for good reason don't want to take their meal breaks (like restaurant workers who would be required to take meal in middle of their shift)
Notice of Wage Rate <ul style="list-style-type: none"> <li>Current law: Employer has to give a notice at time of hire including wage rate.</li> </ul>	Employer notice must include more detail about how wage rate is set, plus info about employer identity and anyone who has 20% ownership in the employer. Employer must use DOL-provided translations - DOL must translate into 7 languages.	Removes info about owners of business b/c of risk of veto and complications for publicly traded companies.  Lets DOL decide how many languages and which ones to provide - in notice.
Pay Stubs and Payroll Records <ul style="list-style-type: none"> <li>Current Law: Rules included in the WTPA already exist - but are hidden in regulations.</li> </ul>	Employer must provide pay stubs - like currently mandated but hidden in regulations that many employers don't know to check.	Same basic provisions.
Employee Right to Inspect Payroll Records <ul style="list-style-type: none"> <li>Current law: No right exists</li> </ul>	Gives employees the right to inspect their payroll records upon request.	Removes provision because of veto risk - burden on responsible employers + concern that employees with shady lawyers can dig for minor things to sue over.
Powers of Commissioner to Require Accounting of Assets after Employer Defaults on an Order to Comply <ul style="list-style-type: none"> <li>Current law: DOL has no power to do this &amp; has hard time finding assets and collecting \$\$ owed.</li> </ul>	(1) IF the DOL finds employer guilty of wage theft; (2) AND the DOL issues an Order to Comply; (3) IF the time to appeal that Order to Comply has expired AND employer has not obeyed the DOL's order... THEN DOL can require employer to show a listing of assets.	Same provision
Bonds <ul style="list-style-type: none"> <li>Current law - DOL can require employer to post bond but must spend taxpayer dollars to docket judgment in court first.</li> </ul>	Both bills provide Commissioner discretion to require employer to post bond after default on order to comply (not after docketing administrative order in court, as is currently required).	Both bills provide Commissioner discretion to require employer to post bond after default on order to comply (not after docketing administrative order in court, as is currently required).
DOL Investigations and Administrative Orders	Codifies maintaining Both bills codify existing DOL policy of <i>maintaining confidentiality</i> of the identity of employees who are subject of investigation as long as possible.  Both bills codify existing DOL policy of investigating <i>third-party complaints</i> of violations.	Both bills codify existing DOL policy of <i>maintaining confidentiality</i> of the identity of employees who are subject of investigation as long as possible.  Both bills codify existing DOL policy of investigating <i>third-party complaints</i> of violations.
Retroactive Claims of Tip and Meal Allowances	Codifies court decisions that employer cannot retroactively claim allowances (e.g. tip or meal allowances) against minimum wage obligation when employer fails to maintain payroll records or provide employees wage statements reflecting allowances.	Removes this provision because of risk of veto.
Calculation of Unpaid Overtime	Provides that where employer fails to provide employee notice of overtime rate, maintain payroll records reflecting the overtime rate, or provide employee with paystubs showing the overtime rate, the correct overtime rate of pay will be calculated by dividing the total wages paid per week by 40 hours or actual hours worked, whichever is less (a calculation resulting in a higher overtime rate).	Removes this provision because of risk of veto.
Burden Shifting	Removes existing Labor Law text and inserts new text providing that where employer fails to maintain payroll records, employee testimony forms the proper basis of calculation absent specific rebuttal evidence by the employer.	Returns to existing law because Attorney General and DOL have specific needs for cases involving many workers that might be affected negatively by the original WTPA text.
Civil Penalties for Sex Discrimination in Pay	Closes loophole to give DOL the ability to handle these claims through their normal administrative process rather than going to court.	Same as Assembly.
Liquidated Damages <ul style="list-style-type: none"> <li>Current law: only 25% on top of amount of unpaid wages</li> </ul>	Both bills increase liquidated damages on unpaid wages from 25% to 200% in court action. [Seven states provide for 200% liquidated damages (AZ, ID, MA, NM, OH, MD and ME).]	Reduces liquidated damages to 100% (double damages) in response to executive concerns.
Class Actions <ul style="list-style-type: none"> <li>Current law: no liquidated damages avail. in class actions.</li> </ul>	Provides for liquidated damages in class action litigation.	Removes this provision b/c of veto risk.
Increasing Damages after Default on a Judgment	Where employer defaults on paying judgment for more than 90 days, after the judgment is final, the	Same as Assembly.

# WTPA Comparison of both bills and existing law

(continued...)

<ul style="list-style-type: none"> <li>Current law: no penalty in existing law</li> </ul>	<p>employer must pay an additional 15% additional damages to partially cover the cost to the employee of collecting on the judgment. (Collections agencies typically charge 30-40% of the amount collected, which the WORKER has to pay. Proposed text is a less aggressive version of the AZ rule, which automatically triples amount of judgment when employer defaults for 10 days.</p>	
<p><b>Criminal Penalties for Flat-out NONpayment of Wages</b></p> <p>Current law:</p> <ul style="list-style-type: none"> <li>First-offense misdemeanor with a penalty of \$500 to \$20,000, up to 1 yr in prison.</li> <li>2<sup>nd</sup> offense - felony with \$500 to \$20,000 fine and up to 1 year and 1 day in prison.</li> </ul>	<p>Increases the misdemeanor fine to \$2,500 or twice the underpayment, whichever is greater.</p> <p>On 2<sup>nd</sup> offense - defines as a class E felony with \$1,000 fine or triple the amount of underpayment, whichever is greater</p> <p>Adds newer business forms (partnerships, limited liability corporations) to the list of types of employers covered under this provision. No other changes.</p>	<p>Adds newer business forms (partnerships, limited liability corporations) to the list of types of employers covered under this provision. No other changes.</p> <p>Otherwise keeps existing law the same.</p> <p>Criminal penalties in Senate version substantially less severe than in Assembly B-print.</p>
<p><b>Criminal Penalties for Nonpayment of Minimum Wage and Overtime</b></p> <ul style="list-style-type: none"> <li>Current law: Class B Misdemeanor</li> </ul>	<p>Increases the misdemeanor fine to \$2,500 or twice the underpayment, whichever is greater.</p> <p>On 2<sup>nd</sup> offense - defines as a class E felony with \$1,000 fine or triple the amount of underpayment, whichever is greater +</p> <p>Adds newer business forms (partnerships, limited liability corporations) to the list of types of employers covered under this provision. No other changes.</p>	<p>Closes loophole by defining criminal penalties exactly the way they are defined under current NY Law applying to NONpayment.</p> <p>Criminal penalties in Senate version substantially less severe than in Assembly B-print.</p>
<p><b>Criminal Penalties for Retaliation</b></p> <ul style="list-style-type: none"> <li>Current law: Retaliation against a worker for filing a complaint that he is not getting paid minimum wage or overtime is a Class B misdemeanor (= 3 months max in prison + max \$500 fine)</li> <li>BUT a loophole means that it is NOT a misdemeanor to retaliate against someone for filing a complaint about absolute NONpayment.</li> </ul>	<p>Moves misdemeanor for retaliation from the Minimum wage article into Section 215, where illegal retaliation is defined.</p> <p>Expands the types of complaints that will be protected by the misdemeanor, to include complaints about nonpayment of wages and all other wage-and-hour rights.</p> <p>Changes from Class B misdemeanor to defined misdemeanor with higher penalties. (\$500 to \$10,000 fine and up to 1 year imprisonment)</p> <p>2<sup>nd</sup> offense for retaliation - felony (\$500 to \$20,000 fine + up to 1 year and 1 day in prison)</p>	<p>Retaliation -- as with Assembly version, Criminal penalty moved from Minimum Wage Article to Section 215.</p> <p>Unlike Assembly version, Senate version leaves as Class B offense (much lower penalty, up to 3 months prison + \$500 fine, per Penal Law 70.15)</p>
<p><b>Criminal penalty for failure to provide notice of wage rate under § 195(1), and keep payroll records</b></p> <ul style="list-style-type: none"> <li>Current law, but ONLY for payroll records</li> <li>Misdemeanor with \$500 to \$5,000 fine + up to 1 year in prison.</li> <li>Second offense - felony with \$500 to \$20,000 fine and/or 1 year &amp; 1 day in prison</li> </ul>	<p>Makes same criminal penalties also apply to failure to provide notice of wage rate that employers must give employees at time of hire.</p>	<p>Does not expand criminal penalties in this area.</p>
<p><b>Criminal penalty for defacing government-ordered posting of violations.</b></p> <ul style="list-style-type: none"> <li>Current law: Not applicable b/c this is a new power of the DOL provided by WTPA</li> </ul>	<p>Misdemeanor for removing or defacing a "tag" placed on illegally manufactured items by DOL.</p>	<p>Misdemeanor for removing or defacing a notice posted on wage violator's premises for public viewing. (Notice is authorized when DOL finds an employer to have willfully violated wage &amp; hour law; notice can only stay up for 90 days.)</p> <p>Note: DOL can also post a notice for employee viewing, but there is no criminal penalty for defacing or removing it.</p> <p>"Tagging" provision not included in bill because of DOL objection.</p>
<p><b>Retaliation - Existing law prohibits retaliation but has many loopholes.</b></p>	<p><i>Closes loopholes on what actions constitute prohibited retaliation (ex: Prohibits threats, prohibits retaliation by people who are not technically "employers" but have acted to terrorize workers who speak up against</i></p>	<p>Does same as Assembly EXCEPT:</p> <p>Does not include Presumption of Retaliation and prohibition against "conduct that would deter a reasonable worker from asserting rights" - because</p>

## WTPA Comparison of both bills and existing law (continued...)

	<p>violations, protects employees who make reasonable good faith complaint about something that turns out to not be a legal violation)</p> <p>Prohibits conduct that would deter a reasonable worker from asserting rights protected under the Labor Law.</p> <p>Adds presumption of retaliation for adverse conduct within 90 days of protected employee conduct.</p> <p>Provides Commissioner with all tools, including ordering reinstatement, to remedy retaliation, making commissioner's power match that of courts.</p>	of serious risk of veto.
Liquidated Damages for Retaliation • Current law: None	\$150 a day to victimized worker until conclusion of violation.	Up to \$10,000 to victimized worker
Waiving Rights Under Wage and Hour Law	Rights under the Article cannot be waived or released except pursuant to a settlement deemed fair and equitable by a court of competent jurisdiction.	Removes this because Exec wants to make sure the AG and DOL can settle cases without going to courts for approval.
Tolling Statute of Limitations	Both bills toll the statute of limitations during investigations by the Commissioner. (Modeled after AZ and NM law, Ariz. Rev. Stat §364(h) and N.M. Stat. Ann. §37-1-5.) In case of delay in DOL investigation due to lack of resources, this lets the worker still get the total amount they were due when the investigation started.	Same as Assembly
DOL Process	Requires DOL to copy claimant on all communications to employer including calculation of wages or damages to be assessed for the claimant and be provided an opportunity to contest the factual basis of the calculation prior to settlement or issuance to comply.	Removed because of risk of veto and substantial fiscal impact.
Translation of Notices posted by employers	Requires employers to post all DOL-required notices in any language spoken by at least 10% of the workforce.	No new requirements for employers.

## Appendix VII: WTPA A10163-b S8380 and Current Law

### Wage Theft Prevention Act ■ S8380 (Savino) ■ A10163-b (Heastie)

#### 1. Definition Section

- **A10163-b § 2:** Amends to explicitly provide that regulations passed pursuant to the Labor Law are incorporated, by reference, to any mention in the Labor Law of “chapter, article, section.” Overrules New York Appellate Division decision in *Epifani* that held that anti-retaliation provisions of the Labor Law do not apply to employee complaints about overtime, since overtime is provided by *regulation* rather than statute.
- **S8380 § 2:** Same provision as Assembly.

#### 2. Meal Breaks and Day of Rest: Statutory Damages

- **Current Law: NYLL Art. 5:** DOL enforces workers’ right to meal breaks and day of rest and assesses penalty for non-compliance. No private right of action or damages go to worker under current law.
- **A10163-b § 3:** Provides new private right of action for employees to enforce existing meal/day of rest rights and provides new statutory damages for violations. Damages are available to employees not exempt from overtime under state law. Six-year statute of limitation. Meal break damages: one hour of pay at the employee’s regular rate of pay for each work day employer fails to provide meal period (recoverable in class actions). Day of rest damages: an extra hour of pay for each hour worked on 7th day of work at employee’s regular rate of compensation (recoverable in class actions).
- **S8380:** Does not include this provision.

#### 3. Notice of Wage Rates

- **Current law: NYLL Art. 6, § 195(1)** Employer must give a notice at time of hire of wage rate. Notice required in English only. No updating of notice required when information changes. No damages to worker for employer’s failure to provide notice. Content of notice is left to DOL to determine.
- **A10163-b §§ 4, 8**
  - Codifies directly in statute the information to be included on wage rate notice. Requires disclosure of new information, including employers’ “doing business as” names and address.
  - Requires DOL to translate notice forms into at least 7 languages and requires employer to use such translations.
  - Requires employer to provide updated notice to employee on Feb. 1<sup>st</sup> of each year and seven days in advance of any change in information contained in notice.
  - **Damages:** Employees may recover \$50 per week that notice is not provided, capped at \$2500. Damages recoverable in class actions.
  - Affirmative defense: employer can show “good cause” for failure to provide notice.
- **S8380 §§ 3, 7** Same as Assembly version except as follows.
  - Gives DOL discretion as to how many translations to provide rather than mandating at least 7. Protects employer against liability for any DOL errors in translation.
  - Requires employee to self-identify primary language and verify that did so correctly.
  - Requires 7-day advance notice of changes only if such changes not reflected in pay stub. [Also requires employer to provide updated notice to employee on Feb. 1<sup>st</sup> of each year.]
  - Affirmative defense: (1) employer timely paid all wages due under law or (2) that employer “reasonably believed in good faith” that it was not required to provide notice.
  - **Damages:** Senate version specifies that employees can recover damages if employees are not provided notice within 10 days of first day of work and if neither affirmative defense applies

#### 4. Pay Stubs and Payroll Records

- **Current law: NYLL Art. 6, § 195(3) & (4):** Requirements to maintain payroll records and provide paystubs already exist but are contained in various regulations rather than in statute. Currently regulations require employers to maintain records for 6 years, but the statute itself only states 3 years. No damages paid to worker for failure to provide pay stubs and maintain payroll records.
- **A10163-b §§ 4, 8:** Moves existing requirements re payroll records and paystubs from regulation to statute. Codifies existing requirement that records be maintained for 6 years. Clarifies information to be maintained, such as how to record piece rate payments. Provides private right of action and statutory damages when employer fails to provide paystubs. Employee recovers damages of \$100 per week that violations occur. Recoverable in class action. [No damages or private right of action for worker where employer fails to keep payroll records.]
- **S8380 §§ 3, 7:** Same basic provisions, except: removes proposed language concerning *commissioned* employees since specific regulatory provisions already regulate records and paystubs for commissioned employees in detail. Damages of \$100 per work week but capped at \$2,500 total. Affirmative defense to assessment of damages for failure to provide paystub: (1) employer timely paid all wages due under law or (2) that employer “reasonably believed in good faith” that it was not required to provide paystub. [No damages or private right of action for worker where employer fails to keep payroll records.]

### 5. Employee Inspection of Payroll Records

- **Current Law:** No right exists
- **A10163-b §§ 4, 8:** Gives employees the right to inspect their payroll records upon request for full 6-year statute of limitation period. Employer must comply within 30 days of date of request. Damages of \$50 per work *week* to employee (through court action) and \$50 per *day* to employee (through DOL investigation), both capped at \$2500. Recoverable in class actions.
- **S8380 § 3:** Does not include this provision.

### 6. DOL Investigations – Administrative Process

- **Confidentiality and third-party complaints:**
  - **Current law:** No explicit statutory provision but DOL practice is to maintain confidentiality of employees during investigation and investigate third-party complaints. No explicit rule re: notification of claimant of calculations of wages owed.
  - **A10163-b § 6:** Codifies existing DOL policy of maintaining confidentiality and investigating third-party complaints.
  - **S8380 § 5:** identical to Assembly version.
- **Copying claimant on communications with ER:**
  - **Current law:** no standard practice on advising claimant of amount of assessment during investigation.
  - **A10163-b § 10:** Requires DOL to copy claimant on all communications to employer including calculation of wages or damages to be assessed for the claimant and be provided an opportunity to contest the factual basis of the calculation prior to settlement or issuance to comply.
  - **S8380:** Removed provision due to DOL concerns and anticipated fiscal impact.
- **Obligation to investigate complaints and discretion to institute criminal proceedings:**
  - **NYLL Art. 6, § 196(a) and (c):** obligates DOL to investigate and to attempt to resolve complaints under “Article” (Art. 6, nonpayment of wages). Loophole: does not contemplate investigation of minimum wage complaints, retaliation, or others. Allows Commissioner to institute criminal proceedings under “this article” – meaning only Art. 6 (nonpayment of wages).
  - **A10163-b § 5:** Substitutes word “chapter” for “article,” thus covering *any* kind of complaint under the full Labor Law.
  - **S8380 § 4:** Substitutes articles 5, 6, 7, 19 and 19-A, rather than “chapter” in place of the word “article” – thus expanding coverage to typical wage issues (retaliation, meal breaks, minimum

wage & overtime) but not expanding coverage to entire Labor Law (which includes UI, prevailing wage, etc.).

### 7. Tolling Statute of Limitations during DOL Investigation

- **Current Law:** none.
- **A10163-b §§ 3, 8, 12:** Tolls SOL during DOL investigation from filing of complaint by employee.
- **S8380 §§ 7, 10:** Tolls SOL during DOL investigation from filing of complaint by employee OR from date that DOL initiates an investigation.

### 8. DOL Power to Assess Civil Penalties for Sex Discrimination in Pay

- **Current law: NYLL Art. 6, § 197:** DOL can assess penalty currently but only through court action.
- **A10163-b § 7:** Closes loophole, allowing DOL to assess penalty through administrative action too.
- **S8380 § 6:** Identical to Assembly version.

### 9. Translation of Notices Posted by Employers

- **Current law: NYLL Art. 7, § 201:** DOL has discretion to translate notices.
- **A10163-b §11:** Requires DOL to translate all notices contemplated by § 201 into at least 7 languages. Requires employers to post those notices in any language spoken by at least 10% of the workforce when a DOL-translation is available.
- **S8380:** leaves § 201 unchanged from current law.

### 10. Retroactive Claims of Tip and Meal Allowances

- **Current Law:** No explicit statutory provision. Case law prohibits retroactive claims of meal or tip allowances where employer failed to maintain payroll records or provide employees wage stubs reflecting allowances. *See Padilla v. Manlapaz*, 643 F. Supp. 2d 302, 209 (E.D.N.Y. 2009).
- **A10163-b §§ 6, 8, & 18:** Codifies *Manlapaz* decision directly in statute.
- **S8380** Does not include this provision.

### 11. Calculation of Unpaid Overtime

- **Current Law:** To calculate proper overtime rate, you typically divide the total wages paid by the total hours *actually* worked.
- **A10163-b §§ 6, 8, & 18:** Provides that where employer fails to provide employee notice of overtime rate, maintain payroll records reflecting the overtime rate, or provide employee with paystubs showing the overtime rate, the correct overtime rate of pay will be calculated by dividing the total wages paid per week by 40 hours or actual hours worked, whichever is less (a calculation resulting in a higher overtime rate).
- **S8380:** Does not include this provision.

### 12. Burden Shifting on Proof of Wages Paid – Court Actions

- **Current Law:** Nothing in the statute, but case law makes clear that a reasonable estimate by the employee, absent credible rebuttal by employer, is proper basis of calculation of wage. (Follows federal *Mt. Clemens (Anderson et al. v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946)) standard for burden shifting.)
- **A10163-b §§ 6, 8:** Includes language intended to codify *Mt. Clemens* standard from case law, namely that employee’s “credible testimony” forms proper basis.
- **S8380:** Does not contain provision out of concern that as originally proposed in Senate and in the form pending in A10163-b, could make law worse by *requiring live testimony* from every employee, which in class actions or large DOL or AG investigations is not feasible.

### 13. Burden Shifting on Proof of Wages Paid – Administrative Process

- **NYLL Art. 6, § 196-a(a):** provides that where employer fails to maintain “adequate” records, the employer shall bear full and unchanging burden of proving the wages actually paid.
- **A10163-b § 6:** Removes word “adequate” from existing law and replaces with text specifying burden-shifting rule, largely based on *Mt. Clemens* standard.
- **S8380:** Based on feedback from DOL that existing statutory text is in fact stronger, as interpreted by BIA, Senate version retains statutory language from current law and does not substitute burden-shifting text as included in Assembly version (and original Senate WTPA).

### 14. Liquidated Damages on Wage Claims

- **NYLL Art. 6, § 198 (payment of wages claim), Art. 19 § 663 (minimum wage and OT claim):** current law provides 25% liquidated damages. Not recoverable in state-court class actions because prohibited by CPLR 901(b). Following recent Supreme Court decision, state liquidated damages *are* recoverable in state claims brought in class actions in *federal* court because CPLR 901(b) is considered a procedural rule that does not apply in federal court. *See Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Corp.*, 2010 U.S. LEXIS 2929 (U.S. Mar. 31, 2010).
- **A10163-b §§ 8, 18:** Increases liquidated damages to 200%. Explicitly provides for recovery in class actions. Requires DOL to assess at least 50% liquidated damages in every case.
- **S8380 §§ 7, 16:** Increases liquidated damages to 100%. Does not explicitly provide for recovery in class actions. Does not set minimum amount of liquidated damages for DOL to assess in all investigations.
- Note: Both versions of bill require assessment of full liquidated damages in an order to comply issued by DOL pursuant to § 218 or § 219. Assembly version includes text saying maximum amount available. Senate version specifies exact damages at 100%.

### 15. Retaliation

- **NYLL Art. 7, § 215** Existing law prohibits retaliation but has many loopholes. No liquidated damages. Loopholes in cases of retaliatory discharge for undocumented or low-wage workers. Undocumented workers have essentially no remedy, since they are ineligible for backpay after retaliatory discharge and ineligible for reinstatement. Low-wage documented workers recover little if anything in instances of retaliatory discharge, since they typically obtain new employment almost immediately and thus back-pay award is de minimis and reinstatement is not relevant remedy. DOL lacks the powers to remedy retaliation that would be available in court - such as ordering reinstatement and back pay.
- **A10163-b § 12**
  - Closes loopholes: prohibits threats of retaliation and conduct that would deter a reasonable worker from asserting rights protected under the Labor Law. Prohibits retaliation because an employee “has been informed, or has informed another person, about his or her rights” under the Labor Law.
  - Creates presumption of retaliation for adverse action w/in 90 days of protected employee conduct.
  - Provides Commissioner with all tools, including ordering reinstatement, to remedy retaliation, making commissioner’s power match that of courts.
  - Explicitly defines “employee” to include any current or former employee.
  - Includes prohibition against retaliation by “any person” – not just those who meet technical definition of “employer” under the Labor Law (e.g., wife of employer, manager, etc.). [Inclusion of phrase “any person” inadvertently not added in two places in section dealing with remedies and enforcement.]
  - **Damages:** adds new liquidated damages set at a minimum of \$150 a day to victimized worker.
- **S8380 § 10** Does same as Assembly EXCEPT:

- Does not include presumption of retaliation
- Does not specify definition of employee to include current and former employees.
- Does not prohibit “conduct that would deter a reasonable worker from asserting rights.”
- Amends name of § 215 from “Penalties and civil action; employer who penalizes employees because of complaints of employer violations” to “Penalties and civil action; prohibited retaliation.”
- Includes prohibition against retaliation by “any person” – and adds “any person” to two other places in section to clarify intent of the provision and facilitate enforcement.
- **Damages:** Adds new liquidated damages of up to \$10,000 to victimized worker. Because “any person” is included in S8380, bill explicitly states that this new category of liquidated damages is the only available remedy for retaliation by a person who does not meet definition of employer. (to make clear that non-employers cannot be held liable for back wages, reinstatement, etc.)

#### 16. Posting Notices of NY Labor Law Violations

- **Current law:** DOL can “tag” goods illegally manufactured in apparel industry only.
- **A10163-b § 15:** Expands existing “tagging” power to all goods manufactured or assembled in violation of Art 6, 19 or 19-A.
- **S8380 § 13:** Gives DOL discretion to order employer to post notices of violations of Art 6, 19 or 19-A. Notices visible to employees only: DOL can order posting of any wage and hour violation, max posting for 1 year. Notices visible to public: DOL can only order posting of willful violations, max posting for 90 days.

#### 17. DOL Power to Order Accounting of Assets on Employer Default

- **Current Law: NYLL Art. 6, § 196** DOL has no power to obtain asset information to assist with collecting unpaid wages.
- **A10163-b § 5:** Gives DOL discretion to demand asset information (bank accounts, real property, etc.) from employer who defaults for more than 10 days on obligation to pay the amount listed as due in final Order to Show Cause. Requires employer to automatically update accounting within 10 days of any change. Provides DOL authority to bring action in court to compel compliance with request for accounting.
- **S8380 § 4** Identical to Assembly version except: allows DOL discretion on how often and in what circumstances to order an employer to update the accounting (rather than automatic updates within 10 days of change) and provides court authority to award up to \$10,000 civil penalty for employer failure to comply.

#### 18. Employer Bonds Paid to DOL

- **Current law: NYLL Ar. 6, § 196:** Law already provides DOL authority to require defaulting employer bond but DOL must first take ministerial step of filing administrative order w/ county clerk before obtaining bond.
- **A10163-b § 5:** Provides DOL discretion to require employer to post bond after default on Order to Comply (not after docketing administrative order in court, as is currently required).
- **S8380 § 4** Identical to Assembly version.

#### 19. Increased Damages after Employer Default

- **Current law: WTPA Amends NYLL §§ 198, 218, 219, 663:** No additional damages in existing law for employer defaults. Costs expended collecting on judgments may be recovered only through separate, subsequent litigation.
- **A10163-b §§ 8, 13, 14, 18:** Where employer defaults on paying judgment or paying on final administrative order for more than 90 days, after the judgment/order is final, the employer must pay 15% additional damages.

- **S8380 §§ 7, 11, 12, 16:** Senate version provides same substantive provision but spells out in greater detail the mechanism of how the additional damages will be included.

## 20. Non-Waiver of Wage and Hour Rights

- **Current Law:** no explicit prohibition of employee's ability to waive rights absent court review.
- **A10163-b §§ 8, 18:** Provides that rights under the Article cannot be waived or released except pursuant to a settlement deemed fair and equitable by a court of competent jurisdiction.
- **S8380:** Does not include this provision.

## 21. Arbitration Fairness Act

- **Current Law:** no explicit prohibition of signing pre-dispute agreement to arbitrate wage claims.
- **A10163-b § 15:** explicitly prohibits pre-dispute agreements to arbitrate wage claims except as contained in a valid collective bargaining agreement.
- **S8380:** Does not include this provision.

## 22. Criminal Penalties: NON-payment of wages.

- **Current Law: NYLL Art. 6, § 198-a:** first offense misdemeanor with fine of \$500 to \$20,000 and up to 1 yr in prison. Second offense: felony with \$500 to \$20,000 fine and up to 1 year and 1 day in prison.
- **A10163-b § 9** Increases existing criminal penalties for nonpayment of wages: First offense: increases minimum misdemeanor fine to \$2,500 or twice the underpayment, whichever is greater. Leaves misdemeanor jail time unchanged. Second offense: changes existing felony to a class E felony, increasing minimum fine to \$5,000 or triple the amount of underpayment, whichever is greater. Felony jail time increased to minimum 3 years and max 4 years (NY Penal Law 70.70). Adds new corporate forms to list of covered entities to ensure, for example, equal treatment of Limited Liability Companies (newer business form) and Corporations (already covered).
- **S8380 § 8** Does not alter existing criminal penalties for nonpayment of wages. Adds new corporate forms to list of covered entities to ensure, for example, equal treatment of Limited Liability Companies (newer business form) and Corporations (already covered).

## 23. Criminal Penalties: Nonpayment of Minimum Wage and Overtime

- **Current law: NYLL Art. 19, § 662:** Non-payment of min wage or overtime under Article 19 is Class B misdemeanor: max 3 months in prison + max \$500 fine. Note: criminal penalty for nonpayment of minimum wage under Article 19 is not parallel to criminal penalty for nonpayment of wages under Article 6.
- **A10163-b § 17:** Increases criminal penalties: First offense: minimum fine increased to \$2,500 or twice the underpayment, whichever is greater; maximum jail time increased to one year. Second offense: provides new 2<sup>nd</sup> offense defined as a class E felony with \$5,000 fine or triple the amount of underpayment, whichever is greater. New jail time minimum 3 years and max 4 years (NY Penal Law 70.70).
- **S8380 § 15:** Makes the penalty for nonpayment of min wage/OT under Article 19 match criminal penalties provided under current NYLL §198-a for nonpayment of wages under Article 6.

## 24. Criminal Penalties: Retaliation

- **Current law:**
  - **NYLL Art. 7, § 215:** existing anti-retaliation section does not include criminal penalties.
  - **NYLL Art. 19, § 662:** Class B misdemeanor for employer retaliation against worker for complaint of nonpayment of min wage or OT under Article 19. Max 3 months in prison + max \$500 fine.
  - **NYLL Art. 6:** loophole: no existing criminal penalty for retaliation against employee for complaint of nonpayment of wages under Article 6.

- **A10163-b § 12:** Moves criminal penalty for retaliation from Art. 19 (minimum wage/OT) to Section 215, where illegal retaliation is defined. This move expands the types of retaliation criminally prohibited to include retaliation against workers complaining about nonpayment of wages and exercising any other wage-and-hour rights. Increases criminal penalties from existing law: First offense: \$500 to \$10,000 fine and up to 1 year imprisonment. Second offense: felony (\$500 to \$20,000 fine + up to 1 year and 1 day in prison).
- **S8380 § 10** As with Assembly version, criminal penalties for retaliation moved from Article 19 to Section 215. Penalties: Senate version does not change the criminal penalties – leaves as Class B misdemeanor and does not provide second-time felony offense.

#### 25. Criminal Penalty: Record-Keeping & Notices Violations

- **Current law: NYLL Art. 6, § 198-a** provides criminal penalty for failure to maintain payroll records. Current law does NOT provide criminal penalty for failure to provide notice of wage rate at time of hire under §195(1).
- **A10163-b §§ 9, 17:** Extends existing criminal penalties under section to criminalize failure to provide employees with notices of wage rates: First offense: misdemeanor, \$500 to \$5,000 fine + 1 yr in prison. Second offense: felony, \$500 to \$20,000 fine and/or 1 yr + 1 day in prison.
- **S8380:** Does not expand criminal penalties to cover non-provision of wage notices.

#### 26. Criminal Penalty: Defacing DOL-Posted Notices of Violations

- **Current Law:** No existing provisions b/c DOL notices at issue are authorized under new provisions of the WTPA.
- **A10163-b § 15** Provides DOL authority to “tag” goods that are illegally manufactured and provides misdemeanor for removing or defacing a “tag” placed by DOL.
- **S8380 § 13** Provides DOL authority to order employer to post notices of *willful* violations for 90 days for public viewing. Misdemeanor for removing or defacing notice. Note: DOL is also authorized to order employer to post a notice of violations for employee viewing. No criminal penalty for removing or defacing that category of notice.



## Appendix VIII: WTPA Overview as Signed into Law

### The Wage Theft Prevention Act: Historic Labor Law Reform in New York State S8380 (Savino) / A11726 (Heastie)

The Wage Theft Prevention Act was drafted by Make the Road New York’s litigators based on over a dozen years’ experience fighting wage theft through worker, consumer, and small business organizing, combined with litigation, government agency monitoring, and innovative partnerships with the Department of Labor and Office of the NYS Attorney General. On March 9, 2010, Assembly member Carl Heastie of the Bronx, and Senator Diane Savino of Staten Island and Brooklyn simultaneously introduced the 26-page piece of legislation in their respective houses. Despite its length and technicality, the WTPA made its way through the state legislature with almost unprecedented speed. It passed the Senate on June 30, 2010 and the Assembly on November 30, 2010 and was sent to Governor Paterson for a signature on December 1, 2010. On December 9, 2010, Governor Paterson signed the WTPA into law. It took effect April 9, 2011.

### The Need

Wage theft has reached epidemic proportions in New York State. In New York City alone, nearly \$1 billion is stolen from low-wage workers *every year*—15% of the workers’ annual incomes. Worst, wage theft is rampant in some of the state’s fastest growing industries.

Wage theft harms not just working families, but also the businesses that pay their employees properly, and suffer a competitive disadvantage as a result. Law-abiding employers struggle to stay afloat, while the competition gains an edge by not paying minimum wage and overtime—and typically not paying into the unemployment or workers’ compensation insurance systems.

Shockingly, New York State has lagged behind dozens of other states—including *Arizona*—in punishing wage thieves and protecting workers from abuse. But this year, New York State passed comprehensive reform to stem the tide of wage theft. A broad coalition of community groups, labor unions, business leaders, worker advocates, and elected officials came together to push comprehensive labor law reform through the Legislature in a mere nine months. With

the passage of the Wage Theft Prevention Act, New York is poised to become the national leader in the fight against wage theft.

### The Wage Theft Prevention Act:

- 1) Finally **puts a real price tag on wage theft violations** to turn around the perverse incentives that have been pressuring businesses to break the law;
- 2) **Protects workers with the courage to stand up** and blow the whistle on wage theft; and
- 3) Provides courts and the Department of Labor **new tools to help ensure that employers found to be violating the law actually pay** the money they owe their workers.

### A REAL PRICE TAG ON VIOLATIONS: INCREASING THE INCENTIVES TO COMPLY

- **The WTPA finally implements “double damages” for wage theft in New York State so that wage thieves who are caught have to pay double the original amount of the stolen wages.** Under current law, employers found to have stolen wages must pay back the wages owed—plus a mere 25% more as “liquidated damages” that go to the aggrieved workers. Damages so low create no incentive against violations—employers build in the small chance of getting caught in to the “cost of doing business.” **The WTPA quadruples the liquidated damages that wage thieves must pay—a real price tag to deter violations.**
- **Stopping the clock.** Currently, workers who file claims with the DOL often must wait years before a final decision, as large case backlogs slow the progress of investigations. If errors or lack of investigative resources during the DOL case result in a settlement for less than what the worker is actually owed, current law lets workers go to court to claim the rest. But by law in NY workers can only claim wages

going back six years from the time they file a court case—so workers lose the time (often years) that they spent waiting during the agency process. The WTPA “stops the clock” during the DOL investigation, so that if necessary, workers will be able to recover the full amount of what they’re owed.

- **Spot light on the worst abuses.** The public has long had the right to view local businesses’ health and sanitation violations. But unscrupulous employers have been able to keep their wage theft under wraps. The WTPA grants the DOL the power to order wage thieves to post notices at their place of business, advising the public and/or employees of proven wage violations. These postings deter future violations, and encourage entire industries and geographic regions to come in to compliance.

## PROTECTING WORKERS WHO BLOW THE WHISTLE ON ABUSE

- **The WTPA explicitly prohibits employers from *threatening workers*** who stand up for their rights. Smart wage thieves know a well-timed threat to fire workers is often all that’s needed to silence dissent. Under old law, threats did not clearly count as illegal retaliation.
- **The WTPA prohibits *everyone* from retaliating against employees who blow the whistle on violations.** Previously, the law did not protect employees against retaliation by individuals who don’t meet the technical definition of an “employer” under the law. Thus, when the employer’s accountant, wife, or cousin retaliated against a worker when he tried to collect his wages, the courts and the Department of Labor couldn’t do anything about it.
- **The WTPA makes clear that workers do not have to cite to the law—any good faith complaint of conduct that the employee reasonably believes is illegal will be protected against retaliation.** Low-wage workers often don’t know the technicalities of the labor law. Incredibly, a New York court recently ruled that workers must cite particular sections of the law when complaining of violations to be protected from retaliation.

- **The WTPA gives the DOL the tools it needs to prevent and remedy retaliation when it occurs, including ordering reinstatement of fired workers,** damages, and restoration of seniority and benefits. Most low-wage workers go to the Department of Labor for help—rather than filing in court. However, under the old law, the DOL did not have the same powers that a court had to remedy retaliation.
- **The WTPA finally compensates victims of retaliation with money damages that will make employers think twice about trying to make a wage claim go away by intimidating workers.** The WTPA provides that victims of retaliation will receive up to \$10,000 in a new type of liquidated damages. Old law provided limited damages that were not well-tailored to compensate victims. For example, low-wage workers scramble to get a new job immediately—since a day without work can mean not meeting the rent that month. For a worker who finds another low-wage job within a few days, an award of “lost wages” for their time out of work would be minor—often less than \$100. \$100 does nothing to compensate workers for a traumatic experience, and does even less to deter employers from firing one person as an effective strategy to silence an entire workforce.

## SHOW ME THE MONEY: MAKING SURE WAGE THIEVES PAY WHAT THEY OWE

Winning unpaid wage cases is the easy part; tracking down the assets to actually collect what is owed is not. The worst wage thieves hide assets to evade having to pay. The WTPA addresses the problem in several ways.

- **The WTPA gives the DOL the authority to collect asset information on employers found in violation**—and take recalcitrant employers to court if they refuse to give it.
- Under the WTPA, **the DOL will have the power to order violators to post bonds to cover the wages found due during the administrative process when appropriate**—guaranteeing that there’s in fact money at the end of the day to pay workers the wages they’re owed.

- **The WTPA provides for an automatic 15% increase in the total amount of a judgment if the employer fails to pay within 90 days.**
- **The WTPA allows the DOL to issue orders for unpaid wages directly in the name of the worker** owed the money, allowing workers to work to collect the money they're owed.

## CLEAR RULES; CLEAR CONSEQUENCES

New York Labor Law is complex, with many of the critical rules that employers must follow buried in the regulations, rather than directly in the text of the law itself. **The WTPA spells out, in the law itself, the employer's obligations to keep records, give notices to workers of their rights, and the repercussions to an employer if the rules aren't followed.**

- The WTPA clarifies an employer's obligations to keep payroll records and corrects inconsistency between the statute and regulations as to how long employers must retain payroll records.
- The WTPA cleans up the rules for providing employees with pre-employment notices of their wage rates and with periodic paystubs. New damages, capped at \$2,500 per worker, puts real teeth in these requirements. Employers now will also be required to provide DOL-created translations of pre-employment wage rate notices, ensuring limited English proficient workers also get real information about their jobs.

## Key Supporters of the Wage Theft Prevention Act Include:

Make the Road New York ■ MFY Legal Services, Inc. ■ Small Business United ■ Morton Williams Supermarkets ■ UFCW Local 1500 ■ Retail, Wholesale & Department Store Union (RWDSU) ■ The Working Families Party ■ New York Communities for Change ■ The National Employment Law Project ■ New York State AFL-CIO ■ The New York City Council ■ 32BJ SEIU ■ New York Hotel & Motel Trades Council ■ 1199 SEIU ■ New York Jobs with Justice / Urban Agenda ■ NYCOSH ■ Drum Major Institute for Public Policy ■ New York Stimulus Alliance NYC Aids Housing Network / VOCAL ■ New York State Trial Lawyers Association ■ Urban Justice Center



## Appendix IX: Car Wash Accountability Act FAQ 2014

### Q&A: The Car Wash Accountability Act of 2014

#### Regulating the NYC Car Wash Service Industry

#### Overview: Why the Act? Why now?

The Car Wash Accountability Act would establish, for the first time, common-sense city oversight covering an industry with a history of unsafe and illegal practices and the potential to harm consumers and our city’s environment in serious ways. The core of the legislation would require car washes to obtain operating licenses from the City of New York in order to do business. The city already requires that businesses in dozens of other industries—including restaurants, towing companies, car garages, dry cleaners, and even thrift shops—follow this elementary step. This industry handles hundreds of thousands of dollars’ worth of consumer property every day, and a litany of consumer complaints has come to light. The industry also poses serious environmental risks impacting New York City water and safety, relating to water usage, sewage discharge, and the use of caustic chemicals. Finally, wage theft is rampant in the industry, resulting in judgments and potential judgments that the city’s police powers can help to enforce. The immediate need for the Act has become apparent as rampant abuses in the industry come to light and reveal just how dirty the New York car wash industry is. A litany of consumer complaints against operators and the increasing uncertainty about what car washes are doing with **untreated wastewater and potentially toxic “sludge”** reveals a fundamental problem: New York City has had virtually no oversight over the car wash industry until now. The Car Wash Accountability Act finally puts in place basic, common-sense oversight for the protection of our city.

#### The Specifics: What would the Act do?

This section presents, in question and answer format, how the Act addresses the many consumer and environmental issues that car washes pose. The main provisions of the bill require that car washes: obtain licenses from the Department of Consumer Affairs (DCA); post surety bonds; provide basic information

about their businesses to the city; and, comply with basic regulations concerning their wastewater discharge and public water usage.

#### 1) Why require car washes to maintain licenses?

The New York City Department of Consumer Affairs already requires that 78,000 separate businesses, across 55 industries, apply for licenses to operate lawfully within the city. Businesses from sidewalk cafes to parking garages must obtain licenses through a process that involves certifying that the business operators are honest and that they meet minimum standards for the protection of consumers and the environment. No blanket licensing law exists. Instead, the City Council licenses industries one-by-one over time. Industries already covered by licensing requirements include laundromats, car garages, storage warehouses and towing vehicles to name but a few. Car washes pose comparable or more serious risks to consumers and the environment. It is surprising that car washes have not been covered to date.

#### 2) Who would be required to maintain the license?

Only bona fide car washes that operate for profit. The Act does not cover charity car washes. Nor does it cover businesses for which washing cars is ancillary to some other service, such as selling or repairing vehicles.

#### 3) What would the license cost car wash owners?

The license application would cost \$550 every two years. This amount covers administrative costs for the DCA.

#### 4) What type of information would the car wash owner provide when applying?

An applicant would be required to supply the same information as is required in other industries including business address and ownership. In addition, applicants would have to certify compliance with existing environmental law and supply proof that they carry the insurance required by law. Further, they would have to maintain records of consumer complaints and environmental practices and make those records available to the DCA upon request.

### 5) What would the Act do to help protect our environment, and why is this necessary?

The Act would require car washes to provide written proof of their compliance with environmental regulations to end bad practices with regard to sludge disposal. “Sludge” is the oil and debris that becomes trapped through filtration.<sup>i</sup> Car wash workers report that many car wash managers, failing to appreciate the concerns sludge poses, take few if any precautions with regard to its disposal.

Prior City Council hearings on the industry and this legislation have included employee testimony that many car washes fail to handle “sludge” disposal in a safe manner. Other localities have passed wastewater regulations that are specific to car washes, thereby addressing the myriad of issues that car wash chemicals pose for human health and that residual oils and debris cause for the flow of the sewer system. The Act simply requires local car washes to meet some of the same minimum standards that are already in place in many other parts of the country.

### 6) What is the surety bond requirement?

A surety bond is a form of insurance that protects the consumer and business owner in the event of damages or unpaid judgments or fines. Surety bonds are a common, well-established requirement for industries that routinely handle consumer property. The Car Wash Accountability Act requires car wash owners, just like operators of laundromats, dry cleaners, and car garages, for instance, to obtain surety bonds to open for business.

### 7) Why is the surety bond requirement necessary?

Surety bonds protect consumers, workers, and other damaged parties by ensuring that legitimate claims are satisfied. A strong bonding requirement is a critical component of ensuring that individuals who secure judgments against a carwash for unpaid or underpaid wages, or damage to a vehicle, can keep the carwash owners from wriggling out from under that judgment.

A recent example illustrates the need: In June 2011, three former employees filed suit in the EDNY against Off Broadway for non-payment of wages. (*Mirek Ramirez, et al. v. H.J.S. Car Wash Inc., et al.*, CV-11-2664). In June 2013 the court entered judgment for damages to plaintiff in the amount of \$205,409.34 and \$41,740 in attorneys’ fees and

costs, a total judgment of nearly \$250,000. The judgment is to date unpaid and unsatisfied, and the corporate entity operating the carwash has changed, leaving workers with virtually no way to collect their back pay. This particular judgment covered only three out of between one and three dozen workers employed during that time period—some of whom have now come forward to confirm that they too were severely underpaid during that time period. And the judgment covers less than two years of wage underpayment, though workers are entitled to 6 years by law if the violation has gone on that long. Attorneys familiar with the industry estimate that meritorious wage claims at many car washes are likely to exceed \$750,000 or \$1,000,000 in value. The bond amount also takes into account the recent Attorney General settlement with the John Lage & Fernando Magalhaes car washes for \$2.2 million in unpaid wages, a mere 5 years after they were forced to pay \$3.4 million in an earlier unpaid wage case. A strong surety bond requirement is one of the only ways to actually ensure that aggrieved workers can access the wages to which they are entitled, thus helping to finally eradicate wage theft from the car wash industry business model, allowing law abiding car washes to thrive at last.

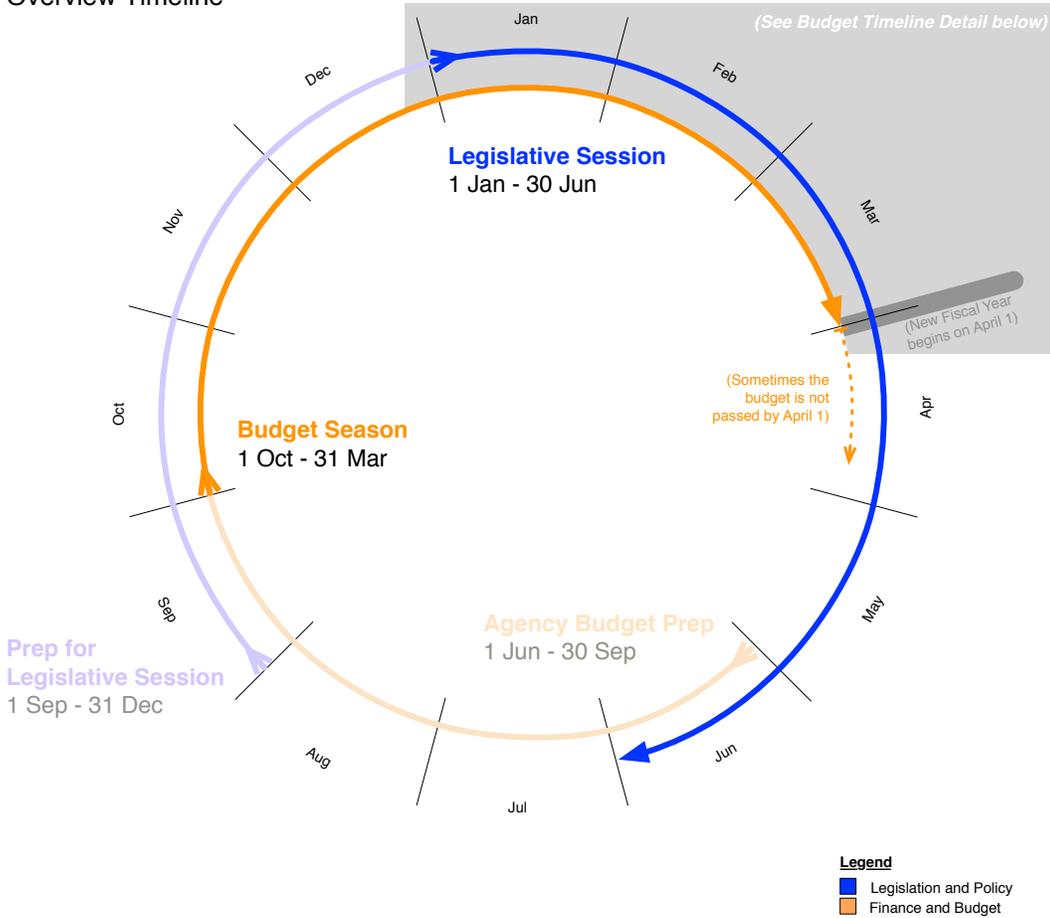
The bond amount also protects consumers. The WASH Campaign investigated the first of these concerns by launching a study of online consumer complaints. Results of the study are alarming. For instance, it shows the frequency with which car wash managers deny responsibility for damage to vehicles and for loss or theft of property. Substantially more than one-third of the complaints against the 50 New York City car washes that the Campaign surveyed pertained to exactly this scenario. In the absence of consumer protections, this unfortunate reality comes as no surprise given that car washes know they have the upper hand. By comparison, aggrieved consumers of parking garages can get quick reimbursement for damage to their property, since parking garages must carry surety bonds, whereas customers of car washes must rely on the good graces of car wash operators to remedy the same grievances. Worker testimony indicates that standard practice to resolve consumer complaints is that employers take cash from the workers’ tip pool to make the customer whole for any damage that the machines may have inflicted. As oversight and worker courage eliminates this approach, consumers will also need guaranteed access to a bond to protect their claims.

<sup>i</sup> A study of the compounds in car wash wastewater and sludge for the International Carwash Association confirms this. See CHRIS BROWN, WATER EFFLUENT AND SOLID WASTE CHARACTERISTICS IN PROFESSIONAL CAR WASH INDUSTRY (International Carwash Association, Inc. 2003) (“The results of this study regarding contaminants in grit indicate that significant levels of some contaminants are caught in the grit by the oil/water separation tanks in professional car washes”).

# Appendix X: Advocacy Institute Sample MAPS

## State Map 1 - Timelines

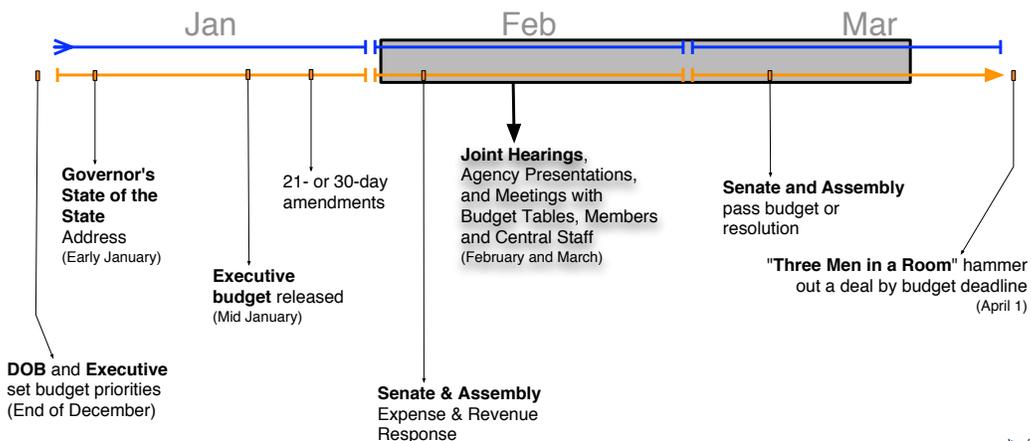
### Overview Timeline



### Budget Timeline Detail

#### Budget Cycle Phases

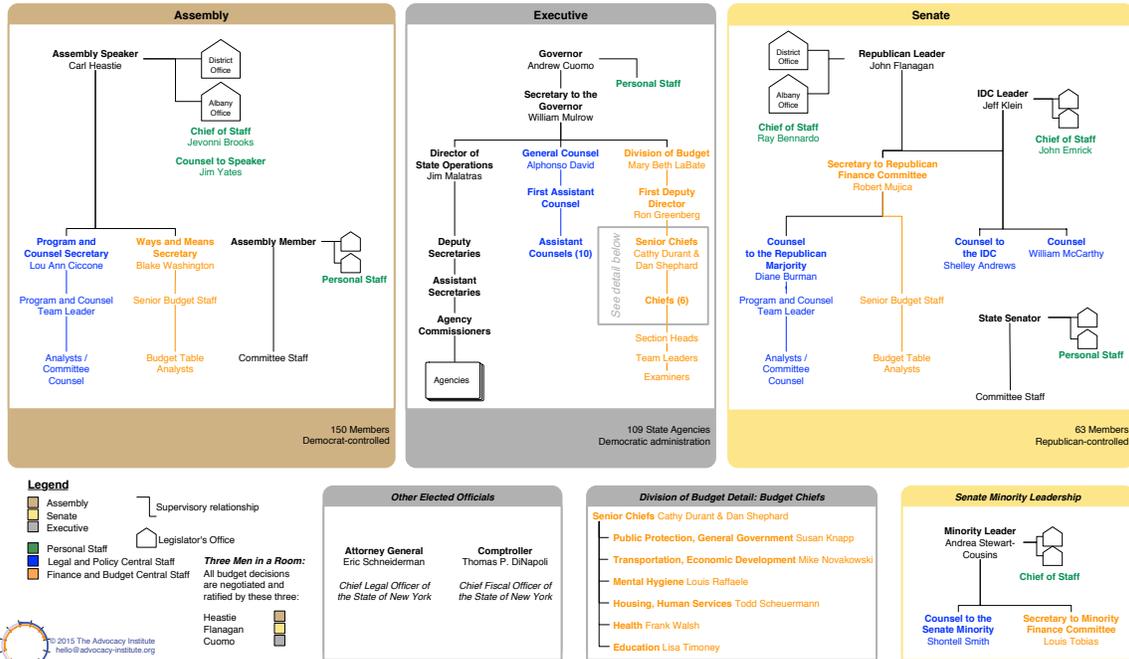
- June - September: Agency budget preparation
- October - December: Division of Budget review
- November - January: Governor and 2nd floor decisions
- January - March: Legislative action



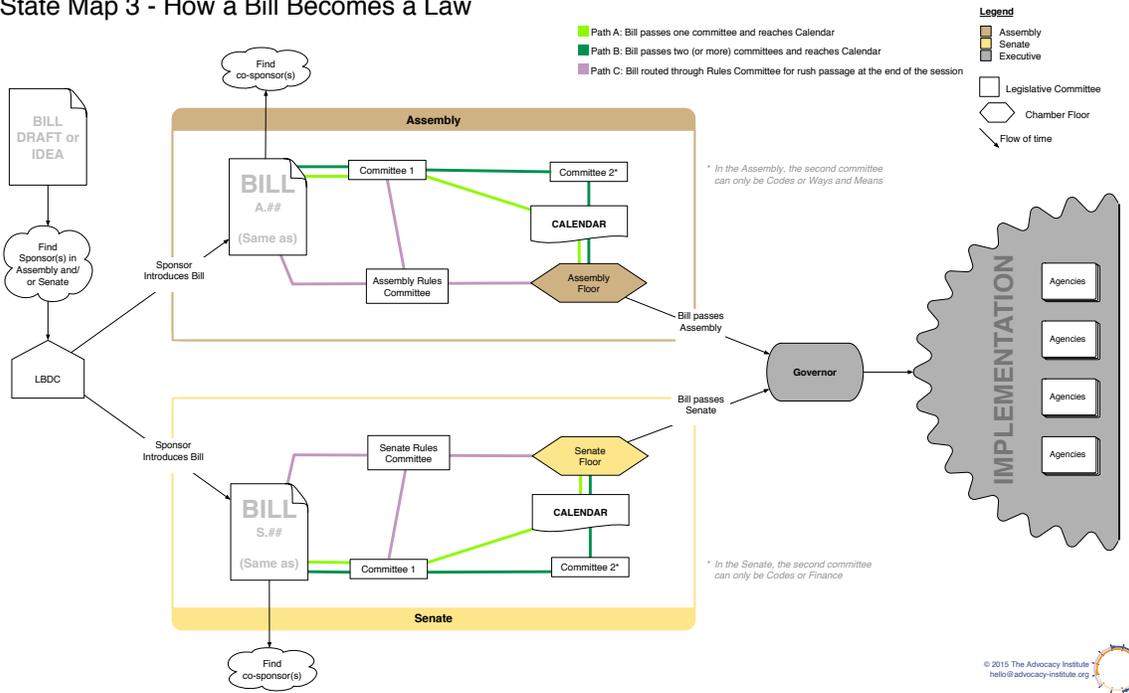
# Advocacy Insitute Sample MAPS (continued...)

## State Map 2 - Who's Who

v15.6 June 2015



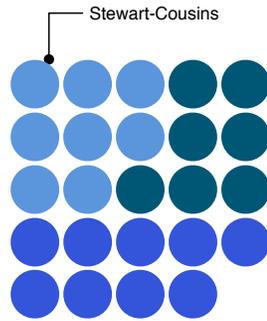
## State Map 3 - How a Bill Becomes a Law



## Advocacy Insitute Sample MAPS (continued...)

### State Map 4 - Legislative Conferences

#### Senate



**Democratic: 24**  
3 bills passed / member

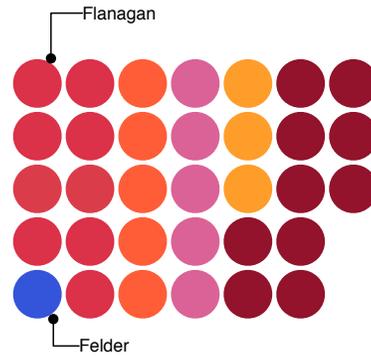
- White Members (9)
- Black Members (8)
- Latino Members (7)
- Women members (5)



**Independent Democratic Conference: 5**  
15 bills passed / member

- White members (5)
- Women members (1)

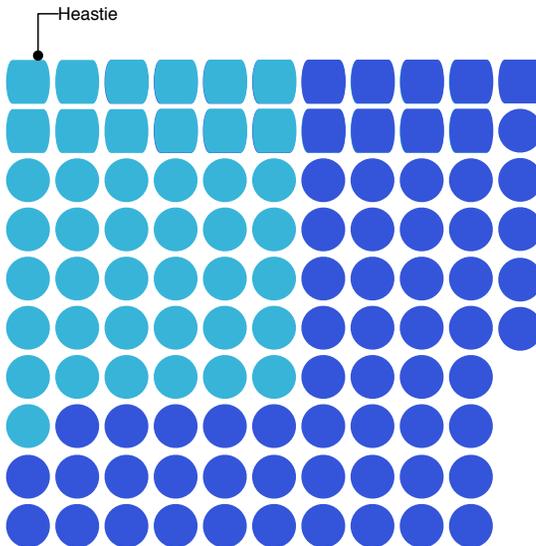
**No Conference: 1**



**Republican: 33**  
33 bills passed / member

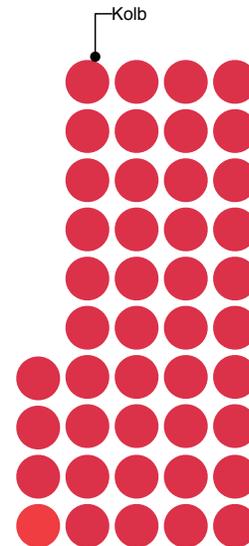
- Long Island Members (9)
- Western New York (5)
- Mid-Hudson & Capital Members (5)
- New York City Members (3)
- Rest of State Members (11)
- White Members (33)
- Women members (5)

#### Assembly



**Democratic: 106**

- Assembly Leadership (21)
- Black, Puerto Rican, Hispanic and Asian Caucus (43)
- [Non-caucus members]
- Women members (35)



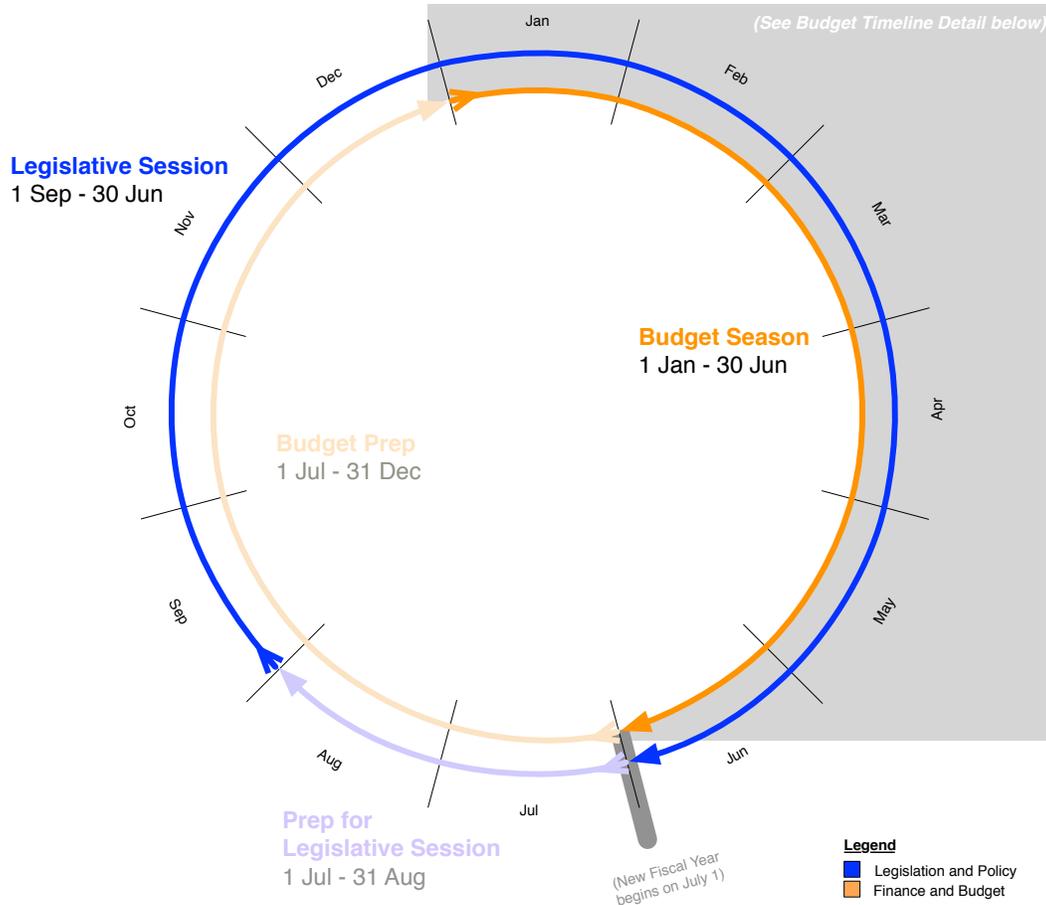
**Republican: 44**

- Women members (5)

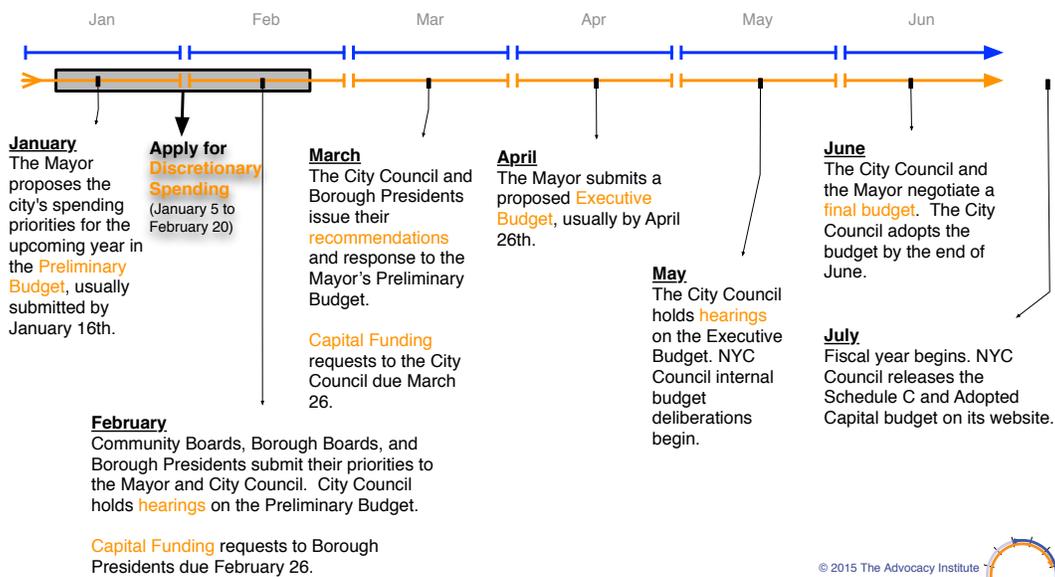
# Advocacy Insitute Sample MAPS (continued...)

## City Map 1 - Timelines

### Overview Timeline



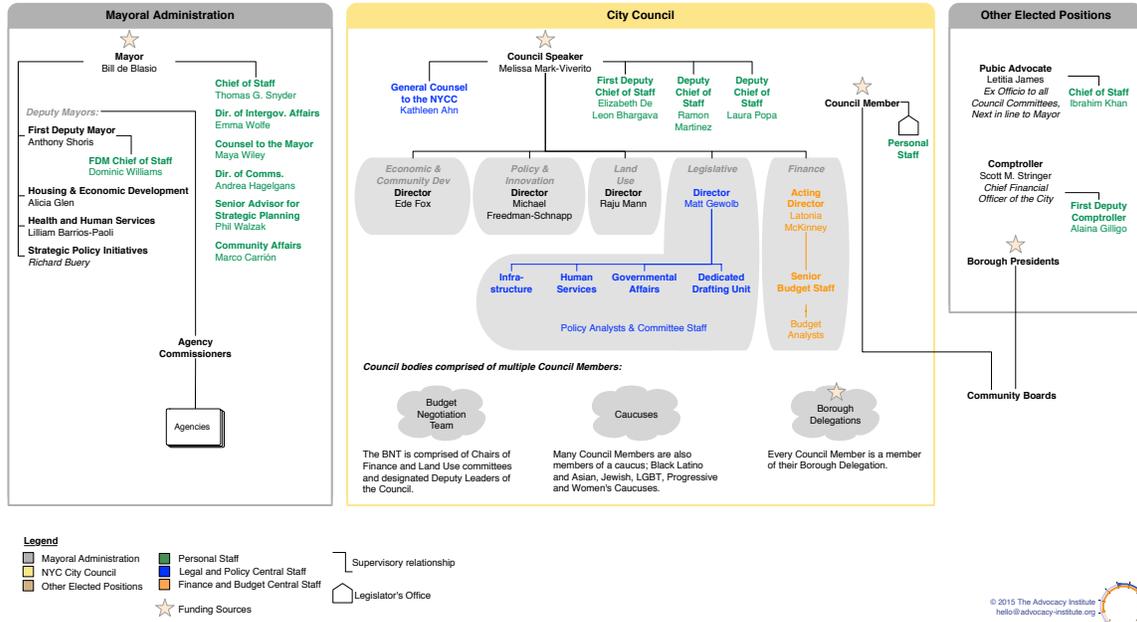
### Budget Timeline Detail



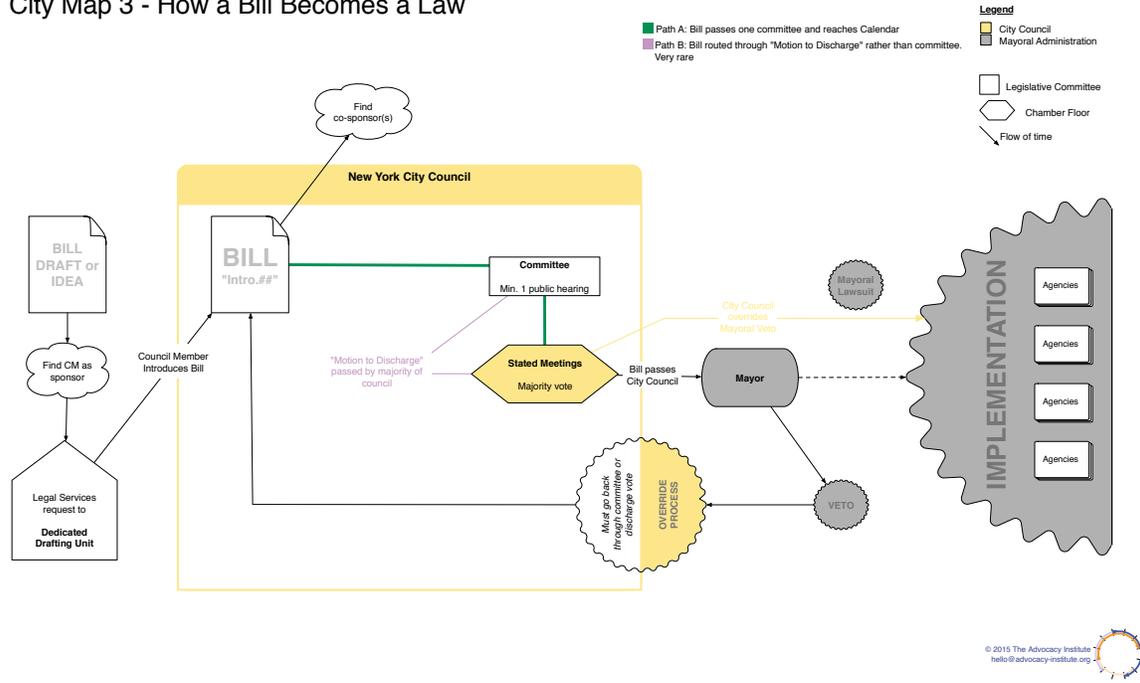
# Advocacy Institute Sample MAPS (continued...)

## City Map 2 - New York City Government

v15.6 June 2015

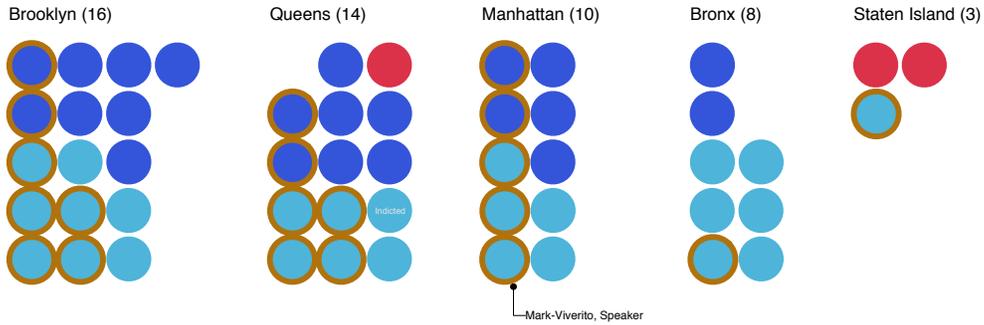


## City Map 3 - How a Bill Becomes a Law

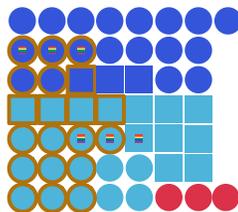


# Advocacy Insitute Sample MAPS (continued...)

## City Map 4 - New York City Council Members



### Summary View (51)



### Democrats (48)

- Black, Latino and Asian Caucus members (26)
- Non-BLA caucus members (22)
- Progressive Caucus members (20)
- Women (15)
- Out LGBT members (6)

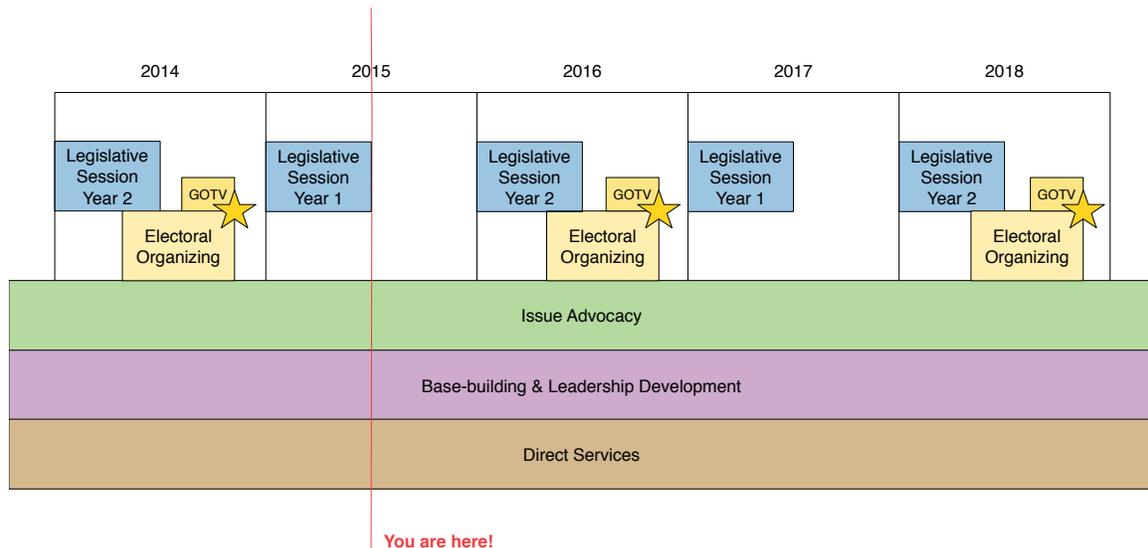
### Republicans (3)

- Non-BLA caucus members (3)

v15.6 June 2015



## State Level Civic Engagement Timeline



## Appendix XI: DOES and ORM Budget Hearing Talking Points

*Below is a shared statement of solidarity, strength and strategic framing for the Just Pay Coalitions testimony in front of DOES and ORM on April 27th. As a Coalition, our goal is to update the public record on our asks and reinforce the need for oversight on DOES. Our tone is to be critical of agencies past performance but optimistic to be working with these agencies under this new administrations. The suggested theme for this year's testimony is that want DOES and ORM to be proactive in enforcing labor laws, transparent and accountable to the public, and responsive to community concerns. We hope that coalition members will have an intro that mirrors the sample text below and then choose a few of the recommendations under one or two of the themes to weave into their testimony.*

"Councilmember \_\_\_\_\_, thank you for the opportunity to testify today.

My name is \_\_\_\_\_ with [your organization] which is also a member of the Just Pay Coalition. [Your Organization] is a [Organization/Union/Coalition] that [insert your organization's mission]. Today I'll focus my testimony on the Department of Employment Services, specifically the Office of Wage and Hour.

The Just Pay Coalition, along with several other organizations in DC, has been successful in passing many important pieces of legislation aimed at ensuring DC workers invaluable rights and benefits. However, laws left unenforced leave workers without their rights and fail to level the playing field for small businesses trying to respect the rights of their workers.

Previously, the Just Pay Coalition had advocated for increased funding in DOES in order to enable them to be proactive in the enforcement of these new laws. However, through the budget process we have learned that DOES still has a significant number of vacancies in key positions. We believe that once DOES is fully staffed under current funding they will have a significant increase in capacity. We further believes that the fact that these vacancies have existed for so long and that the public was unable to independently confirm these vacancies highlights the need for the council to provide more direct and extensive oversight of DOES in order to hold them accountable. We feel it necessary to reiterate the council's, and more specifically this committee's, responsibility in providing extensive oversight of DOES.

As a [worker/advocate], I look forward to working closely with DOES under this new administration because it is important to me that DOES is transparent, accountable to the public, proactive in enforcing labor laws and responsive to community concerns. "

*If applicable:* [Your organization] is also a member of the DC Fair Budget Coalition, and we support the Coalition's Budget Platform because we believe it offers a comprehensive approach towards fighting poverty in the District across a range of issue areas that affect DC's lowest-income communities.

## DOES and ORM Budget Hearing Talking Points *(continued...)*

### **Just Pay Coalition DOES Demands**

1. Proactive enforcement of all laws through:
  - a. Hold community and business forums to educate the public on their rights and responsibilities
  - b. Conduct proactive public outreach by auditing whether businesses are in compliance. When businesses are not in compliance they should be fined and investors should look into other possible labor standard violation.
  - c. Full Staffing - Fill all vacancies and increase number of investigators, outreach staff and administrative law judges to ensure timely adjudication of workers' cases.
  - d. Work with enforcement and regulatory agencies like DCRA, OAG and OHR to create interagency collaboration in labor law enforcement.
  
2. Transparency with the Community and Advocates:
  - a. Increased oversight of DOES from the council
    - i. create an implementation plan in collaboration with advocates and workers
    - ii. re-define key measures of success to better reflect the needs of the DC workers
    - iii. Create timelines for compliance to community and council demands with penalties for inaction
  - b. Regular sharing of data with advocates and the community including:
    - i. Number of claims resolved by the Office of Wage and Hour
    - ii. Number of claims referred to Attorney General or administrative law judges
    - iii. How much money is recovered, and what percent of the wages claimed by worker is this?
    - iv. Number of claims where employer is non-compliant and does not respond to DOES inquiries
    - v. Number and amount of fines issued
  - c. Issue of regulations for Wage Theft Prevention Act and Accrued Sick and Safe Leave Amendment Act by June 1st 2015.
  - d. Create necessary documents including frequently asked question (FAQ) documents to guide employers on how to comply with law by June 1st 2015.
  - e. Create a worker friendly overview of the OWH claims process including the appeal process and expected timeline to distribute to workers who are making claims and inform them of their rights under the law by June 1st 2015
  
3. Responsive to Community Concerns
  - a. Treat workers with respect and dignity
  - b. Have a complaint process for unprofessional interactions with agency staff
  - c. Ensure that services and materials are easily accessed by workers who speak languages other than English in accordance with the DC Language Access Act
  - d. Have regular quarterly meetings with advocates
  - e. Host public forums to hear from workers directly
  - f. Conduct in-depth training with all levels of staff at the Office of Wage Hour to ensure thorough knowledge of all wage and hour laws.

### **Just Pay Coalition ORM Ask**

1. Re-institution the Cost of Living increases for approved benefits

## Appendix XII: Weisbard 2013 Oversight Testimony on DOES – As Submitted

**ARI WEISBARD, ESQ. ADVOCACY  
MANAGER D.C. EMPLOYMENT  
JUSTICE CENTER**

### **COMMITTEE ON WORKFORCE AND COMMUNITY AFFAIRS FY 2013 Performance Oversight Hearing Department of Employment Services March 4, 2013**

Committee Chair Barry and members of the Committee, thank you very much for the opportunity to testify on the performance of the Department of Employment Services. My name is Ari Weisbard and I am Advocacy Manager at the D.C. Employment Justice Center. EJC is a nonprofit organization whose mission is to secure, protect and promote workplace justice in the D.C. metropolitan area. We provide free legal advice to more than 1,200 workers a year and consistently refer many District workers to DOES's Office of Wage-Hour.

First, I want to thank you for your leadership in passing several pieces of pro-worker legislation supported by EJC. We deeply appreciated your support of the Accrued Sick and Safe Leave Act of 2008 and, more recently, the Workplace Fraud Amendment Act of 2012, and the Unemployed Anti-Discrimination Act of 2011. These laws protect workers when they get sick, when they are misclassified by their employers, or when they are unemployed and looking for work. We look forward to your continued support for ensuring that workplace protection laws are funded in this year's budget and fully implemented.

The performance of DOES's Office of Wage-Hour is a critical issue for EJC. More than 400 workers have come to EJC with wage complaints in just the last two years. Some of these workers are paid less than the minimum wage, some are illegally denied overtime, some are paid less than what they were promised, and many lose whole days or weeks of pay because their employers simply refuse to give them their paychecks. We consider all of these practices to be "wage theft," because losing your wages is just as damaging as any other form of theft.

According to a 2009 survey of low-wage workers in three urban areas, low-wage workers lose on average \$51 per week to wage theft, or \$2,634 per year. That amounts to 15% of their annual income. Most of these workers are supporting at least one child.<sup>i</sup>

And yet, the District is doing less than ever to combat wage theft. In 1971, the Office of Wage-Hour had a budget large enough to support a staff of 25. Today, the Office has only three investigators. It is simply not possible with this limited a staff to adequately enforce DC's minimum wage, unpaid wage, living wage, sick leave, and other worker protection laws.

But the issue is not merely one of adequate staffing. One recent national survey gave DC's wage laws a grade of F due to the inadequate safeguards we provide for workers. The survey was titled "Where Wage Theft is Legal." While stealing from your own employees isn't technically legal here in DC, to be honest, they're right. It may as well be. If we want to make sure that workers get paid what they're owed, we need to address wage theft on a structural level.

Why are workers more likely to have their money stolen by their own employers than having it stolen by strangers? Why are the hundreds of employees who come forward and file wage theft complaints each year just the tip of the iceberg?

Well, most employees suffer in silence because they fear losing their jobs, especially in this economy. If the worker complains, the employer can retaliate with near impunity. So they keep working for weeks, hoping they can believe their employer's promises to pay them eventually. And when they don't, they can't afford to hire a lawyer and spend months trying to get their wages back, often without success. For them, it's throwing good money after bad.

And what happens when a worker actually does come forward and file a complaint? After months of waiting and investigating, the most they ever seem to get back is the money they were owed in the first place. No interest. No damages. No penalties. So wage theft perpetrators know they probably won't get caught, and even when they do, they still come out ahead, with an interest-free loan from their own employees. And all those other employees who didn't come forward? It's like a special form of unearned loan forgiveness.

<sup>i</sup> Tim Judson & Cristina Francisco-McGuire, "[Where Theft is Legal: Mapping Wage Theft Laws in the 50 States.](#)" Progressive States Network. June 2012 (at page 2).

So it shouldn't be surprising that so many employers are careful to keep their employees off the books. According to DOES, when an employer fails to keep records, even legally-required records, they're not held accountable for any orally promised wages they owe their employees. Moreover, DOES does not believe they have the authority to assess liquidated damages and reports again this year that they have not assessed any administrative penalties or even set up the apparatus to hold formal hearings in order to impose them. Without better procedures and remedies for employees, wage theft will continue. Employees will suffer and honest employers won't be able to compete on a level playing field.

In conclusion, we urge the Council to strengthen worker protection laws, to expand workers' rights to a fair hearing and reasonable damages, and to adequately fund enforcement of these laws. Thank you very much for the opportunity to provide you with this testimony.

## Appendix XIII: WTPA Brochure

# THE WAGE THEFT PREVENTION ACT



**NEW TOOLS TO END WAGE THEFT**



**NEW RIGHTS AND PROTECTIONS FOR WORKERS IN THE STATE OF NEW YORK**

# WHAT ARE MY RIGHTS AS A

## ALMOST ALL WORKERS RECEIVE THE MINIMUM WAGE:



IN THE STATE OF NEW YORK THE MINIMUM WAGE IS \$7.25 PER HOUR. EMPLOYERS ARE SUPPOSED TO PAY MOST WORKERS AT LEAST \$7.25 PER HOUR.

TIPPED WORKERS MIGHT RECEIVE A LOWER MINIMUM WAGE, DEPENDING ON THEIR JOB.

## MOST WORKERS HAVE THE RIGHT TO RECEIVE OVERTIME PAY:

EMPLOYERS ARE SUPPOSED TO PAY WORKERS TIME-AND-A-HALF WHEN THEY WORK OVER 40 HOURS IN A WEEK.

**FOR EXAMPLE:**

IF YOU MAKE \$10 PER HOUR, YOUR BOSS HAS TO PAY YOU \$15 PER HOUR IN OVERTIME FOR EVERY HOUR OVER 40 HOURS. IF YOU HAVE TO WORK MORE THAN 40 HOURS A WEEK BUT YOUR BOSS PAYS YOU A FLAT SALARY (FOR EXAMPLE \$450 A WEEK FOR 60 HOURS), MOST WORKERS ARE SUPPOSED TO BE PAID EXTRA OVERTIME WAGES TOO.

**1**

# BASIC WORKER ?



IN THE STATE OF NEW YORK YOU SHOULD ALSO GET A DAILY BONUS OF \$7.25 (THE CURRENT MINIMUM WAGE) IF YOUR SHIFT IS LONGER THAN 10 HOURS.

## ALL WORKERS HAVE THE RIGHT TO WORK IN A SAFE ENVIRONMENT:

WORKERS HAVE THE RIGHT TO WORK IN AN ENVIRONMENT THAT DOES NOT POSE A RISK TO THEIR HEALTH OR SAFETY.

WORKERS HAVE THE RIGHT TO WORK IN AN ENVIRONMENT FREE OF SEXUAL HARASSMENT AND DISCRIMINATION BASED ON RACE, NATIONAL ORIGIN, AGE, RELIGION, GENDER, OR SEXUAL ORIENTATION.

WORKERS HAVE THE RIGHT TO BELONG TO A UNION AND TO ORGANIZE WITH THEIR CO-WORKERS TO IMPROVE WORKING CONDITIONS.



**2**

# ALL WORKERS HAVE THE RIGHT TO STAND UP FOR THEIR RIGHTS



WORKERS HAVE A RIGHT TO CLAIM MONEY FROM THEIR BOSSES WHEN THEY ARE OWED WAGES. FOR IMMIGRANT WORKERS, IT DOESN'T MATTER WHETHER OR NOT THEY HAVE A VISA, SOCIAL SECURITY NUMBER, OR LEGAL DOCUMENTS TO WORK IN THIS COUNTRY.

IMMIGRATION SIGNED A PUBLIC AGREEMENT PROMISING NOT TO TAKE ACTION WHEN EMPLOYERS CALL THEM TO REPORT UNDOCUMENTED WORKERS. THEY ALSO PROMISED NOT TO GET INVOLVED IN WAGE THEFT INVESTIGATIONS.

## EVEN THOUGH WORKERS HAVE THESE RIGHTS...

ABUSIVE EMPLOYERS STEAL THOUSANDS OF DOLLARS FROM THEIR OWN WORKERS EVERY YEAR. THIS IS CALLED WAGE THEFT.



WAGE THEFT HAPPENS ANYTIME A WORKER IS NOT PAID WHAT THEY ARE OWED. THIS INCLUDES:

- RECEIVING LESS THAN THE MINIMUM WAGE.
- NOT RECEIVING OVERTIME PAY.
- WORKING AND NOT BEING PAID AT ALL.

**3**

## WTPA Brochure (continued...)

IN NEW YORK CITY ALONE, EMPLOYERS STEAL ALMOST \$1 BILLION FROM WORKERS EVERY SINGLE YEAR!

### WHAT IS THE WAGE THEFT PREVENTION ACT?

IN 2010  
MAKE THE ROAD NEW YORK

LEDA COALITION OF COMMUNITY ORGANIZATIONS, LABOR UNIONS AND SMALL BUSINESSES TO PASS

### THE WAGE THEFT PREVENTION ACT (WTPA)

THE WAGE THEFT PREVENTION ACT WENT INTO EFFECT IN APRIL 2011  
**ALL WORKERS IN THE STATE OF NEW YORK HAVE IMPORTANT NEW RIGHTS AND PROTECTIONS UNDER THE WTPA**



4

### The WTPA:

- **INCREASES** PENALTIES FOR ABUSIVE BOSSES
- **STRENGTHENS** PROTECTIONS FOR WORKERS WHO STAND UP FOR THEIR RIGHTS
- **HELPS MAKE SURE** LABOR LAWS ARE ENFORCED SO THAT EMPLOYERS WHO BREAK THE LAW ACTUALLY PAY THE MONEY THEY OWE THEIR WORKERS

### WHAT ARE MY NEW RIGHTS UNDER THE WAGE THEFT PREVENTION ACT?



**INCREASED PENALTIES FOR ABUSIVE BOSSES!**

WHEN EMPLOYERS ARE CAUGHT STEALING WAGES FROM THEIR WORKERS, THE COURTS AND THE

5 DEPARTMENT OF LABOR (DOL)

CAN ORDER THE EMPLOYER TO PAY WORKERS THEIR UNPAID WAGES PLUS AN EXTRA FINE, CALLED "DAMAGES."



BEFORE, THIS FINE WAS ONLY 25% OF THE STOLEN WAGES.

**NOW,**

EMPLOYERS CAN BE CHARGED UP TO 100%. IN OTHER WORDS, NOW THEY HAVE TO PAY TWICE WHAT THEY STOLE.

6

### FOR EXAMPLE,

IF YOU ARE OWED \$10,000 IN UNPAID WAGES, BEFORE, YOUR BOSS WOULD HAVE HAD TO PAY YOU \$12,500

**NOW** YOUR BOSS WILL BE ORDERED TO PAY YOU UP TO \$20,000



THIS MEANS WORKERS WILL RECEIVE MORE MONEY IN DAMAGES. IT ALSO MEANS EMPLOYERS WILL THINK TWICE BEFORE THEY STEAL WAGES FROM THEIR WORKERS BECAUSE THEY HAVE TO PAY MORE WHEN THEY ARE

7 CAUGHT!



## WTPA Brochure (continued...)

**EVEN AFTER THEY ARE ORDERED TO PAY, MANY BOSSES DON'T PAY ON TIME!**

**NOW,**  
IF YOUR BOSS DOESN'T PAY THE FULL AMOUNT IN 90 DAYS, HE HAS TO PAY THAT AMOUNT PLUS AN EXTRA 15%!



**FOR EXAMPLE,**  
SAY YOUR EMPLOYER OWES YOU \$1,000 IN UNPAID WAGES AND DAMAGES. IF HE HAS NOT PAID AFTER 90 DAYS, HE WILL OWE YOU \$1,150

8

**STRONGER PROTECTION FOR WORKERS FOR THEIR RETALIATION**

WHEN WORKERS STAND UP FOR THEIR RIGHTS, EMPLOYERS OFTEN RETALIATE BY DOING THINGS LIKE:

- CUTTING THEIR HOURS
- CHANGING THEIR SCHEDULE, OR EVEN FIRING THEM

THIS HAS ALWAYS BEEN ILLEGAL, BUT EMPLOYERS USUALLY GOT AWAY WITH IT.

**NOW,**  
THE LAW TO PROTECT WORKERS AGAINST RETALIATION IS MUCH STRONGER

NOW IT'S ILLEGAL FOR OTHER PEOPLE BESIDES THE EMPLOYER TO RETALIATE AGAINST WORKERS WHO STAND UP FOR THEIR RIGHTS.



9

**PROTECTIONS FOR WORKERS WHO STAND UP FOR THEIR RIGHTS**

**FOR EXAMPLE,**  
IF YOU TRY AND COLLECT YOUR WAGES AND YOUR BOSS'S WIFE OR COUSIN RETALIATES AGAINST YOU, BEFORE THE COURTS AND THE DOL COULDN'T DO ANYTHING TO PROTECT YOU.

**NOW THEY CAN!**

NOW IT'S ILLEGAL FOR EMPLOYERS TO EVEN THREATEN WORKERS WHO STAND UP FOR THEIR RIGHTS.

**FOR EXAMPLE,**  
IF YOU COMPLAIN THAT YOU ARE WORKING 60 HOURS A WEEK WITH NO OVERTIME AND YOUR BOSS THREATENS TO FIRE YOU IF YOU DON'T STOP COMPLAINING, THAT'S ILLEGAL!



10

**NOW WORKERS CAN RECEIVE UP TO \$10,000 FOR EACH ILLEGAL THREAT OR RETALIATION WHEN THEY STAND UP FOR THEIR RIGHTS.**

**FOR EXAMPLE,**  
IF YOU DEMAND TO BE PAID OVERTIME; FIRST YOUR BOSS CHANGES YOUR SCHEDULE SO YOU HAVE TO WORK ALL NIGHT SHIFTS. THEN HE THREATENS TO CALL IMMIGRATION IF YOU DON'T STOP INSISTING AND THEN HE FIRES YOU. YOU COULD BE AWARDED UP TO \$10,000 FOR HIM CHANGING YOUR SCHEDULE, UP TO \$10,000 FOR HIM THREATENING TO CALL IMMIGRATION AND UP TO \$10,000 FOR FIRING YOU - A MAXIMUM OF \$30,000

**BEFORE, WHEN THINGS LIKE THIS HAPPENED, WORKERS DIDN'T GET ANYTHING AT ALL.**

THIS MEANS WORKERS WILL RECEIVE MORE MONEY. IT ALSO MEANS EMPLOYERS WILL THINK TWICE BEFORE THEY RETALIATE AGAINST THEIR WORKERS.



11

## WTPA Brochure (continued...)

### CLEARER INFORMATION ABOUT WORKERS' SALARIES



WHEN YOU START A NEW JOB, YOUR EMPLOYER HAS TO GIVE YOU A DOCUMENT THAT TELLS YOU HOW MUCH MONEY YOU WILL BE EARNING. THIS DOCUMENT IS CALLED A "WAGE RATE NOTICE"

BUT UNDER THE OLD LAW, A LOT OF EMPLOYEES DID NOT GET THEIR WORKERS THIS NOTICE. IT ONLY HAD TO BE IN ENGLISH, AND IT DIDN'T HAVE VERY USEFUL INFORMATION.

**UNDER THE NEW LAW:**

- THE NOTICE HAS TO INCLUDE THE EMPLOYER'S NAME, ADDRESS AND PHONE NUMBER.
- THE NOTICE HAS TO SAY WHETHER YOU WILL BE PAID BY THE HOUR, PER WEEK OR PER SHIFT.
- THE NOTICE HAS TO TELL YOU IF THE EMPLOYER IS GOING TO PAY YOU A LOWER MINIMUM WAGE BECAUSE YOU GET TIPS OR MEALS.

**FOR EXAMPLE,**



IF YOU WORK IN A RESTAURANT AND YOUR BOSS IS GOING TO TAKE THE COST OF YOUR DAILY MEAL FROM YOUR PAY, HE HAS TO TELL YOU THAT IN WRITING.

IF YOU EARN TIPS, YOUR BOSS CAN PAY YOU A LOWER MINIMUM WAGE. BUT HE HAS TO TELL YOU IN WRITING EXACTLY HOW MUCH YOU WILL BE PAID PER HOUR.

12

EMPLOYERS ALSO HAVE TO USE TRANSLATIONS PROVIDED BY THE DEPARTMENT OF LABOR (DOL) SO THAT WORKERS WHO DON'T SPEAK ENGLISH WILL HAVE CLEAR INFORMATION ABOUT THEIR WAGES.



WORKERS WHO SPEAK SPANISH, CHINESE OR KOREAN WILL BE ABLE TO GET THE NOTICE IN THEIR OWN LANGUAGE. OVER TIME, THE DOL WILL PROVIDE INFORMATION IN OTHER LANGUAGES TOO.

**UNDER THE NEW LAW,**

IF YOUR EMPLOYER ALREADY OWES YOU UNPAID WAGES, YOU CAN RECEIVE UP TO \$ 2,500 IF HE DID NOT GIVE YOU A WAGE RATE NOTICE WHEN YOU FIRST STARTED WORKING OR HAS NOT GIVEN YOU A REGULAR PAY STUB.

**FOR EXAMPLE,**

IF YOUR BOSS OWES YOU \$1,500 IN UNPAID WAGES BUT HE NEVER GAVE YOU A PAY STUB, NOW YOU COULD BE AWARDED THE \$1,500 PLUS \$2,500 FOR NEVER GETTING A PAY STUB, \$ 4,000 IN TOTAL.

13

### HOW CAN I MAKE SURE MY RIGHTS ARE PROTECTED?

PASSING THE WAGE THEFT PREVENTION ACT WAS A HISTORIC VICTORY FOR WORKERS

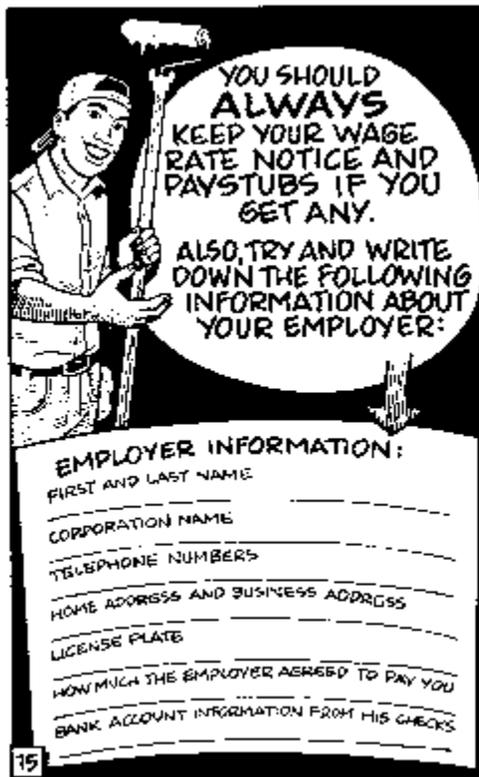


BUT WE STILL HAVE TO MAKE SURE THIS LAW IS ENFORCED, AND WORKERS' RIGHTS ARE RESPECTED!

14

YOU SHOULD ALWAYS KEEP YOUR WAGE RATE NOTICE AND PAYSTUBS IF YOU GET ANY.

ALSO TRY AND WRITE DOWN THE FOLLOWING INFORMATION ABOUT YOUR EMPLOYER:



**EMPLOYER INFORMATION:**

- FIRST AND LAST NAME
- CORPORATION NAME
- TELEPHONE NUMBERS
- HOME ADDRESS AND BUSINESS ADDRESS
- LICENSE PLATE
- HOW MUCH THE EMPLOYER AGREED TO PAY YOU
- BANK ACCOUNT INFORMATION FROM HIS CHECKS

15

## WTPA Brochure (continued...)

AT THE END OF EACH WORK DAY, YOU SHOULD WRITE DOWN THE FOLLOWING INFORMATION:



DATE \_\_\_\_\_

WHAT TIME YOU STARTED WORKING \_\_\_\_\_

WHAT TIME YOU FINISHED WORKING \_\_\_\_\_

IF YOU TOOK A LUNCH BREAK AND FOR HOW LONG \_\_\_\_\_

HOW MUCH YOU WERE PAID \_\_\_\_\_

16

# GET INVOLVED MAKE THE ROAD WORKERS

HAVE YOU HAD A PROBLEM AT YOUR WORKPLACE ?  
WOULD YOU LIKE TO BE PART OF CAMPAIGNS TO DEFEND WORKERS' RIGHTS ?



FOR MORE INFORMATION ABOUT WORKERS' RIGHTS, TO TALK TO A LAWYER ABOUT A PROBLEM IN YOUR WORKPLACE, OR TO GET INVOLVED, COME TO ONE OF OUR

17

## WITH NEW YORK'S COMMITTEES!



### WORKERS COMMITTEES' WEEKLY MEETINGS:

IN BROOKLYN  
EVERY TUESDAY AT 7 PM

IN QUEENS  
EVERY THURSDAY AT 7 PM

IN STATEN ISLAND  
EVERY FRIDAY AT 7 PM

18

FOR MORE INFORMATION CALL AND TALK TO AN ORGANIZER.



## MAKE THE ROAD NEW YORK

HAS FOUR OFFICES:

- BUSHWICK, BROOKLYN:  
301 GROVE STREET  
(718) 418-7690 x 1208
- JACKSON HEIGHTS, QUEENS:  
92-10 ROOSEVELT AVENUE  
(718) 565-8500 x 4427
- PORT RICHMOND, STATEN ISLAND:  
479 PORT RICHMOND AVENUE  
(718) 727-1222 x 3446
- LONG ISLAND:  
(631) 294-8726

## Appendix XIV: Vision for Meaningful Enforcement

### Recommended State Law Provisions for Preventing Wage Theft<sup>i</sup>

#### I. Make Government Agencies Effective Enforcers of the Law

- i. Community input and collaboration
  - 1) Fund worker advocacy organizations to conduct outreach, educate workers about their rights, and identify violations of law.
  - 2) Convene task forces on specific industries which include worker advocates.
  - 3) Create an oversight board to monitor the agency and include worker advocates.
  - 4) Designate agency staff to act as liaisons to community groups.
- ii. Targeted and affirmative enforcement
  - 1) Identify substantive violation priorities.
  - 2) Identify industries with high violation rates by consulting with labor advocates and other labor standards enforcers. Ensure the agency has the authority to do affirmative investigations without waiting for a complaint.
  - 3) Conduct unannounced sweeps in priority industries and regions.
  - 4) Grant the agency authority to impose corrective action beyond the payment of wages, penalties and interest.
- iii. More agency funding
  - 1) Increase the state budget for investigators.
  - 2) Increase the number of investigators specifically dedicated to wage theft.
  - 3) Direct fines back to enforcement agencies (for example, a mandatory minimum civil penalty or fine that is not tied to the amount of claim could both deter employers from stealing wages and also could be directed to enforcement efforts.) Note: This could have some potential drawbacks in

terms of political will to provide stable funding.

- 4) Authorize enforcement agencies to collect investigatory and enforcement costs from employers found to have violated the law.
- iv. Improve the complaint process
  - 1) Revise intake and screening processes to ensure incoming claims are properly categorized and prioritized into high-, medium- and low-priority levels based on identified enforcement priorities.
  - 2) Simplify complaint procedures and explain them clearly on the agency's website, including by providing a downloadable claim form.
  - 3) Refer claims to experienced private wage and hour attorneys via bar associations in a timely manner, when appropriate. This can free up the enforcement resources of agencies.
- v. Tap the full potential of government enforcement
  - 1) Treat individual worker complaints as covering the entire workplace so that other workers who fear coming forward will benefit from the agency's investigation. This will allow the expenditure of investigatory resources to benefit a greater number of employees.
  - 2) Enter into forward-looking monitoring agreements so that the agency can inspect and re-investigate the violator for a number of years after the violations were found.
  - 3) Authorize the state department of labor to investigate violations of local wage and hour ordinances upon request from local government. In jurisdictions where the local minimum wage is higher than the state minimum wage, workers can recover the full local wage owed.

#### II. Raise the Cost to Employers for Violating the Law

<sup>i</sup> This outline draws from NELP's publication "Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft," available at <http://www.nelp.org/content/uploads/2015/03/WinningWageJustice2011.pdf>

- i. Make business licenses and public contracts contingent on compliance with employment laws
  - 1) Require employers to disclose any outstanding wages owed and judgments or orders of unpaid wages, and to pay all wages due, as a condition for issuance or renewal of business licenses or registrations. This should be mandatory, not discretionary, for issuance or renewal.
  - 2) Employers with outstanding judgments should be ineligible to bid on or be awarded contracts with state entities. Repeat violators should be barred from contracting for several years.
- ii. Adequate monetary penalties to compel compliance
  - 1) Employers must be subject to either treble damages and interest or a separate fine payable to workers who have not been paid on time, supplementary to the overdue wages. Only monetary penalties that substantially outweigh the withheld wages will deter violations.
  - 2) Penalties should increase for repeat violators.

**III. Protect Workers from Retaliation**

- i. Anonymous, confidential, or third-party claims
  - 1) Allow anonymous complaints, or allow third parties, such as worker centers, to file complaints.
  - 2) Allow one worker to file claims on behalf of the rest of the workers affected by wage theft.
  - 3) Require the state enforcement agency to keep the identities of complaining workers confidential as long as possible during its investigation.
- ii. Remove barriers to proving retaliation
  - 1) Establish a rebuttable presumption of employer retaliation when an adverse action occurs shortly after the employee has exercised his or her rights.
  - 2) Specify that the burden of proof is satisfied when retaliation was a motivating factor, unless the employer can show that it would have taken

the adverse action in the absence of protected activity.

- iii. Retaliation protection should extend to workers who mistakenly but in good faith allege violations of law.

**IV. Stop Independent Contractor Misclassification and Hold Subcontracting Employers Accountable**

- i. Broadly define the employment relationship
  - 1) A broadly-defined scope of who is an employee and who is the employer under wage and hour laws allows agencies to target employers that call their employees “independent contractors,” and to hold more than one employer (a worksite employer AND a temp agency, or a janitorial subcontractor AND the office building or retail store where the work is performed, for instance) responsible for unpaid wages.
  - ii. In industries where subcontracting is rampant (e.g., security, janitorial, agricultural, warehousing), require client employers to share with labor contractors all civil legal responsibility for workers supplied by that labor contractor for the payment of wages and the failure to obtain valid workers’ compensation coverage.
  - iii. Offer an amnesty period to encourage reclassification to employee status
    - 1) Create a time-limited period during which employers can convert so-called “independent contractors” to employees and pay all wages, benefits, and taxes owed in exchange for relief from statutory or civil liability.

**V. Uphold Undocumented Workers’ Rights Under State Law**

- i. The express or implied threat of reporting a worker or a worker’s family member to immigration authorities must be recognized and punishable as a retaliatory act.
- ii. Ensure access for Limited English Proficient Workers by requiring a range of affirmative policies for immigrant worker access to state enforcement agency. The state law should create an office specifically tasked with ensuring agency compliance with immigrant access. To further ensure compliance, the state law should include a private right of action to

sue to enforce individual agency violations of LEP access programs.

iii. Leverage U Visas: Protect immigrant workers who bring wage theft claims

- 1) In pursuing state wage and hour claims, advocates should urge state departments of labor and the attorney general offices to issue certifications for U visas as part of their investigation process.

## VI. Guarantee that Workers can Collect From Their Employers

i. Wage liens

- 1) An ideal wage lien statute would provide for a lien against the property of an employer or property owner as soon as a wage claim is filed.
- 2) Authorize the state Labor Commissioner to enforce nonpayment of wages by issuing a lien or levy on an employer's real or personal property in order to collect unpaid wages for the employee. The Labor Commissioner should be empowered to directly levy bank or otherwise send out its own officers to execute collections.

ii. Wage bonds

- 1) Bonds are most useful for workers employed in industries that are typically undercapitalized or heavily subcontracted such as agriculture, garment, construction and janitorial work. They are routine in most states for public works and construction projects and are also commonly imposed on employment agencies. To be most effective, a bond has to be large enough to cover wages owed to workers with potential claims.
- 2) Require employers with outstanding judgments for nonpayment of wages to either settle or post a bond until satisfaction of the judgment, and authorizes the State Labor Commissioner to issue work-stop orders against employers who fail to do so. The bond amount should depend on the size of the unpaid judgment and apply to both successors and individuals "acting on behalf of an employer."

- 3) Authorize Labor Commissioners to order interim or temporary relief, including by requiring a bond to be posted sufficient to satisfy a good-faith estimate of wages or other damages owed, while the investigation is pending.

iii. Wage pools: ensure (and insure) unpaid wage payments

- 1) A wage fund provides cheated workers the remedies they have fought for and won but were unable to collect. A wage fund is useful for workers who do not know their employer's contact information or identification, or whose employer has no assets, hides its assets, files for bankruptcy, disappears, or re-incorporates as a new successor business.

## VII. Preserve Access to Courts

i. Ensure that workers have time to bring wage theft claims

- 1) Toll the statute of limitations for a civil suit during any investigation by the state department of labor or administrative proceeding.

- 2) Extend the statute of limitation to ensure that workers' valid wage claims do not expire, help workers collect all back wages owed, preserve workers' rights to pursue a lawsuit, and give state agencies sufficient time to investigate claims.

ii. Allow workers to collect attorneys' fees when they prevail in wage enforcement litigation. Employers should not be able to collect if the worker doesn't prevail.

iii. Establish expedited class action procedures for wage and hour claims.

iv. Prohibit the practice of requiring employees to sign mandatory arbitration agreements as a condition of employment.

## VIII. Expand Substantive Wage & Hour Standards

i. Extend minimum wage and overtime protections to excluded groups like agricultural workers, domestic workers, and home care workers.

ii. Institute protections for workers paid on a piece-rate basis by ensuring that piece-rate

workers are paid the minimum hourly wage for “nonproductive time” and rest and recovery periods.

- iii. Ensure paid meal and rest breaks. Specify the intervals at which breaks be provided; and require that rest breaks be counted as compensable time. Workers should receive one hour’s pay for each break they are not permitted to take.
- iv. Daily overtime: Safeguard the eight-hour day
  - 1) Daily overtime laws should require employers to pay workers at least one-and-a-half times their regular rate of pay for hours worked in excess of 8 in a day, and double-time for hours over 12 in a day.
- v. Written notice and wage statements
  - 1) States should require both notice at the time of hire and wage statements at each pay period, and should require employers to provide both types of disclosures in writing to workers. Wage statements should include pay rate (hourly, overtime, attendance, bonus, and/or piece rate), allowances, deductions, hours worked, and basic identifying information for the employer (name including DBAs, address, phone). Violation of this requirement should incur separate penalties.
  - 2) Employers should be required to provide bilingual statements if their workers’ primary language is not English.

## Notes

- 1 Annette Bernhardt et al, "Broken Laws, Unprotected Workers," National Employment Law Project, 2009, <http://www.nelp.org/content/uploads/2015/03/BrokenLawsReport2009.pdf>, 2.
- 2 "Wage Theft Costs American Workers as Much as \$50 Billion a Year," Economic Policy Institute, September 11, 2014, <http://www.epi.org/press/wage-theft-costs-american-workers-50-billion/>.
- 3 "New York State Wage Theft Recovery," New York State Department of Labor, accessed July 13, 2017, <https://labor.ny.gov/workerprotection/laborstandards/wage-theft-recovery/new-york-state-wage-theft-recovery.shtm>.
- 4 Bernhardt et al, "Broken Laws, Unprotected Workers," 2.
- 5 Bernhardt et al, "Broken Laws, Unprotected Workers," 6.
- 6 "Wage Theft Costs American Workers," Economic Policy Institute.
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