



THE WAGE THEFT EPIDEMIC

HOW WAGE THEFT AFFECTS THE
CONSTRUCTION INDUSTRY



An Intelligent Partnerships Publication



Wage theft costs workers billions of dollars a year at the hand of employers. Even though wage theft is against the law, employees are denied benefits that they have earned and are rightfully owed them. This is an issue that is especially prevalent in the construction industry. Wage theft, also referred to as payroll fraud, typically happens when an employee is intentionally or unintentionally denied wages and benefits they are legally owed by their employer.

In the construction industry, wage theft is an issue seen primarily with residential construction workers, non-union employees, and immigrants who work as laborers or craft professionals. Union employees are better protected from wage theft as it is a union's role to help protect workers through collective bargaining agreements (CBAs), which is a legal contract between an employer and the union representing their employees. Furthermore, collective bargaining agreements are required by the National Labor Relations Board which requires all CBAs to adhere to subjects including "wages, overtime, bonuses, grievance procedures, safety and work practices, and seniority." When workers are not active members of a union, they are not protected by CBAs and are therefore more susceptible to wage fraud and poor working conditions. Workers in non-union environments must rely on public compliance systems that include Wage and Hour offices and local agency compliance structures that require workers report violations directly or respond to complaints interested parties. However, current funding of these offices is not sufficient enough to properly address the volume of wage theft complaints.

Source: [National Labor Relations Board](#)

Source: [SHRM](#)

Source: [Midwest Economic Policy](#)

Wage theft is a fundamental problem in the United States that negatively affects employees—especially young workers, people of color, women, and immigrants—while employers pocket billions of dollars annually due to payroll fraud. Taxpayers are also affected by wage theft because when low-income households are illegally underpaid, the government collects less in tax revenue and taxpayers need to provide additional funding for programs such as welfare to make up for losses.



The following are a few statistics regarding the detrimental effects of wage theft:

- Wage theft costs workers billions of dollars every year
- Wage theft is considered the costliest crime in America and accounts for 100x more than the costs of all robberies in the U.S.
- In the top ten most populated states, an estimated 2.4 million people lose a combined \$8 billion each year due to wage theft
- Workers are often hesitant to report wage theft out of fear of retaliation including loss of pay or loss of job

Source: [Economic Policy Institute](#)

Source: [Construct Connect](#)

Source: [Working: Now and Then](#)

Source: [The Guardian](#)



Wage theft accounts for **100x**
more than the costs of all robberies in the U.S.

In the top ten most populated states
\$8 Million is lost each year combined

What is Wage Theft?

Economic Policy Institute (EPI) defines wage theft as failure to pay workers the full wages to which they are legally entitled. Often, employers commit wage theft by paying workers for fewer hours than the actual time worked, not paying legally required overtime, stealing tips, and misclassifying employee status. Although wage theft, which costs workers billions of dollars and taxpayers hundreds of millions of dollars a year, is a growing problem in numerous industries such as fast food, restaurants, and retail, it is a known epidemic in the construction industry.

While multiple state governments around the country such as California, Colorado, Massachusetts, Maryland, and Oregon have attempted to crack down on wage theft issues through laws and legislation specifically in the construction industry, there is still far more to be done on a local, state, and federal level nationwide to fight payroll fraud.

With a specific focus on the Upper Midwest states of Wisconsin, Minnesota, and Illinois, 1-in-5 construction workers (18%) experiences wage theft. In Minnesota, 23% of the construction workforce are misclassified or paid off the books, while Illinois and Wisconsin report 20% and 10%, respectively. For employees who are illegally employed and lack basic labor protections, on average Wisconsin workers earn \$23,500 less annually than they are rightfully owed with workers in Minnesota and Illinois earning \$29,700 and \$23,100 less, respectively. Furthermore, contractors who misclassify workers or illegally pay employees in cash costs taxpayers millions of dollars per year. In Illinois alone, payroll fraud accounts for \$186 million in tax revenue losses each year, while Minnesota loses \$136 million, and Wisconsin loses \$40 million.

Source: [Economic Policy Institute](#)

Source: [Construct Connect](#)

Source: [Midwest Economic Policy](#)

1-in-5

Construction workers
(18%) experiences wage theft



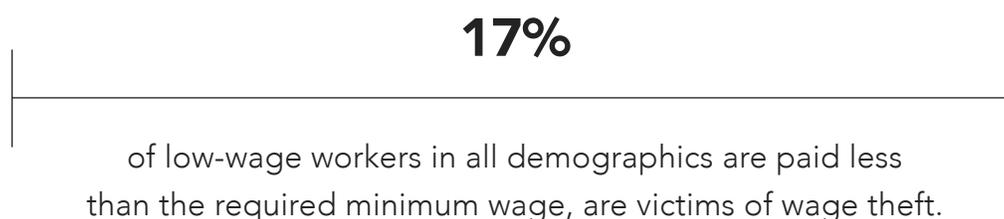
Different Types of Wage Theft

Wage theft can occur in numerous ways. The following list explains six common forms of wage theft and how it costs workers and taxpayers millions of dollars a year:

1. Minimum Wage Violations

Each state sets minimum wage standards that employers are required to pay to workers. When workers are paid less than the required minimum wage, they are victims of wage theft. EPI reports that this form of violation affects 17% of low-wage workers in all demographics. Additionally, minimum wage violations cause many families to fall below the poverty line, thus hurting local and state economies.

Minimum wage violations can happen in a few ways, one being employers misclassifying workers, which denies them rights to minimum wage, overtime, unemployment insurance, benefits, health insurance, and retirement. In 2012, a shuttle driver from California filed a claim that he was wrongly classified as an independent contractor and was forced to work 13-hour days, denied meal breaks, and was denied wage rights he should have been owed in a contract agreement. The Labor Commissioner cited the company who misclassified the employee, but it took 8 years of a lengthy legal battle for the wronged employee to reach a settlement in his misclassification case. EPI states that “minimum wage violations withhold earnings from the lowest-paid workers in society” and if a wronged employee tries to fight their case, many times they go up against big companies with plenty of resources to fight against fines.



Additionally, and more specifically within the construction industry, prevailing wage violations happen when the agreed minimum wage set for certain jobs on public works projects is underpaid. It is illegal for contractors and subcontractors to pay less than what the federal and/or state laws mandate, and when this happens it is a form of minimum wage violation that negates the legally agreed upon prevailing wage.

Source: [KQED](#)

Source: [Economic Policy Institute](#)

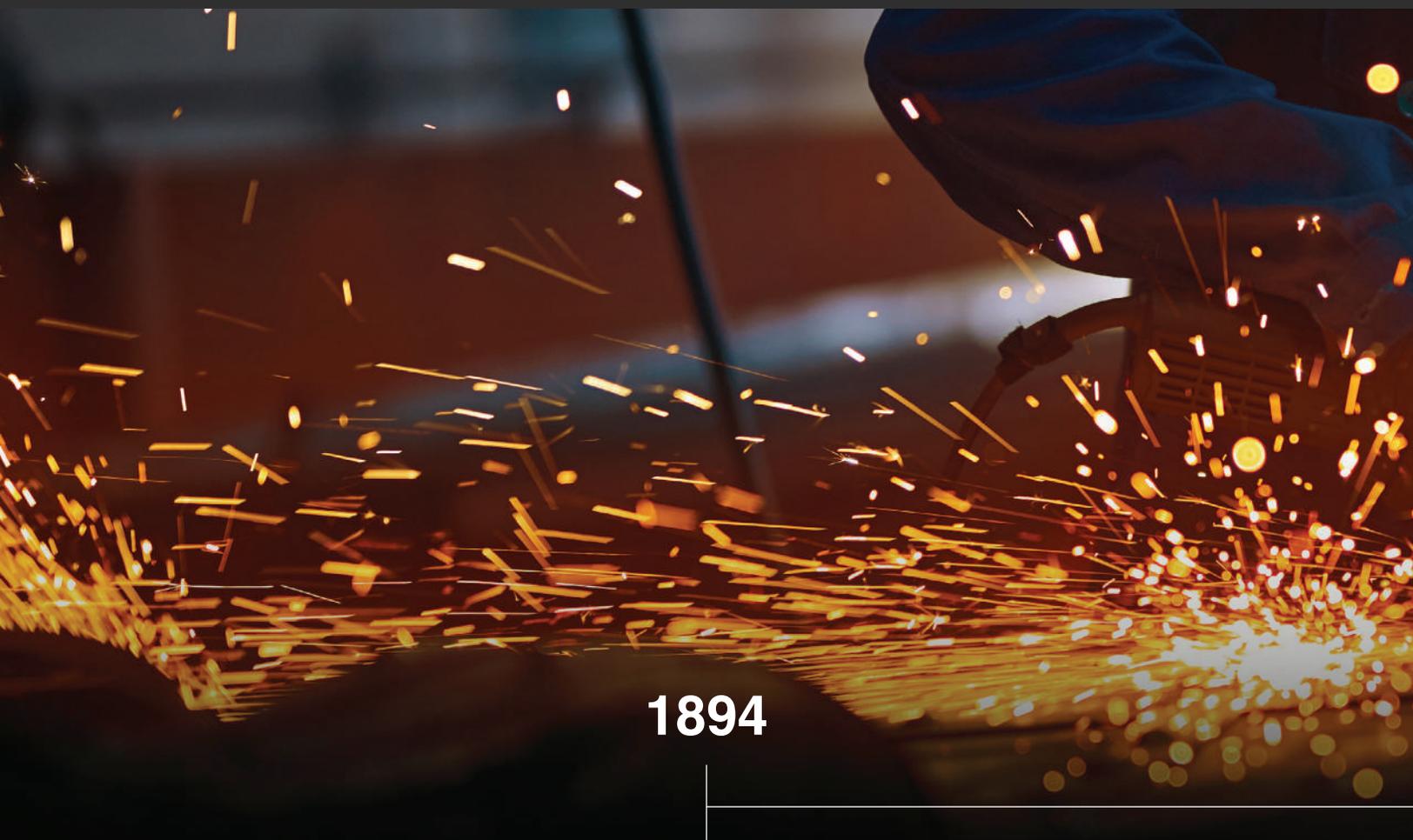
Minimum Wage vs. Prevailing Wage

Minimum wage is classified as the lowest allowable rate of pay for which an employee can work. Minimum wage is a concept that was formally established in New Zealand in 1894 and made its way to the United States in 1938 with the Fair Labor Standards Act of 1938 and is mandated by the U.S. Federal Government.

Source: [Wikipedia](#)

Source: [GovDocs](#)

Source: [National Conference of State Legislatures](#)



1894

Minimum wage is a concept that was formally established in New Zealand



Prevailing wage is the rate of pay contractors and vendors must pay their workers on certain public works projects. Prevailing wages are determined through wage surveys of occupations in the surrounding areas. This means that states with higher construction wages will have high prevailing wages. While the Davis-Bacon Act applies to all federally funded projects over \$2000, only laborers and mechanics must be paid prevailing wages on these projects. However, many states have implemented their own “Little Davis-Bacon” laws to encompass state-funded public works projects; the minimum threshold varies by state and often includes more construction occupations than the federal Davis-Bacon Act. To be clear, the Prevailing wage is the minimum to be paid on applicable projects while union Collective Bargaining Agreements may mandate higher wages.



1938

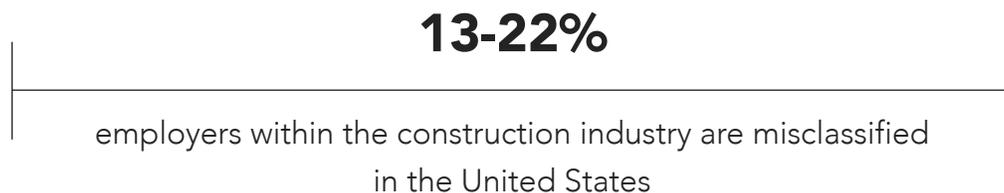
The Fair Labor Standards Act is mandated by
the U.S. Federal Government

2. Overtime Violations

Overtime violations happen when employers fail to pay non-exempt employees time-and-a-half for hours worked more than 40 hours per week. Denying overtime pay is a form of wage theft that costs employees thousands of dollars a year. This sort of violation happens due to employers misclassifying their workers, improper record-keeping, failure to count off-the-clock work, forcing employees to clock out while still working, or miscalculating hourly wages.

Exempt vs. Non-Exempt Employees

An exempt employee means that a worker is exempt from receiving overtime pay, but may receive extra compensation through benefits packages. ADP states that exempt employees “typically must be paid a salary above a certain level and work in an administrative, professional, executive, computer or outside sales role.” Non-exempt employees are protected under the Fair Labor Standards Act and have rights to minimum wage salaries and overtime pay when they work 40 hours per week. Failing to pay a non-exempt employee a proper wage, overtime, or misclassifying an employee can lead to compliance violations for company.



3. Overtime Violations

Misclassifying employees is a rampant issue within the construction industry. Contractors and subcontractors misclassify workers by falsely considering a worker as an independent contractor in order to pay a wage lower than the legal minimum wage. In the United States, it is approximated that 13-22% of employers within the construction industry are misclassified. When workers are misclassified, contractors can underreport taxes and avoid paying benefits to employees.

Source: [ADP](#)

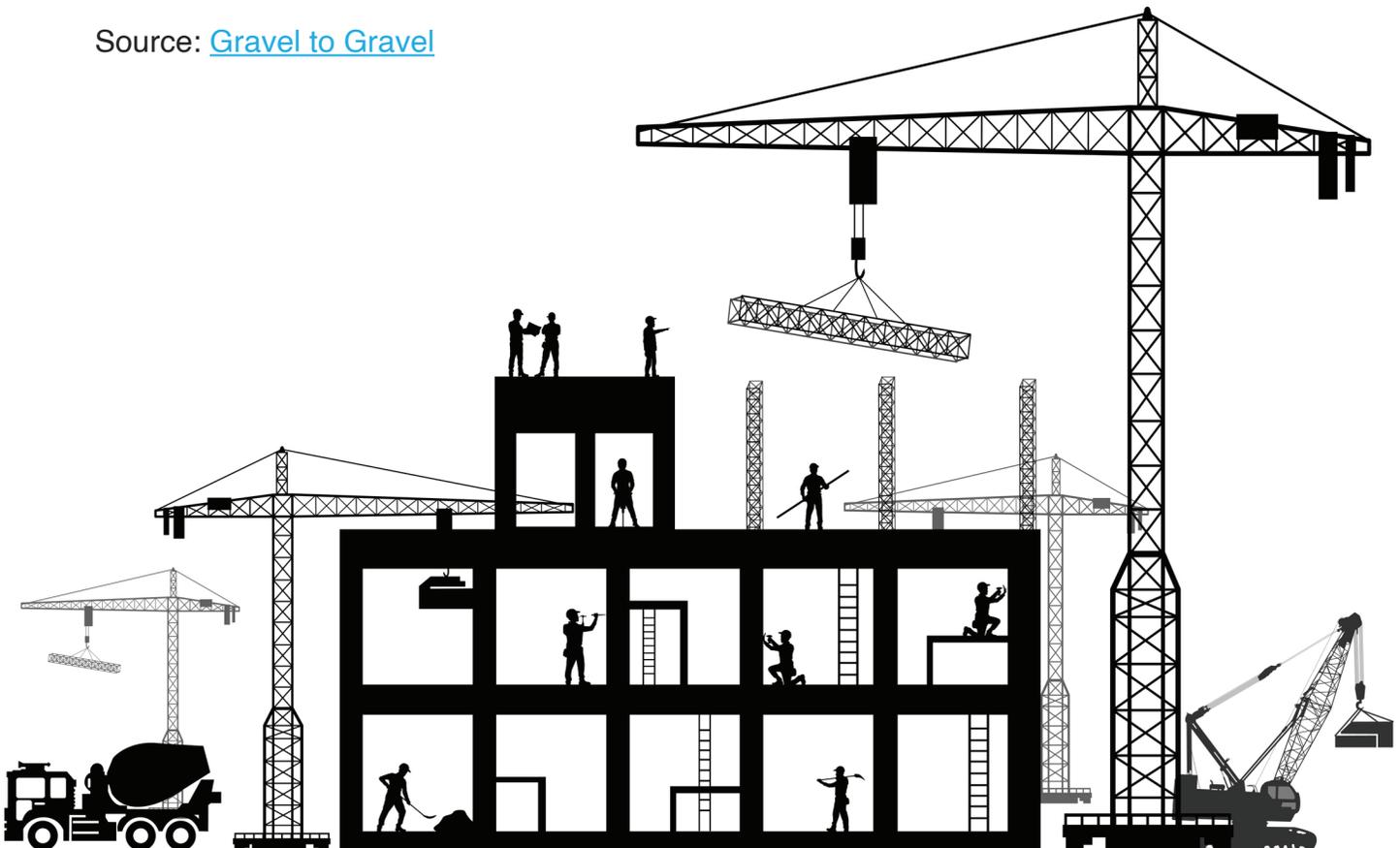


Common Classifications in the Construction Industry

There are many classifications within the construction industry, however, it's vital to classify workers correctly and not simply sign them on as independent contractors. The following positions are common classifications within the construction industry:

- ✓ **Apprentice:** An apprentice learns skills from experienced craft professionals. Many apprentices begin right after high school while others join apprenticeship programs design to provide occupation specific career onramps.
- ✓ **Journeyman:** A journeyman has completed an apprenticeship program or is a experienced worker and is fully qualified to perform all aspects of their occupation without supervision.
- ✓ **Foreman:** A construction foreman supervises a team of crew members and does everything from training new workers to managing projects.

Source: [Gravel to Gravel](#)



4. Off-the-Clock Violations

Off-the-clock violations occur when employers ask employees to work before or after their shifts. According to the Fair Labor Standards Act, non-exempt employees must receive at least minimum wage and one and a-half times their regular rate of pay for hours worked over forty in a workweek. The U.S. Department of Labor defines hours worked as including all times an employee must be on duty, on the employer's premises, or at a prescribed place of work. Failing to pay an employee for hours worked results in off-the-clock violations that affect workers and illegally benefit employers. Additionally, failing to give employees legally required meal and rest breaks is a common off-the-clock work violation.

Source: [U.S. Department of Labor](#)

5. Illegal Paycheck Deductions

Employers are expected to make various deductions from paychecks to include items such as income taxes or healthcare. However, when employers deduct wages to make up for shortages it is considered an illegal deduction. Additionally, it is illegal to not distribute pay stubs, as that can be a way employers try to hide illegal deductions.

6. Uncompensated Travel Expenses

If an employee is required to travel as part of their principal activity, they should be paid for those hours. Within the construction industry, if a worker must travel from job site to job site during the workday, that is time that must be counted as hours worked. Failure to pay for on-the-job travel—as part of an employee's workday—that results in uncompensated travel expenses and is a form of wage theft.

Source: [Economic Policy Institute](#)

Source: [Wage Authority Group](#)



What Laws Protect Against Wage Theft?

Even though wage theft is a serious crime that damages local, state, and federal economies as well as families, it is a crime that historically has not been prosecuted. In many cases, EPI reports that it is up to private class-action lawsuits to attempt to enforce workplace protections. However, with more research proving the egregious wage theft epidemic in the nation, a growing number of district attorneys and state attorney generals have turned their attention to prosecuting employers who commit wage theft.

More specifically, a set of laws have been established over the past 15 years to combat wage theft. In 2009, the Fair Labor Standards Minimum Wage Act set the federal minimum wage at \$7.25 per hour with many states establishing their own higher minimum wage laws that employers must comply with. In 2011, the Wage Theft Prevention Act of 2011 was passed which enacted multiple anti-wage theft initiatives and established wage theft violations as a misdemeanor. Additionally, each state has its own wage theft laws to offer workers protection. Here are a few examples of how certain states punish wage theft:

- **California:** Intentional wage theft is punishable as grand theft. Prosecutors can determine if the crime is a misdemeanor or a felony.
- **New York:** For construction workers who file wage theft complaints, the prime contractor and construction manager on the project are both liable and responsible for unpaid wages no matter how far down the subcontractor chain the wage theft occurs.
- **Minnesota:** Payroll fraud includes imprisonment for up to 20 years and fines of up to \$100,000 for severe violations. Additionally, employers who retaliate against workers are liable for a civil penalty of \$700 to \$3,000 per violation.
- **Connecticut:** Employers are responsible to pay workers twice the amount wrongly withheld.

Source: [GovDocs](#)

Source: [JD Supra](#)

Source: [Department of Labor](#)

Source: [Midwest Economic Policy](#)

Source: [United Steelworkers](#)

Wage Theft Complaints

Wage theft complaints can be filed directly to the U.S. Department of Labor's Wage and Hour Division in a simple process, but the reality is that many workers do not file complaints. The primary reason workers do not report wage violations is due to a high risk of retaliation which includes loss of pay or loss of job. According to research done by the National Employment Law Project, "the vast majority of workers around the country live in states that fail to provide the most essential mechanisms for legal protection when it comes to retaliation in the wage and hour context." While there are multiple law firms and companies ready and willing to fight against wage theft, individual employees cannot be expected to tackle this billion-dollar epidemic.

// The vast majority of workers around the country live in states that fail to provide the most essential mechanisms for legal protection when it comes to retaliation in the wage and hour context. //

Source: [Wage Theft is a Crime](#)

Source: [National Employment Law Protection](#)

Source: [U.S. Department of Labor](#)

Source: [Economic Policy Institute](#)



Who is in Charge of Enforcing Wage Laws?

The U.S. Department of Labor says that enforcement of the Fair Labor Standards Act is conducted by investigators throughout the United States. However, there are numerous reports that federal and state enforcement is inadequate, which in turn contributes to the wage theft problem. EPI research points to a major problem with current enforcement, which is the decline in enforcement workers and the growth of the U.S. workforce. In 2018, there were approximately 175,000 workers per one investigator. Researchers also found that seven states have no investigators while most states have fewer than 10 investigators.

To rectify the issue of understaffed investigators within federal and state levels, there are third-party companies that can assist in monitoring and enforcing fair wages. Specifically, within the construction industry, a third-party enforcement agent can help with prevailing wage compliance monitoring, overtime benefits, off-the-clock violations, and more.

Los Angeles has instituted a successful program wherein union members are badged to monitor compliance of Prevailing Wage laws on construction sites. In accordance with the adopted policy, badged members also monitor compliance of apprenticeship utilization and the general welfare and safety of workers onsite.

175,000 workers per 1 Investigator?

Researchers found that seven states have no investigators while most states have fewer than 10 investigators.

Source: [LA City](#)

Source: [Economic Policy Institute](#)

Source: [The Guardian](#)

Is it a True Picture of Wage Theft in the United States?

Wage theft is a highly damaging crime that primarily affects women, people of color, and foreign-born workers. The National Employment Law Project reports that in a sample of 4,000 workers, 30% of women experience minimum wage violations compared with 20% of men. Almost one in three Latinx workers were paid less than minimum wage compared to fewer than one and ten white workers. African Americans experience wage theft at three times the rate of white workers and low-income workers experience the highest minimum wage violations across all categories.

The harsh reality of wage theft in America is that the people who are affected the most are the hard workers who show up for a job and are denied their rightful wages and benefits. Even if they are aware of the crimes against them, fear of retaliation stifles many voices from speaking out. According to Broken Laws, a survey done with 4,000 workers found that 4 and 10 (43%) experienced illegal retaliation when they complained about their employer. **Furthermore, a 50-state survey found that most state laws regarding retaliation are weak, and employers often receive little to no consequences.**



Source: [National Employment Law Project](#)

Source: [Broken Laws, Unprotected Workers](#)





How Does Wage Theft Affect the Construction Industry?

Wage theft in the construction industry is a rampant issue that is destructive for families, local and state economies, and legitimate companies following the law. The most disheartening factor regarding wage theft is that it is often committed purposely as a strategized business model. Out of the billions of dollars wage theft infractions steal from employees, close to \$1 billion a year is stolen within the construction industry.

In recent years, due to the rising media coverage regarding wage theft—specifically within the construction industry—prosecutors have zeroed in on Section 216(a) of the Fair Labor Standards Act which provides imprisonment for willful violations of wage theft thus treating it as a criminal act. However, the trend in prosecuting wage theft has been largely left up to local governments to prioritize wage-related crimes.

On April 30, 2021, New Jersey issued a state-wide shutdown after it was discovered that construction workers were being paid off the books and denied workers' compensation insurance, among a long list of infractions. After many months, numerous civil suits were filed resulting in three subcontractors facing criminal charges. Similarly, in January 2021, Pennsylvania Attorney General brought a wage prosecution against a company that classified workers as independent contractors to avoid paying appropriate wages. The company pleaded guilty to four counts of felony charges and paid \$20 million to over 1,000 employees.

In the Upper Midwest states, wage theft has also been an economy-damaging problem that elected officials have worked to combat in recent years. In 2019, the Governor of Wisconsin created a task force for payroll fraud and worker misclassification to help prevent the loss of millions of dollars to the state government and taxpayers. Similarly, the Governor of Illinois signed a law in 2019 creating a task force to combat wage payment violations and unfair labor practices, and in 2021 an amendment was approved to require employers to pay damages of 5% for wage theft which was previously a penalty of 2%. In 2019 the Governor of Minnesota invested \$3 million into the state's Department of Labor and Industry to enforce wage and hour laws. In the year 2020, a total of \$4,826,197 in wages were recovered compared to \$842,957 in 2019.



\$ Billions

Out of the billions of dollars wage theft infractions steal from employees, close to \$1 billion a year is stolen within the construction industry.

Source: [The Legal Intelligencer](#)

Source: [Midwest Economic Policy](#)

Source: [The National Law Review](#)

Source: [Economic Policy Institute](#)



FINAL THOUGHTS

WHERE TO GO FROM HERE?

It is difficult to get an accurate number of the immense damage caused by wage theft violations due to how under-reported wage crimes are from individual workers. However, it is abundantly clear that employers across the nation are successfully stealing billions of dollars from families and the economy. Industry sectors like the construction industry lose approximately \$1 billion annually due to wage infractions, which leaves many employees below the poverty line and taxpayers robbed of their hard-earned money.

While local and state governments have begun to pay more attention to wage crimes in recent years, this is a rampant epidemic that needs fixing from the ground up. Here are three actions steps to help combat wage theft for employees:

- ✓ Local and state governments can increase employment for enforcement workers so that more employees get representation and assistance.
- ✓ Governments and city officials can alleviate the burden of the investigation by hiring third-party companies, such as Intelligent Partnerships, Inc. to assist in monitoring and enforcing fair wages, especially within the construction industry.
- ✓ Municipalities can provide more widespread information regarding wage theft including how to identify and report wage theft and the consequences of committing wage infractions.

Wage theft is a dangerous crime that often goes under-reported and unpunished. Employees who report wage crimes are often at risk of dangerous retaliation and therefore suffer financially at the hand of powerful corporations. It is up to local and state governments as well as city officials to help put an end to this nationwide epidemic that is costing hardworking people billions of dollars each year.



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