

HOLLOW VICTORIES



THE CRISIS IN COLLECTING UNPAID WAGES FOR CALIFORNIA'S WORKERS

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“I had high hopes after I found out that a judgment was issued in my favor, but with the news of the [employer’s] bankruptcy filing, I have to wait and see what is going to happen. I plan to continue to fight for my wages, but I am realizing that the law seems to protect the companies and individuals who have financial stability and steal wages.”

~ D.L., a construction worker. The Labor Commissioner found that he was owed \$17,000 for unpaid wages. Daniel was promised wages at a rate of \$12.50 an hour, but his employer failed to consistently pay workers. After two years, Daniel finally decided to ask his employer for his full wages, but instead of receiving his wages, was fired.

“I won the case but what was it worth if the company did not pay? I was still forced to rent out a room in order to pay rent. I fell behind on bills. I was forced to borrow money. My children had to pass up necessities during this time.”

~ E.P., a janitorial worker in California. The Labor Commissioner determined that she was owed more than \$45,000, but she has been unable to collect her unpaid wages from her employer. She was promised pay at a rate of \$8 per hour.

I. EXECUTIVE SUMMARY

This report exposes a surprising, but unfortunately common problem facing low-wage workers in California and nationwide. Workers whose employers have failed to pay them face serious challenges in recovering their hard-earned wages — even after state authorities have found in the workers’ favor and have issued a legally binding judgment ordering employers to pay. To a worker who has lost hundreds, if not thousands of dollars in unpaid wages, winning a judgment is often at best a hollow victory. Non-payment or underpayment of wages, moreover, remains rampant nationwide. As a landmark survey of low-wage workers found in 2008, 26 percent of low-wage workers were paid less than the minimum wage in the prior week; 76 percent of those who worked more than 40 hours were not paid the legally required overtime rate. More than two-thirds of low-wage workers have experienced at least one pay-related violation in the previous work week—leading workers to lose an average of \$2,634 annually due to workplace violations.¹

The inability of workers and state authorities to enforce judgments and collect payment from unscrupulous employers has widespread effects. Workers who cannot collect their unpaid wages from their employers—even after engaging in a complicated legal process—often cannot put food on the table, pay their rent, or keep up with their bills. Workers spend less, and may depend more heavily on social service programs. The failure of employers to pay wages for work that benefits them decreases tax revenue for local and state governments, creates an unfair playing field where law-abiding businesses are unable to compete, and reduces consumption in local economies. Moreover, employers’ failure to pay even in the face of a court-ordered judgment undermines faith in the basic operation of our legal system and the enforcement of our state’s labor protections. For these reasons, a number of states across the country have enacted, or are considering legislative measures to provide workers with additional tools to collect unpaid wages.²

Our study is based on a comprehensive review of records released by the California Division of Labor Standards Enforcement (DLSE), the agency that enforces California’s wage laws. Although workers may pursue wage claims through other means, such as the U.S. Department of Labor or in court, DLSE data provides the most comprehensive set of data available statewide. We review data from 2008 until 2011, the most recent available in California. We compare our

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findings with data released by the Wisconsin Labor Standards Bureau, Wisconsin Department of Workforce Development, and Wisconsin Department of Justice, which enforce the state's law authorizing workers to place a lien on an employer's property to help enforce wage law protections. We examine Wisconsin data, as the state has the oldest and one of the most extensive wage lien programs in the country. In addition, the study is based on a review of California state corporate records and business registration information.

Our analysis is also informed by in-depth interviews conducted in the Spring of 2013 with fifty workers who have attempted to collect their unpaid wages through legal channels in California.

Our findings, drawn from a comprehensive and statistically significant review of DLSE data, reveal that a shocking percentage of workers are unable to recover their unpaid wages in California. It also finds that workers and state officials alike lack sufficient legal tools to enforce the law and to recover unpaid wages from employers who engage in unscrupulous business practices to avoid payment. As our interviews suggest, all workers—whether they pursue their claims through court or through agencies—face similar challenges in recovering their wages.

- Between 2008 and 2011, workers recovered only 42 percent, or \$165 million of approximately \$390 million

in total wages verified as owed by the DLSE. This figure includes amounts agreed to in settlement and after judgment.

- Only 17 percent of California workers who prevailed in their wage claims before the DLSE and received a judgment were able to recover any payment at all between 2008 and 2011.
- Although the DLSE issued awards for unpaid wages of more than \$282 million between 2008 and 2011, workers were able to collect a mere \$42 million—roughly 15 percent—of those awards from their employers.

Our research also finds that workers who try to enforce DLSE judgments for unpaid wages often find that their employers have disappeared, hidden assets, or shut down operations and reorganized as a new entity.

- Employers who did not pay their workers, refused to settle, were found by DLSE to owe wages, and then became subject to a court judgment were more likely than not to have suspended, forfeited, cancelled, or dissolved business status within a year of the wage claim.
- In 60 percent of cases where judgments were issued against business entities by the DLSE, employers who were found to owe their workers for unpaid wages were also found to be “non-active” business entities by the California Franchise

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Tax Board or the California Secretary of State. “Non-active” businesses include those that have forfeited, cancelled, or dissolved status. In 24 percent of all cases, employers were found to be non-active before the DLSE was able to issue its finding.

The good news is that other states have enacted policy solutions that encourage prompt settlement and promote efficiency in their wage collections process. For example, states like Wisconsin that have enacted laws that authorize the worker to impose a lien on the employer’s property in cases involving unpaid wage have higher rates of collection for wage theft.

- In Wisconsin, which does not have an administrative hearing process for wage claims, 80 percent of suits to enforce the wage lien result in some payment of unpaid wages for the worker.
- In cases where wage liens are used to recover unpaid wages for a worker, workers recover 25 percent of the amount found to be owed, more than 1.5 times more than in California.

California and other states around the country can provide more effective legal tools, such as wage liens, already available in several states, to increase efficiency in the enforcement of judgments for unpaid wages. Especially during a time of limited resources, a self-help tool that empowers workers

and provides employers with strong incentives to comply with the law will only benefit the entire state. The report offers the following recommendations:

- Strengthen current wage lien provisions to allow workers to file a temporary pre-judgment hold on employer property.
- Increase resources for collections efforts by state agencies.
- Provide clear educational materials for workers who seek to collect payment upon judgment.