

A Civil Rights Issue

THE MINIMUM WAGE & WAGE THEFT

CHRISTOPHER BROWN, EMILY CHATTERJEE, HUIXIAN LI, INDI DUTTA-GUPTA, & LAURA TATUM

Wage theft occurs when employers do not pay working people their legally owed earnings. According to the [Economic Policy Institute](#), the main forms of wage theft are:

- **Minimum Wage Violations:** Paying workers below the minimum wage
- **Overtime Violations:** Failing to pay nonexempt employees time and a half for hours worked in excess of 40 hours per week
- **Off-the-clock Violations:** Asking employees to work off the clock before or after their shifts
- **Meal Break Violations:** Denying working people their legal meal breaks
- **Illegal Deductions:** Unlawfully deducting wages from an employee's pay
- **Tipped Minimum Wage Violations:** Confiscating tips from tipped workers, or failing to make up the difference between the tipped minimum wage and the full minimum wage
- **Employee Misclassification Violations:** Misclassifying employees in order to avoid paying the minimum wage or overtime

Wage theft hurts responsible employers by giving unscrupulous employers an unfair advantage, and exploits the labor of low-paid working people who depend on their wages for their family's financial security.

WAGE THEFT PROTECTIONS ARE INSUFFICIENTLY ENFORCED

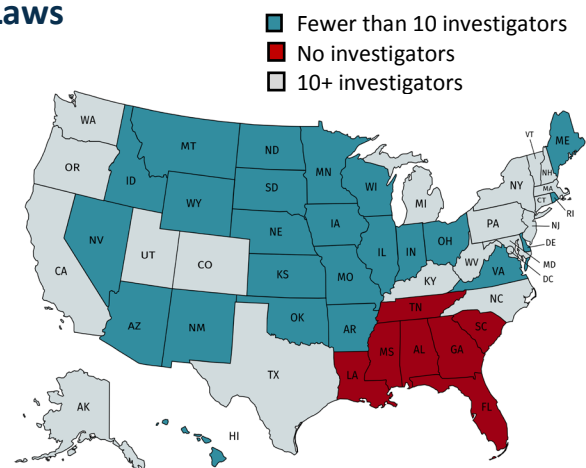
Working people rely on the U.S. Department of Labor's Wage and Hour Division, state agencies, and/or private attorneys to recover their unpaid wages. However, federal and state agencies struggle to enforce the law with inadequate funding and staff. There are fewer federal Wage and Hour investigators today than 70 years ago, despite the U.S. workforce having expanded by [seven times](#) since then.

[The Economic Policy Institute](#) (EPI) estimates that working people lose more than \$50 billion annually to wage theft. However, in 2015 and 2016, only \$2 billion of the over \$100 billion in lost wages were recovered by

a combination of the U.S. Department of Labor, state agencies, and class action settlements, according to the study.

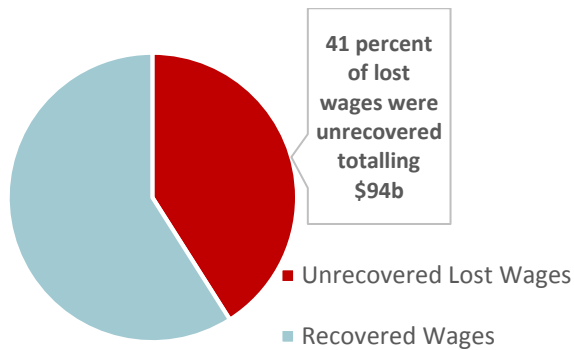
In a [9-month investigation](#), *POLITICO* found that there are simply not enough state investigators to handle minimum wage violations. Six states (Georgia, Louisiana, Alabama, South Carolina, Tennessee, and Mississippi) have no state investigators, while 26 additional states have fewer than 10 investigators. Other states impose monetary ceilings on the wage theft cases they choose to pursue, which means that these states choose not to pursue enforcement actions if the amount in question is above the monetary ceiling. For example, in Kansas, the ceiling is \$10,000, and in Iowa it is \$5,000. Furthermore, even when a state or federal agency decides in the employee's favor, working people still are often unable to recover back pay. *POLITICO's* survey of 15 states found that 41 percent of the wages that employers were ordered to pay back to working people were not recovered due to states' lack of adequate funding and enforcement tools.

Figure 1. Most States Lack Sufficient Investigators to Enforce Minimum Wage Laws



Source: GCPI based on *POLITICO* survey of 15 state labor agencies. Data collected from September 2017 to February 2018.

Figure 2. States Frequently Fail to Recover Wages Owed by Employers



Source: GCPI based on POLITICO survey of 15 state labor agencies. Data were collected from September 2017 through February 2018.

PEOPLE WORKING FOR TIPS ARE ESPECIALLY AFFECTED BY WAGE THEFT

Wage theft in tipped industries (e.g. restaurants, landscaping, and cleaning) is pervasive. Employers not only sometimes fail to make up the difference between working people’s tips and the minimum wage, but they also sometimes [confiscate the tips directly](#), in violation of federal law. Additionally, the [tipped minimum wage](#) has been frozen at \$2.13 an hour since 1996, and it now stands at less than 30 percent of the value of the federal minimum wage, which is \$7.25 an hour. Partly because of low wages and inadequate enforcement, the [poverty rate](#) for people working for tips (14 percent) is double that of non-tipped working people (7 percent).

Women of color and immigrants are disproportionately affected by wage theft due to their overrepresentation in the tipped workforce. Almost [40 percent](#) of people working for tips are people of color. People of color are more likely to live in poverty than their White counterparts. The take-home wages of restaurant workers of color are [56 percent](#) less than their White colleagues.

RECOMMENDATIONS

Working people in our country deserve policies and enforcement to ensure that they are paid fairly for the work they do and to guarantee that they receive their hard-earned wages. Wage theft exacerbates the financial insecurity many low-paid working people already face. Preventing and addressing wage theft and

raising the minimum wage would help reduce overall poverty, income inequality, the gender pay gap, and the racial wage gap. The following policies would help achieve those goals:

Strengthening enforcement of existing protections:

The U.S. Department of Labor’s Wage and Hour Division, as well as state agencies, must be adequately funded and staffed to aggressively enforce against wage theft violations to ensure that working people receive the back pay they are owed.

Eliminating the tipped minimum wage: The tipped minimum wage perpetuates a system that allows for wage theft, harming low-paid working people. Eliminating the separate tipped minimum wage would help address wage theft and truly guarantee people working for tips the same wage floor as everyone else.

Protecting workers’ rights: Approximately [43 percent](#) of employees who complained to their employer about their wages or working conditions experienced retaliation. Ensuring that enforcement agencies receive both anonymous and third-party (e.g. union) complaints would allow for employees to [more safely](#) make claims of wage theft without the fear of retaliation. Despite the recent Supreme Court decision in [Epic Systems v. Lewis](#) limiting employees’ arbitration rights, all working people, including low-paid workers, should be able to protect their rights including by joining unions or class-action suits without jeopardizing their employment.

Raising the federal minimum wage to \$15 per hour:

The current federal minimum wage is [insufficient](#) to meet basic needs across the country, and is [inadequate](#) for lifting families out of poverty. Gradual steps to increase the federal minimum wage to \$15 are supported by the [public](#) and many [economists](#) to improve the economic security of low income families. Once the federal minimum wage reaches \$15 per hour, indexing it to either inflation, the median wage, or both would prevent it from eroding over time.



This document builds upon [Bare Minimum: Why We Need to Raise Wages for America’s Lowest-Paid Families](#) by Elisa Minoff, published by The Leadership Conference Education Fund and Georgetown Center on Poverty and Inequality (GCPI), April 2018