

"Wage Theft: It Happens Here"

a report based on the
Kentucky Workers Rights Board hearing
held November 29, 2011 in Louisville



a partnership project of
Kentucky Equal Justice Center
Kentucky Jobs with Justice
Network Center for Community Change

Introduction

On Tuesday, November 29, 2011, Kentucky Equal Justice Center, Kentucky Jobs with Justice and the Network Center for Community Change hosted a Workers Rights Board hearing on the issue of Wage Theft. The Kentucky Workers Rights Board is a project of Kentucky Jobs with Justice, which was founded in 1992.

Wage Theft

Wage Theft is the illegal underpayment or non-payment of workers' wages. It affects millions of workers each year, often forcing them to choose between paying the rent or putting food on the table. Wage Theft is all around us. It robs from the government's tax coffers, resulting in cutbacks of vital services. Wage Theft puts ethical employers at a competitive disadvantage (from <http://www.iwj.org/index.cfm/wage-theft>). Wage theft occurs in various ways but traditionally manifests itself as pay below the minimum wage, lack of pay or failure to pay for overtime hours worked, and nonpayment of wages.

- **MINIMUM WAGE:** Minimum wage is currently \$7.25 per hour.
- **OVERTIME:** According to the US Department of Labor: An employer who requires or permits an employee to work overtime is generally required to pay the employee premium pay for such overtime work. Employees covered by the Fair Labor Standards Act (FLSA) must receive overtime pay for hours worked in excess of 40 hours in a workweek of at least 1 1/2 times their regular rates of pay. The FLSA does not require overtime pay for work on Saturdays, Sundays, holidays, or regular days of rest, unless overtime hours are worked on such days.

The FLSA, with some exceptions, requires bonus payments to be included as part of an employee's regular rate of pay in computing overtime. The FLSA, with some exceptions, excludes bonus payments from counting towards an employee's pay in the computing of hourly wage in determining compliance with the minimum wage and overtime regulations. Extra pay for working weekends or nights is a matter of agreement between the employer and the employee (or the employee's representative). The FLSA does not require extra pay for weekend or night work or double time pay.

- **NONPAYMENT OF WAGES:** Nonpayment of wages, often called "wage theft," means an employer's intentional failure to pay wages that are owed to a worker by law or by contract. Wage theft takes many forms, including failure to pay minimum wage, failure to pay for overtime hours worked, failure to pay wages at a promised rate, failure to pay on time, paying workers for fewer hours than they actually worked, taking excessive or illegal deductions from pay, misclassifying workers as independent contractors, or simple failure to pay wages at all.

Panelists included:

Rev. Mary Abrams
Peace & Justice Division,
Episcopal Diocese of KY

Khalilah Collins
Women In Transition

Bob Cunningham
Kentucky Alliance

Rep. Joni Jenkins
House of Representatives

Pastor Derrick Miles
Greater Friendship Baptist
Church

Rep. Darryl Owens
House of Representatives

Juan Pena
Commission on Human
Rights

Enid Trucios-Haynes
Hispanic/Latino Coalition

Carla Wallace
Fairness Campaign

Community Impact

Worker Stories

My name is Maria and I am from Shelbyville Kentucky. I have a husband and two little children. I have worked in the school system and my husband, Antonio, has traditionally worked doing construction jobs including cement work and block work.

When my husband finished the work on the first house, he asked Bill to pay him for the work that was done. Bill said no, refused, and told Antonio that he had to finish the other house as well. We really needed that money. We have two children who depend on his wages and we were frustrated that Bill would not pay for the work that was completed. At that time I was getting nervous that Bill was not going to pay up. But my husband needed that work, so he went ahead and finished up the second house. When the job was done, Bill started setting up times for my husband to meet him to get the money. But, when my husband arrived at the place they agreed on, Bill didn't show up. This happened over and over, in total about 10 times. At that time, Bill owed Antonio \$1,500. It was wintertime and the bills were piling up.

We were getting desperate and it was becoming more clear that Bill was not going to pay up. We weren't sure where to go because we had no written record of the work that was done. We didn't have time sheets or a contract or anything.

Eventually, we went to Centro Latino in Shelbyville for advice and talked to Sister Pat. Meanwhile, Bill told his sons to tell his cousin to tell my husband not to take legal action. He said that he had attorneys and would deport us to Mexico.

We also contacted the human rights commission in Shelbyville because we found out that Bill had done the same things to other Mexicans. He took longer to pay his Mexican employees than American employees and we had people who were willing to tell about it.

In the end, we sent a letter to the human rights commission and Centro Latino who made some phone calls on our behalf. Bill tried to excuse his refusal to pay by saying that my husband never finished the job. We were advised to get a lawyer but we couldn't pay the attorney fees. In the end I think it was the response from all of the folks in Shelbyville that pressured Bill into paying. We got the full amount in June, eight months after the work was done. Bill tried to get my husband to sign a letter saying all of the complaints were a lie, but Antonio refused.



Our case is one with a good ending. Thankfully we got the money and didn't lose our home in the process. We depended on those wages and not everyone is able to fight their cases like we were able to fight.

Unfortunately, we know of so many people that this has happened to, and in most of their cases they never get the money back. Bill on the other hand, had suffered no penalties, and was only required to pay what he owed in the first place. I don't see what would keep him from doing this again.

"Although widespread in its practice, the problem of wage theft rarely gets attention or publicity in the state of Kentucky,"
Rich Seckel,
Director, Kentucky Equal Justice Center. *"Working families affected by this epidemic often do not get the help they need to recover the money owed to them for*

Community Impact

"I would like to honor the workers that are sharing their stories.

In doing outreach for the forum, I spoke with many workers and advocates to find folks who would be willing to share testimony.

I am sure that you are not surprised that there was not a line of people ready to share.

Many of these families are working paycheck to paycheck, and taking time off for an evening forum is something too difficult to swing with childcare demands and no vacation time. Also, the environment of fear for many of these workers is palpable....

Jose, Marcos, and Maria describe that fear more eloquently than I can, but there is no certainty that one is fully protected from retaliation when speaking out against wage theft.

Thank you to these workers for speaking out."

~Bree Pearsall, Kentucky Equal Justice Center

Worker Stories

One of the workers who testified at the hearing worked on several different construction projects across central Kentucky, including the Kentucky Horse Park. He was not paid for his work on two different jobs, and when he asked his employer for the money he was told that his employer simply didn't have it. He shared his frustration that when a boss doesn't pay his or her workers, there are no criminal penalties. The employee told the worker's rights board that if he walked into Wal-Mart and stole something, he would surely be arrested and could go to jail. But if an employer steals wages from an employee, the employer will most likely face no repercussions—or will simply be required to pay what was owed in the first place, without penalty.



Human Trafficking

Marissa Castellanos from the human trafficking program at Catholic Charities shared her stories about the problems of wage theft that have arisen in the context of human trafficking cases. She asked for support from the panel and the audience for a change in the penal code that will be introduced this upcoming legislative session in Frankfort. The proposal is mostly tailored to addressing the needs of human trafficking cases, but also seeks to expand Kentucky's theft of labor statute to include non-payment of wages by means other than writing a cold check.

Employer Accountability: Larry Roberts from the Kentucky Building and Construction Trades Council testified about the problem of misclassification and the need to hold employers accountable who want to classify workers as independent contractors instead of employees. Larry introduced us to a new term, "payroll fraud," and highlighted the millions of dollars that the state loses when employers evade taxes that should go into state coffers. He also illustrated how this practice gives dishonest employers an unfair advantage because their costs are lower, driving honest employers out of business.

Government Action: Dianet Valencia and Dave Suetholtz spoke on behalf of the Kentucky Labor Cabinet, the state agency charged with the enforcement of Kentucky's labor laws. Dianet and Dave shared stories about some of the common problems they have encountered during their investigation of complaints from workers around the state. They have seen an increase in illegal deductions being taken out of workers' paychecks, particularly with the rise of temporary employment agencies charging employees for multiple background checks and drug testing. Dianet and Dave also highlighted some of the responses that other states and cities have taken, including enhanced penalties that encourage payment sooner rather than later.

Protecting Workers from Retaliation: In order to put what is happening in Kentucky in the national context, Ted Smukler from Interfaith Worker Justice (IWJ) in Chicago testified about the responses that other communities have taken to fight back against wage theft. IWJ is a network of worker centers across the country. Ted highlighted the unique role that worker centers can play in organizing workers and educating folks about their workplace rights. While policy changes can have a big impact, worker centers have also been successful in recovering wages by pressuring abusive employers to pay-up by using direct action. These centers have also been at the forefront of many of the legislative victories across the country.

Recommendations

Presenters included:

Jose (via video)
an affected worker

Ron Crouch
Workforce Development

David O'Brien Suetholz
Dianet Valencia
Kentucky Labor Cabinet

Larry Roberts
KY Building and
Construction Trades
Council

Maria (via read
statement)
an affected worker

Marissa Castellanos
Catholic Charities

Ted Smukler
Interfaith Worker Justice
Chicago

Marcos

After listening to testimony, the worker's rights board deliberated and made recommendations in moving forward. They supported some of the legislative remedies suggested by the presenters and also highlighted the need for further education about the problem. Many panel members expressed that hearing the testimony helped them understand how wage theft happens, a problem of which most of them were previously unaware.

The panel emphasized that educating workers about their rights is also key so that folks know where to go when they find themselves victims of wage theft. The board also suggested that people and organizations interested in empowering workers continue discussion about starting a worker's center in Kentucky.

There are multiple options in addressing wage theft. During the discussion, the **Workers Rights Board** considered initiatives that have been taken by either state legislatures or cities:

Creating Employer Accountability

- triple damages for violation of wage and hour laws (this would be at the state level where Kentucky already provides for recovery of wages and an equal amount in liquidated damages)
- stop the clock on statute of limitations (which may be unnecessary in Kentucky where a five-year statute of limitations on wage claim actions already exists)
- revoke business licenses (this could be part of a city ordinance)
- award attorney's fees (Kentucky currently provides for attorney's fees in private lawsuits)
- strengthen Kentucky's theft of labor statute

Reforming Government Action

- target and amplify enforcement procedures so that agencies are not waiting for complaints
- streamline the complaint process by creating clearer priorities, timelines and procedures
- prohibit the city licensing commission from renewing a license if there are pending wage theft disputes (this was one of the many provisions that Seattle enacted in its recent city ordinance)


Protecting Workers from Retaliation

- ensure equal access to remedies regardless of immigration status
- collaborate with organizations to survey the need for a worker center in Kentucky

Kentucky Workers Rights Board

The Kentucky **Workers Rights Board** unites community leaders, faith leaders, business leaders and other community members to enhance and ensure the democratic rights of all workers. The board seeks to provide a moral voice for economic issues concerning justice for working women and men.

The **Workers Rights Board** responds quickly and effectively to correct abusive treatment exhibited in the workplace. Existing labor laws and the National Labor Relations Board have failed to respond to worker abuse in an effective and timely manner. These institutions have also failed to protect the right to organize.

The **Workers Rights Board** strives to provide a community-based alternative to the National Labor Relations Board, ensure workers with safe working conditions, provide for the fair treatment of all employees, protect the right to organize unions and to bargain collectively, and create a community that will not tolerate the denial of workers rights. Attainment of these objectives will be addressed through broad community action.

The goals of the Kentucky **Workers Rights Board** are to

- speak out and exert moral and political pressure to correct abuses of workers rights;
- encourage the strengthening of legal and democratic rights for working people;
- conduct hearings to investigate complaints of unfair treatment, discrimination and suppression of democratic collective activity in the workplace;
- raise public awareness of the lack of workers rights under the law; and
- encourage democratic and fair behavior from employers.

For more information about future steps, contact any of the host organizations:

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