



Greater Hartford Legal Aid

March 14, 2013

Testimony In support of House Bill RB 910- An Act Concerning An Employee's Access To Personnel Files and SB 1075- An Act Concerning Construction Services and the Reporting of Nonwage Payments

Good afternoon, Senator Osten, Representative Tercyak, and members of the committee. My name is Lisa Levy and I am an Attorney at Greater Hartford Legal Aid, Inc. I am here to speak in support of R.B. 910, which seeks to amend the Connecticut Personnel Files Act, Conn. Gen. Stat. § 31-128a et seq. At Greater Hartford Legal Aid, Inc. we represent low wage workers who are often illegally terminated or disciplined. Many of these workers apply for and depend on unemployment compensation benefits and some file discrimination, or other complaints of unlawful conduct by their employers. These workers need timely access to their personnel files in order to effectively advocate for unemployment compensation, respond to groundless discipline or a discharge notice, or withstand a challenge by employers to discrimination complaints.

R.B. 910 sets a time limit of three business days for employers to allow their current employees, after request, to inspect and make a copy of their personnel files. Under current law, while employees have the right to inspect their personnel files, there is no time frame for compliance. The bill also requires companies to allow former employees to inspect and copy their personnel records within ten business days, if the request is made within one year after they leave the job. Finally, the bill requires any employer who documents a disciplinary action, including termination, to give a copy of that document to the employee who has been disciplined or fired.

These measures are sorely needed so that workers are not disadvantaged in unemployment compensation and other employment proceedings. Unemployed workers are only given five days notice before their unemployment compensation hearings, so they must have quick access to their personnel files. In our experience, many employers impose discipline or issue a discharge, but then refuse to allow the employees to inspect the documentation or to provide them with a copy. Timely access to the file is critical so that the worker can write a prompt rebuttal to the alleged disciplinary violation, which under current law, becomes a part of the personnel file. The bill's provision that the employer must provide the employee with a copy of documented discipline within one business day after its imposition will enable the employee to make an expeditious rebuttal statement that may reduce the chances of further unwarranted discipline, discharge, or negative performance evaluations.

In cases of job termination, timely access to the personnel file is even more crucial. Under current law, there is no time requirement on the employer's duty to provide the file after a request by a former employee. The bill's requirement that the employer must provide a copy of the personnel file to the former employee within ten business days of the request can result in timely submission of an accurate disciplinary history or lack of disciplinary history, performance

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evaluations, or other documentation that may be favorable to the worker at an unemployment compensation hearing.

Also in the case of job termination, employees should be provided with any documentation of their discharge immediately so that they can respond to the notice while still on the employer's premises or, in the case of a termination to take effect prospectively (such as at the end of the business day or week), while still employed. Many of our clients are given only an oral notice of termination or, if there is a written notice, the employer often refuses to provide a copy. By requiring that if there is a documented notice of discharge, the employer must provide this document to the employee immediately, RB 910 can assist the employee in promptly rebutting management's reason for the termination, thus ensuring that a timely and accurate statement is made in the worker's personnel file. This documentation can provide necessary corroborating evidence at an unemployment appeals hearing or other agency proceeding of the actual reason for termination of the worker.

Finally, even when an employer provides documentation of discipline, discharge or a negative performance appraisal, workers often have no knowledge of their right to submit a statement disagreeing with the action and stating their own position. R.B. 910 ensures that workers will have written notice of this right on any documented disciplinary action, notice of discharge or performance evaluation.

Thus, R.B. 910 provides protections to the rights of the working poor and all employees in seeking to obtain unemployment compensation benefits, restoration of back pay in a discrimination or wage action, or other relief to which they are entitled under the employment laws. We therefore respectfully urge the Committee to take favorable action on R.B. 910.

We also submit comments on SB 1075, An Act Concerning Construction Services and the Reporting of Nonwage Payments. This bill holds persons/entities that perform construction services accountable for reporting all non-wage payments made to construction services providers, in excess of \$600.00 per year to the Commissioner of Revenue Services who in turn reports such payments to the Administrator of the Unemployment Compensation Fund. We would support this concept and add language in the bill requiring employer accountability for violating state wage and hour laws.

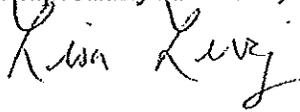
Wage theft is a term that is used to describe what happens when an employer fails or refuses to pay for work performed by an employee. This can include the failure to pay the minimum wage, overtime, or the amount of wages that are due. Wage theft has a particularly devastating effect on low wage workers. Examples include dishwashers who worked 12 to 14 hour days but were paid less than the minimum wage and no overtime; painters whose employer failed to pay them for the last two to three months of work; domestic workers and personal care attendants required to work 80 hours a week or who were on call 24 hours a day but received as little as \$2.00 to \$3.00 an hour for their work. Legal Services runs the Stamford Day Laborer Clinic and has seen cases where workers put in weeks of physical labor only to not be paid at all by their employers.

The current state statute must become more of a deterrent for employers engaging in wage theft. Although Conn. Gen. Stat. §31-72 allows for an award of double damages in cases of wage

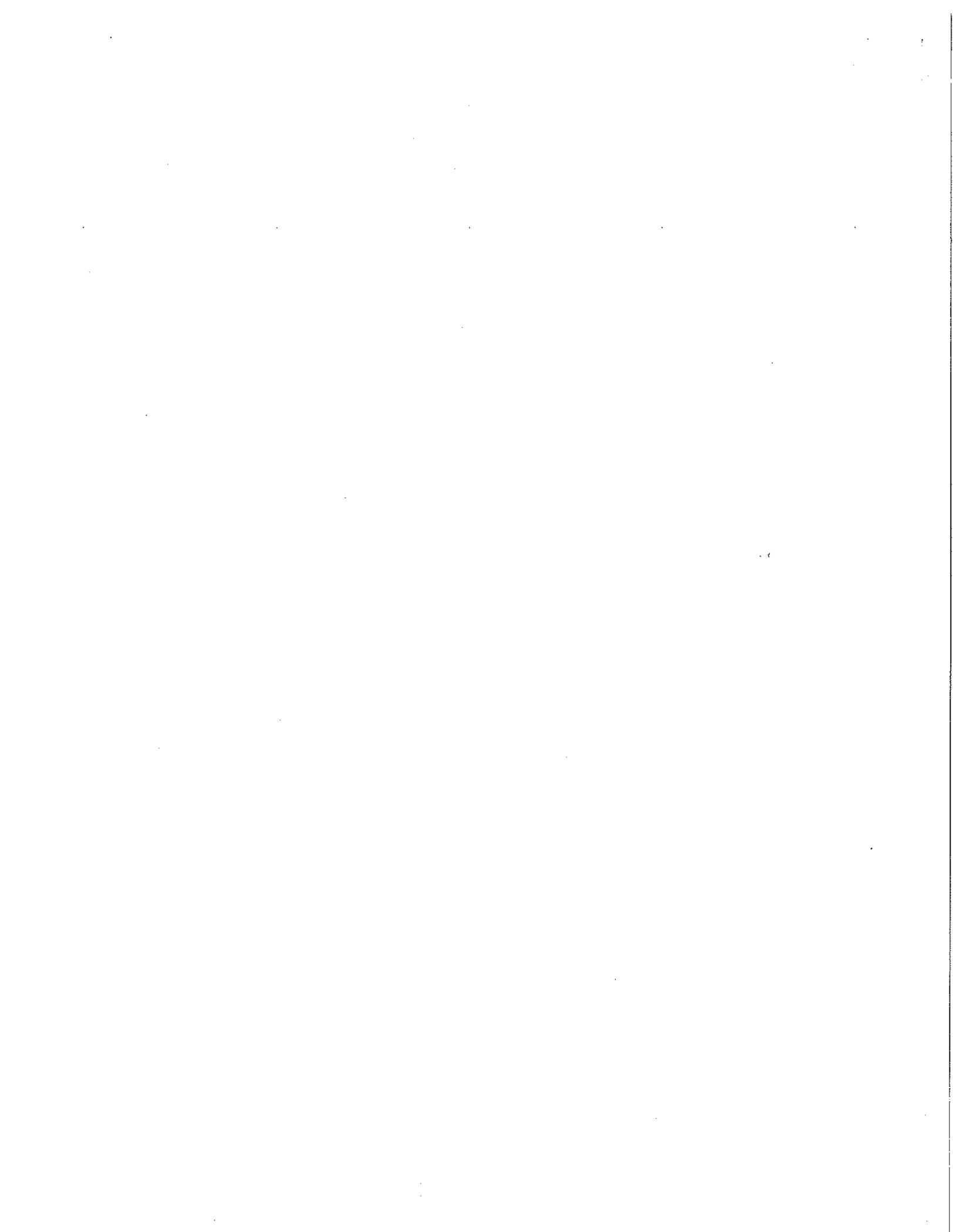
violations, Connecticut case law requires a finding of bad faith, arbitrariness or unreasonableness to support such an award. By changing Connecticut's statute to conform with the federal Fair Labor Standards Act, double damages would automatically be awarded in wage theft cases. The language we are proposing would also enable an employer who could prove that it acted in good faith to limit the recovery to single damages. Overall, the bill should deter unscrupulous employers from cheating workers out of their lawful pay and the state out of its taxes.

I have attached our proposed language. Thank you for your consideration of our proposals.

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa Levy".

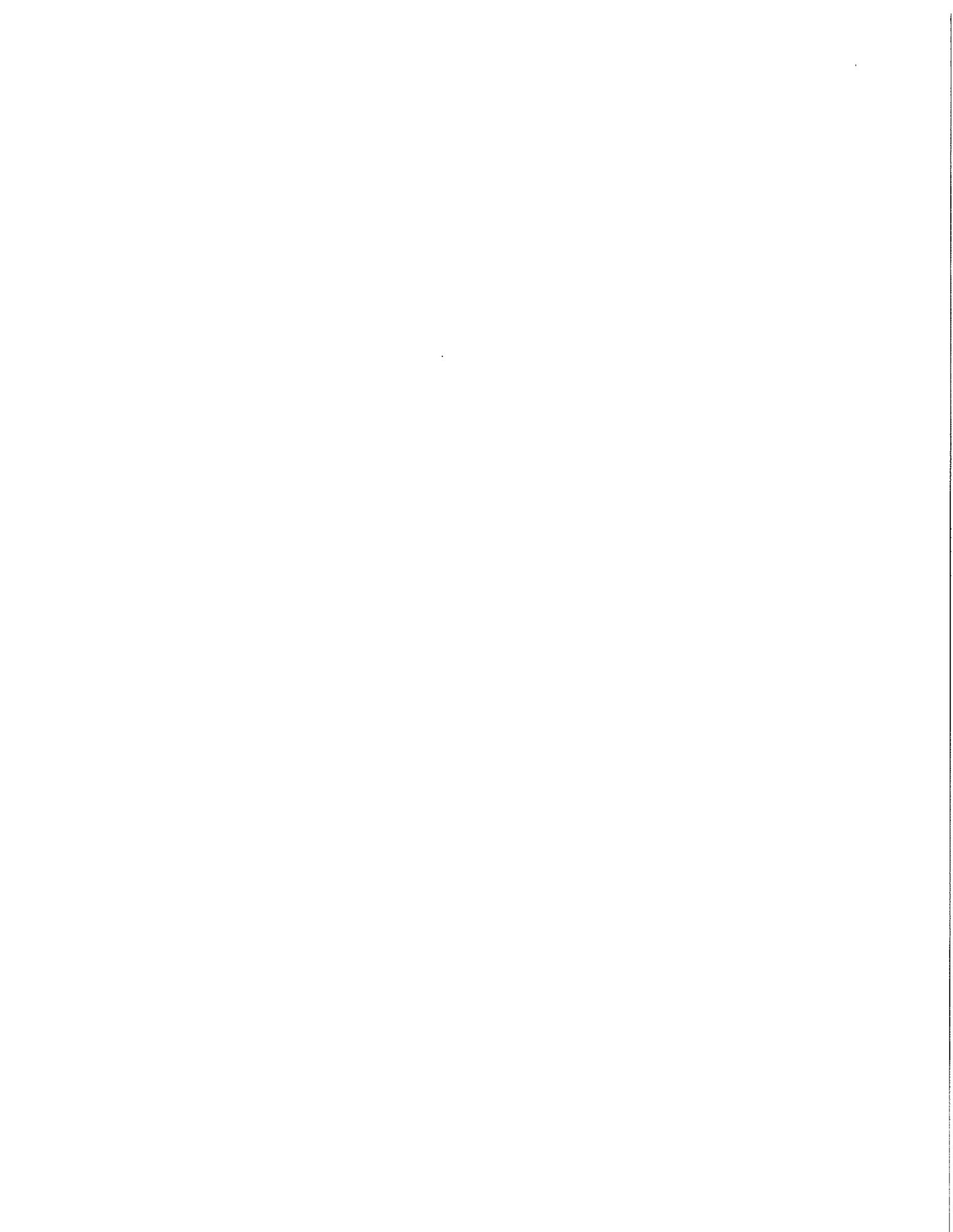
Lisa Levy
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Draft Language Amending Damage Awards in Wage Claim/Wage Theft Cases

§ 31-72. Civil action to collect wage claim, fringe benefit claim or arbitration award

When any employer fails to pay an employee wages in accordance with the provisions of sections 31-71a to 31-71i, inclusive, or fails to compensate an employee in accordance with section 31-76k or where an employee or a labor organization representing an employee institutes an action to enforce an arbitration award which requires an employer to make an employee whole or to make payments to an employee welfare fund, unless the employer proves a good faith basis for believing that its underpayment of wages was in compliance with the law, such employee or labor organization ~~[may]~~ **shall** recover, in a civil action, twice the full amount of such wages, with costs and such reasonable attorney's fees as may be allowed by the court, and any agreement between him and his employer for payment of wages other than as specified in said sections shall be no defense to such action. The Labor Commissioner may collect the full amount of any such unpaid wages, payments due to an employee welfare fund or such arbitration award, as well as interest calculated in accordance with the provisions of section 31-265 from the date the wages or payment should have been received, had payment been made in a timely manner. In addition, the Labor Commissioner may bring any legal action necessary to recover twice the full amount of unpaid wages, payments due to an employee welfare fund or arbitration award, and the employer shall be required to pay the costs and such reasonable attorney's fees as may be allowed by the court. The commissioner shall distribute any wages, arbitration awards or payments due to an employee welfare fund collected pursuant to this section to the appropriate person.



FACTS about

WAGE THEFT & DAMAGE AWARDS

Wage theft or nonpayment of wages, is rampant throughout the United States and in Connecticut. The problem has worsened with the downturn in the economy.

Under the federal Fair Labor Standards Act (FLSA) double damages are awarded automatically in non-payment of wage cases.

The Connecticut statute that protects workers from wage theft, CGS 31-72, on its face, allows for the award of double damages in cases of non-payment of wages. However, CT case law has held that a finding of bad faith, arbitrariness, or unreasonableness is required to support an award of double damages. Thus, it is harder for workers to collect double damages under Connecticut law.

Advocates are seeking to conform the Connecticut wage collection statute to the FLSA and mandate double damages in non-payment of wages cases.

Employers will have the burden of showing a good faith basis for the underpayment of wages. This will help to deter unscrupulous employers from cheating workers out of their pay and the state out of its taxes.

Day laborers are particularly vulnerable to wage theft because they are generally less educated and more unfamiliar with the wage laws and their rights than other workers. The Stamford Day Laborer Wage Clinic has claimed over \$2 million in unpaid wages and overtime on behalf of low wage Stamford workers in the 5 years it has been in existence.

According to the Connecticut Department of Labor, from July 2010 through February 22, 2012 there were 6186 wage complaints filed with the CT DOL. Many other states allow for double damages. Massachusetts actually calls for treble damages.

This is a simple fix that does not cost the state money and in fact, allows for recovery of taxes for the state.

Business benefits by creating a level playing field instead of one where unscrupulous employers undercut legitimate employers because they pay less for their labor.



FACTS about **Amendments to the Personnel Files Act**

CT's Personnel Files Act, CGS 31-128a et seq, protects the confidentiality of personnel files except in limited circumstances. It also however, gives the employee certain rights to access these files.

CT's Personnel Files Act currently:

- enables employees to inspect the documentation in their files
- gives the employee the right to request that the employer correct inaccurate information in the file
- allows an employee to submit a written memo for the file rebutting the employer's position on, for example, an incident of discipline or a negative evaluation.

While these provisions are crucially important to employees, employers don't always comply with them. Employment advocates find frequent violations of the provisions requiring copies of written discipline or discharge notices to employees. Advocates also frequently encounter situations when employers refuse to give employees access to their files, or delay access unnecessarily. In more egregious cases, confidential information from a discharged employee's file to a prospective employer is disclosed without the employee's consent.

This proposed language:

- Provides that an employee can inspect their own personnel file within 3 business days of a written request;
- Provides that a former employee may inspect their personnel file within 10 business days of a written request if such request is received within one year of separation;
- Provides that a copy of any documented disciplinary action be given to the employee within one business day of imposition;
- Provides that a copy of any documented discharge or intent to discharge notice, be provided to the employee immediately upon imposition.

