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Testimony of Attorney Nadine Nevins To The Labor and Public Employees Committee in Support of:

SB 914 An Act Concerning an Employer's Failure to Pay Wages and

SB 1037 An Act Concerning Employee Liens Against Employers for Unpaid Wages on

March 5, 2015

Good Afternoon, Senator Gomes and Representative Tercyak and Committee members.

My name is Nadine Nevins and I am managing attorney of the Bridgeport office of Connecticut legal Services. For the last seven years I have run a free, legal clinic in Stamford for low-wage workers who have been subject to wage theft i.e. they have not been paid minimum wage, overtime or at all. The clinic has advised or represented 633 workers. I am testifying today on behalf of the Connecticut Legal Services, New Haven Legal Assistance Association and Greater Hartford Legal Aid, Employment Task Force in support of **SB 914**, which would amend Connecticut General Statutes §31-68 and §31-72 to make an award of double damages mandatory in cases of wage theft and **SB 1037**, which would create a lien on an employer's real or personal property for unpaid wages.

First SB 914. Unfortunately, wage theft is a fact of life when you are a low-wage worker in Connecticut especially when working in the construction, retail, cleaning, restaurant, and day labor industries. Connecticut is not unique. Wage theft is happening throughout the country. However, Connecticut is lagging behind other states in trying to combat it. Other states have enacted double and treble damages(AZ, ID, ME, MD, MA, MI, NB, ND, VT, WV, NY, CA, IL, SC, Wash. D.C.) in wage theft cases. Under the Fair Labor Standards Act (FLSA) double damages are the norm.

SB914 would allow double damages in wage theft cases, absent a showing of good faith by the employer. If Connecticut does not pass this bill the status quo will be maintained for employers who can continue with getting away with not properly paying their employees unless and until a worker files a complaint with DOL or the court. Then employers may pay, but just what they were supposed to pay in the first place, just months and even years later. Low-wage workers often do not sue their employers for unpaid wages and/or overtime. Many times they fear retaliation or loss of their job or are unaware of the minimum wage and overtime laws or they do not have the education or funds to do so. Without double damages there is no incentive, no penalty and no pressure on the employers to pay.

Employers are directly profiting from the exploitation of vulnerable members of Connecticut's work force. Workers like George and Tina whose cases are typical of those we have seen at the STDLC.



George worked doing food preparation for two years in a restaurant in Westport. He came to the clinic because he had not been given his final paycheck after he was let go. He had called his employer several times asking for his check, to no avail. Finally, he went in person to get his pay check. His former boss cursed him out, pulled him by the scruff of his neck while threatening to call the police if he did not leave. While reviewing his pay stubs at the clinic we discovered that he had worked 60 hours a week and was only paid at his regular rate of \$15 per hour. Instead of being paid \$900 a week, with overtime, he should have been paid \$1,050 per week. He was cheated out of \$150 a week, each week for over two years.

Tina worked as a waitress at an upscale restaurant in Westport. The minimum wage for wait staff was \$5.69. The assumption is that tips bring their wages above the minimum wage. Tina worked at the restaurant for four months. For eight weeks she only received partial payment of her wages. For six weeks, although she worked over forty hours each week, she received no overtime and for two weeks she did not get her tips. Tina is owed about \$2,900. The restaurant closed for good before Tina was paid.

SB914 would make the award of double damages mandatory where the worker proves their claim of wage theft. It will deter employers from cheating workers out of their pay, the state out of its taxes and will level the playing field for honest employers who are undercut by unscrupulous employers who pay less for their labor.

Now to SB1037 which will create a procedure for establishing a lien on an employer's real or personal property to secure payment of unpaid wages. It is necessary because even when a worker wins a judgment, collection is increasingly difficult.

The wage lien is a simple and tested collection tool that is especially useful for low-wage workers who often live paycheck to paycheck, and need to get their wages paid in a timely manner to pay their rent and put food on their tables. They provide security and some leverage in a workers attempts to be paid for their work. "If there is a true dispute, the courthouse door is open; when the failure to pay the wages has no basis, the lien can provide real relief on an expedited basis." At least six states have wage lien laws (Alaska, Idaho, Maryland, New Hampshire, Texas and Wisconsin) providing good experience and success.

Connecticut has many other types of liens protecting a wide range of individuals. Warehousemen have a lien on goods stored in storage facilities for non-payment, jewelers, radio and television repair persons have a lien upon the repaired property until the bill is paid. All states have a mechanic's lien which covers work performed in connection with the construction or repair of structures or land improvements. They are regularly used but are limited to the construction industry.

Employers will go to extremes to avoid paying their workers. They will transfer their assets into other peoples' names, declare bankruptcy, close their business and open in another name, others simply cannot be found. Employers prioritize protecting their own assets over paying their wage debts. Two Stamford Day Laborer Wage Clinic (STDLC) cases exemplify the value of enacting a lien to protect workers from these practices.

Carlos and Scott worked for a sub-contractor repairing chimneys in a condominium complex in Stamford. They were not paid for two weeks of work and were owed \$975 and \$900 respectively. Scott and Carlos only knew the first name of the person they were working for and had no other information about him or the general contractor. We were able to identify the sub-contractor and general contractor from the condominium property management company. Because the employer was

unresponsive to our requests for payment, we placed a mechanic's lien on the property on which they performed the work i.e. each of the forty condominium units. It worked like a charm. Within three weeks of the condominium owners' receipt of notice of the lien, Scott and Carlos were paid; much faster than if we had to pursue their claims in court. But that only works in construction. We need that same tool for all workers that are subject to wage theft.

Contrast another STDLC case in which three workers Jim, David and Eric worked doing home repair in 2007. In addition to refusing to pay them for their work, the employer charged Jim \$600 to pay for "insurance" to cover the work he performed. That money was never returned to him despite completing the work. The employer also gave Jim and Eric checks which were returned for insufficient funds causing them to incur bank fees and costs. After receiving our demand letter, the employer threatened Jim, David and Eric. We had to get a restraining order to protect our clients and their families. It was past the statutory deadline for filing a mechanic's lien so we filed a lawsuit in federal court to recover their wages. The 2008 default judgment of \$41,000 still remains unpaid.

The employer used three aliases, several social security numbers and we served him at four different addresses. He had no property in his name. We filed a bank execution to try to collect the judgment. The Marshall found where he banked but the employer had closed the account just a few days earlier. He knew, because we had to give him notice, that we were searching for assets to pay the judgment. If we had been able to file a wage lien when our clients first came to us, that money could have put on hold during the pendency of the litigation and been there for our clients when they won their case. Workers need security early in the claim process that will hold employer assets and allow for future payment.

Enacting both SB 914 and SB 1037 would help send a message to non-paying employers that the minimum wage and overtime protections are to be enforced, and that cheating workers out of their hard-earned wages will not pay.