



TESTIMONY
OF
JAMES BHANDARY-ALEXANDER, NEW HAVEN LEGAL ASSISTANCE
ON
THE PROBLEM OF WAGE THEFT IN CONNECTICUT
AND
IN SUPPORT OF SB 1037 REGARDING WAGE LIENS
AND
IN SUPPORT OF SB 914 REGARDING AN EMPLOYER'S FAILURE TO PAY WAGES.

MARCH 5, 2015

HARTFORD, CONNECTICUT

Dear Members of the Labor and Public Employees Committee,

My name is James Bhandary-Alexander and I am a staff attorney at New Haven Legal Assistance. New Haven Legal Assistance provides high-quality legal services to individuals and groups unable to obtain legal services because of limited income, age, disability, discrimination and other barriers. I represent low-wage workers in court, before administrative agencies, and in the legislature. My principal area of expertise is wage theft.

WAGE THEFT IS RAMPANT IN CONNECTICUT

Wage theft occurs when an employer steals wages by paying less than the minimum wage, fails to pay an overtime premium, forces employees to work off the clock, steals tips, withholds pay, or does not pay workers at all. A national study of several metropolitan areas revealed that an estimated 64% of low-wage workers suffered some form of wage theft each week.¹ A June 2012 Report from the Progressive States Network showed that over sixty percent of low-wage workers “suffer wage violations each week.”² Extrapolating from national rates of failure to pay minimum wage or overtime wages, it is possible to estimate the number of Connecticut workers in low-wage professions who experience these workplace violations:

Retail Salespersons:	49,670 employed in Connecticut. ³ 76.2% national rate of overtime violations. 37,848 Connecticut employees suffering from overtime violations at least once during the year.
Waiters and Waitresses:	26,110 employed in Connecticut. 77.9% national rate of overtime violations 17,885 Connecticut employees suffering from overtime violations at least once during the year.
Janitors and Building Services:	30,400 employed in Connecticut 71.2% national rate of overtime violations 21,644 Connecticut employees suffering from overtime violations at least once during the year

¹ Annette Bernhardt, et al, Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities (NELP, 2008), available at <http://www.nelp.org/page/brokenlaws/BrokenLawsReport2009.pdf>

² Where Theft is Legal: Mapping Wage Theft Laws in the 50 States, Progressive States Network (June 6, 2012), <http://progressivestates.org/wagetheft>

³ Connecticut numbers come from: CT Voices For Children Analysis of U.S. Bureau of Labor Statistics, May 2010 Occupational Employment Statistics data <http://www.ctvoices.org/sites/default/files/econ12raiseminwage.pdf>

National numbers come from Annette Bernhardt, et al, Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities (NELP, 2008), available at <http://www.nelp.org/page/brokenlaws/BrokenLawsReport2009.pdf>

These are just three examples, though. Construction, landscaping, childcare, domestic work are all examples of industries employing hundreds of thousands of vulnerable workers who are often victims of wage theft.

The workers are not the only victims. Businesses that comply with the law face unfair competition from low-balling rivals. The state loses tax revenue, too. In short, this is a major economic problem with real – and very negative – economic ramifications for Connecticut and its citizens. Apart from continuing to fund the Connecticut Department of Labor and legal services agencies like mine to the maximum extent possible to enforce existing laws, the legislature needs to make some changes to those existing laws.

SB 1037 – Wage liens work

SB 1037 would create a procedure for establishing a lien an employer's property to secure a payment of unpaid wages owed to an employee. I can tell you from personal experience representing low-wage workers that many workers who obtain money judgments for wage theft are never able to collect their wages. Employers who commit wage theft hide assets, shut down operations, switch corporate forms, and sometimes declare bankruptcy to avoid the consequences of their actions. For example, at Connecticut Legal Services' Day Laborer Clinic in Stamford only 30% of workers who obtain judgments are able to collect.

This tool would be especially useful for workers in low-wage industries who often live paycheck to paycheck, and need to get their wages paid in a timely manner. SB 1037 would send a message to non-paying employers that the minimum wage and overtime protections are to be enforced, and that cheating employees of hard-earned wages will not pay. Wage liens are a simple tool that encourages employers to comply with pay requirements efficiently. Contractors in Connecticut already have this tool available when they are not paid, there's not reason employees shouldn't.

And wage liens are proven to work extraordinarily well. In Wisconsin, the collection rate on wage theft claims backed by a wage lien is 80%.⁴ Let me remind you, at the Stamford Day Laborer Clinic, where the wage theft victims have the benefit of counsel, the collection rate is 30%. Wage liens exist in one form or another today in Alaska, Idaho, New Hampshire, Texas, Washington, and Wisconsin. I strongly urge you to support SB 1037 and help make work pay.

SB 914 – Double Damages are common sense

I also urge the Committee to support SB 914, which makes a modest change to the statutory remedies available to victims of wage theft. The statutes currently allow for the award of double damages in wage theft cases. However, case law has so constricted the circumstances in which double damages may be awarded – essentially requiring the worker to prove that the employer

⁴Eunice Hyunhye Cho, Tia Koonse, Anthony Mischel, *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's workers*, available at http://nelp.3cdn.net/f6fc363a30266f0cd3_pzm6id1xa.pdf

conducted some other unlawful activity alongside the wage theft – that double damages under state law are difficult to obtain.

If double damages are difficult to obtain, it means that employers have an easy time basing a business model on wage theft. That is because even if they lose a case, they will only pay what they should have paid in the first place.

If SB 914 passes, all that will happen is that the burden will shift to the employer to demonstrate that the wage violation occurred despite the employer having tried to comply with the law. For example, if an employer has made a good-faith attempt to verify with the Department of Labor or through an independent law firm audit that their payment practices are legal, under the terms of SB 914, they would not be assessed double damages. This protects employers who truly make honest mistakes. I have read commentary that SB 914 would take discretion away from judges. This is false. The judge has the same amount of discretion, but is asking a different question. Rather than asking “has the employee proven employer recklessness?,” the judge asks “has the employer proven that she tried to comply with the law but made an honest mistake.” The latter is a better question.

Sincerely,

James Bhandary-Alexander
New Haven Legal Assistance