

NEW HAVEN LEGAL ASSISTANCE ASSOCIATION, INC.
426 STATE STREET
NEW HAVEN, CONNECTICUT 06510-2018
TELEPHONE (203) 946-4811
FAX (203) 498-9271

TESTIMONY OF JAMES BHANDARY-ALEXANDER IN SUPPORT OF WAGE LIENS
AND SUBSTITUTE BILL SB 223

March 3, 2016

My name is James Bhandary-Alexander, and I am an attorney at New Haven Legal Assistance. I represent low-wage workers in my practice, and am also currently the co-chair of Connecticut's Low-Wage Employer Board, which is studying the impact of low-wage jobs on Connecticut's budget.

I am here to speak about wage theft and wage liens. We in legal services have a wage lien bill we would like this committee to consider as a substitute for the current bill SB 223, which we oppose.

Wage theft is unfortunately a pervasive phenomenon in Connecticut. Too many businesses routinely violate minimum wage and overtime laws, or refuse to pay what they promise, robbing employees of their lawful earnings and undercutting law-abiding competitors.

The legislature last year recognized the seriousness of this problem and passed SB-914 to increase penalties on employers who fail to pay legal wages. Unfortunately, low-wage workers continue to face severe obstacles to vindicating their statutory rights.

Even employees who win a judgment from a court or an order from the state Department of Labor often cannot collect their unpaid wages and damages because employers do not pay. We need stronger mechanisms to enforce Connecticut's existing laws.

- In my personal experience as an attorney for low-wage workers in New Haven, collection is always a major problem. For example, I represent a group of janitors who worked cleaning movie theatres at night. They worked 3rd shift seven days a week, from midnight until 5:00 or 6:00 in the morning, for illegal wage of \$5.00 an hour. They did this because they are poor, and could not find another job to pay their bills. These workers received a judgement worth tens of thousands dollars, but haven't yet been able to collect a cent. I also represent the workers at Gourmet Heaven in New Haven, who worked for as little as \$3.00 an hour for sixty or seventy hours a week. These workers obtained prejudgment remedies of over \$175,000 and are owed even more than that. Yet because of the time it took to obtain those remedies, we fear that collection will be very challenging.

- This is a problem throughout Connecticut. The Connecticut Legal Services Day Laborer Clinic in Stamford, for example, reports that their clients are only able to collect on about 30% of judgments for unpaid wages.¹
- These challenges are common across the country:
 - California – A 2013 UCLA report found that between 2008 and 2011, only 17% of California workers who received a judgment for unpaid wages from the state Division of Labor Standards Enforcement were able to recover any payment.²
 - Maryland – Before Maryland passed its wage lien bill, the state Department of Labor, Licensing, and Regulation testified that they were only able to collect unpaid wages in about 20% of the cases where final wage orders for unpaid wages were issued.³
 - New York – Between 2003 and 2013 the NY State Department of Labor was unable to collect over \$101 million of the wages it determined employers owed their workers.⁴ This is in addition to at least \$25 million in unpaid court judgments for wage violations.⁵

Wage liens have proven effective in other states as a means of ensuring that employers actually pay the wages they owe their employees.

- This bill would allow the state Department of Labor or an employee to obtain a lien on the employer's property early in the process to ensure that the employer does not transfer or hide assets over the course of the litigation.
- In Wisconsin, which has a robust wage lien law, the state Department of Workforce Development was able to collect at least some payment in about 80% of cases where it brought suit to enforce a wage lien.⁶ Most cases handled by the state agency in Wisconsin do not get this far, however, because 55% of employers agree to pay prior to litigation.⁷
- In addition to Wisconsin, other states including Maryland, Alaska, Idaho, Texas, and Washington have wage lien provisions in various forms.

¹ *The Connecticut Wage Theft Crisis: Stories and Solutions* (Unidad Latina en Acción and New Haven Worker's Association 2015), 8. Available at <https://ulanewhaven.org/wage-theft-crisis-report>

² Eunice Hyunhye Cho, Tia Koonse, and Anthony Mischel, *Hollow Victories* (National Employment Law Project and UCLA Labor Center 2013), 2. Available at http://nelp.3cdn.net/f6fc363a30266f0cd3_pzm6id1xa.pdf

³ Maryland Department of Labor, Licensing, and Regulation, Testimony on SB 758, Committee on Judicial Proceedings & Finance, March 13, 2013.

⁴ *Empty Judgments: The Wage Collection Crisis in New York* (Urban Justice Center, The Legal Aid Society, and National Center for Law and Economic Justice 2015), 5. Available at <https://cdp.urbanjustice.org/cdp-reports/emptyjudgements>

⁵ *Id.*, 4.

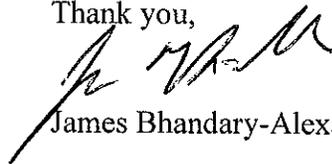
⁶ Eunice Hyunhye Cho, Tia Koonse, and Anthony Mischel, *Hollow Victories* (National Employment Law Project and UCLA Labor Center 2013), 18.

⁷ *Id.*

Connecticut already has a mechanic's lien to address a similar problem of contractors not being paid by their clients and then subsequently having a difficult time collecting on their debt.

- This bill recognizes the same principle that once individuals have invested their time and labor in service of a client or employer, they need strong protections to ensure they will be compensated for that work.
- The proposed wage lien would provide greater procedural protections for employers than are currently available to property owners subject to mechanic's liens because they would have the opportunity to contest the lien in court before it is imposed. This will ensure that no lien is imposed without probable cause of wage violations.

Thank you,



James Bhandary-Alexander

PROPOSED SUBSTITUTE SB 223

Establishment of a Lien for Unpaid Wages

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective October 1, 2016) (a) Whenever an employee is aggrieved by an employer's failure to pay wages in violation of section 31-68 or 31-72 of the general statutes, the Labor Commissioner shall have a lien or any employee shall have a lien upon all property of the employer, real or personal, in which such employer has an interest to enforce payment of such wages and penalties as may be allowed by the court pursuant to said sections.

(b) To establish a lien for unpaid wages under this section, the Labor Commissioner or an employee shall serve notice of such lien by certified mail with a return receipt requested or by priority mail with delivery confirmation, to the employer that failed to pay such wages. Such notice of lien shall contain such information as will identify (1) the owner of the property upon which the lien is claimed, (2) the residence or business address of such owner, (3) the specific property claimed to be subject to such lien, (4) the location of such property, (5) the amount of wages and accrued penalties and interest claimed to be due the employee in relation to the lien, and (6) the tax period or periods for which such lien is claimed. Such lien shall be filed not later than three years after the final pay period in which such wages were due and shall have priority over any other encumbrance originating after the employee's unpaid wages became due.

(c) An employer may dispute a lien for unpaid wages by filing a complaint in the small claims or Superior Court where the property is located within 30 days after notice is served on the employer. A complaint under this section shall include a copy of the notice to establish a lien that was served on the employer, a statement of any defense to the lien for unpaid wages with an affidavit containing a statement of facts that support any defenses raised. If the court, upon consideration of the facts before it and taking into account any defenses, counterclaims or set-offs, claims of exemption and claims of adequate insurance, finds that the plaintiff has shown probable cause that such a judgment will be rendered in the matter in the plaintiff's favor in the amount of the lien sought and finds that a lien securing the judgment should be granted, the lien applied for shall be granted as requested or as modified by the court. The court shall determine whether to issue an order establishing a lien within 45 days after the date on which the complaint was filed and shall provide written notification to the employer or employee of such determination. On request of the employer or employee, the court may hold an evidentiary hearing prior to making such determination.

(d) If the employer fails to file a timely complaint disputing the lien, the clerk of the small claims or Superior Court where the property is located shall, upon filing with the court of a copy of the notice of lien and proof of service, issue an order establishing a lien for the amount claimed.

(e) Such lien is established after the court provides written notification to the employer and employee of such determination, provided such employer does not file an appeal of such determination within thirty days after receiving such determination. Such lien shall be effective for a period of ten years from the date of filing unless discharged as hereinafter provided.

(f) An action to recover unpaid wages by the employee or the Labor Commissioner shall also be deemed an action to foreclose upon any property subject to an employee's perfected and recorded lien established pursuant to subsection (b) of this section. In any judgment resulting from such an action the

court may order the sale at sheriff's sale or the transfer to the plaintiff of title or possession of any property subject to the lien.

(g) A lien under paragraph (b) shall be extinguished upon expiration of the limitations period applicable to any claim for the wages owed if no action is commenced to recover the wages due to the employee. If judgment is entered in any action for unpaid wages, the lien shall be extinguished upon expiration of the applicable appeals period if no appeal is filed. If an appeal is filed, the lien shall remain in force until all issues on appeal have been decided.

(h) A lien under paragraph (b) has priority over the rights of any purchaser of any property of the employer, including any bona fide purchaser under 11 U.S.C. 545(2). Where more than one lien is issued upon the same employer and served upon the same employer, the attachment first delivered to the marshal shall have priority, and all subsequent attachments shall be satisfied in the order of priority based on the lien's recording date. An employee's wage lien is effective against the employer and the estate of the employer.

(i) A wage lien against real property shall be recorded on the land records with the town clerk for the town in which any portion of the property is located. A wage lien against personal property may be recorded in the same manner a financing statement is filed with the Secretary of State.

(j) This subtitle may not be construed to prevent an employee from exercising any right or seeking any remedy to which the employee may be otherwise entitled.

FACTS about **Liens for Unpaid Wages**

Although common sense tells us that workers should get paid what they earn, oftentimes that isn't the reality. Workers often face hurdles when attempting to collect their unpaid wages.

Low-wage workers are particularly impacted by employers who disappear and/or dissolve or hide their assets in an attempt to render any legal judgments for unpaid wages meaningless.

Liens are effective tools in assisting workers in recovering wages they are due. Wage liens allow workers to place a temporary hold on the property of an employer until the employer pays the workers the wages they have earned. Wage liens are modeled on mechanic's liens (see Section 49-33 of the CT general statutes) which give a worker a claim against real estate and bank accounts until a wage payment claim is resolved. This provides a financial incentive for employers to both abide by the law and pay lost wages when they do not.

Wage theft is rampant throughout the country and particularly in low-wage service industry jobs.

A Day Laborer Clinic run through CT Legal Services reported that only about 30% of the judgments they won in wage theft cases were able to be collected. Wage liens would give workers some leverage in attempting to collect their wages.

Most wage lien claims would fall under the jurisdiction of the small claims courts as they are under \$5000.

- A worker would still have to determine that the employer has property that could be the subject of the lien.
- Workers must serve the employer with written notice that describes the wages that are due and the property subject to a lien.
- Employers would have the opportunity to dispute any lien for unpaid wages and ask the court to decide.

When employers are held accountable for paying their workers they also pay their part of unemployment insurance and workers compensation costs. Wage liens don't subject law-abiding employers to any cost or worry.