



The Hidden Crime Wave
**Robbing Workers and
Communities**

By Sabine Schoenbach

 north carolina
JUSTICE CENTER

MARCH 2013

ACKNOWLEDGEMENTS

The North Carolina Justice Center would like to thank the UNC Immigration/Human Rights Policy Clinic, especially Professor Deborah M. Weissman, H. Esteban Diaz, Sara Milstein, Channell Singh, and Douglas Thie, as well as UNC law students Laura Arredondo-Santisteban and Cory Wolfe, for significant collaboration, research, and insights throughout the process of producing the wage theft report series.

We also express our sincere gratitude to North Carolina stakeholders interviewed for the reports, particularly the workers affected by wage theft, but also the advocates, attorneys, and administrative agency officials who shared their experiences and expertise including: Rick Blaylock, Mauricio Castro, Justin Flores, Rafael Gallegos, Leonardo Galván, Nitin Goyal, Eric Jonas, Vicki Meath, Mike Morrow, Professor Kathryn Sabbeth, Alice Tejada, Jose Torres-Don, and Robert Willis.

Wage Theft in North Carolina

The Hidden Crime Wave
Robbing Workers and Communities

By Sabine Schoenbach

TABLE OF CONTENTS

EXECUTIVE SUMMARY	2
AVAILABLE ENFORCEMENT DATA SHOW THAT EMPLOYERS WHO ENGAGED IN WAGE THEFT STOLE, AT A MINIMUM, \$33 MILLION FROM NC WORKERS OVER THE LAST FIVE YEARS.	2
NATIONAL SURVEY RESULTS SHOW THAT ENFORCEMENT DATA ARE JUST THE TIP OF THE ICEBERG.	5
INDUSTRY-SPECIFIC DATA SHOW THAT WAGE THEFT IS PARTICULARLY RAMPANT IN LOW-WAGE INDUSTRIES.	7
THE INDUSTRIES WITH SOME OF THE HIGHEST INCIDENCES OF WAGE THEFT ARE HIGH-GROWTH INDUSTRIES IN NORTH CAROLINA.	9
NORTH CAROLINA STAKEHOLDERS REPORT BARRIERS TO REDRESS	9
The Threat of Retaliation	9
Information Access Barriers	11
Obstacles and a lack of faith in the administrative and legal process	12
<i>Filing a claim with the Wage and Hour Bureau</i>	12
<i>Navigating small claims court</i>	13
<i>Seeking legal representation</i>	13
NORTH CAROLINA LAWMAKERS AND AGENCY HEADS CAN TAKE ACTION	14

EXECUTIVE SUMMARY

Wage theft occurs when an employer underpays or fails to pay wages to workers who have earned those wages. Wage theft can take any of a number of forms. For example, employers may fail to pay minimum wage or overtime, take employees' tips, make illegal paycheck deductions, misclassify employees as independent contractors, or simply not pay promised wages.

However wage theft manifests, the impacts are devastating for workers struggling to make ends meet. It also hurts their communities, as a decline in personal spending power means less demand for local businesses' goods and services. Furthermore, wage theft gives unscrupulous employers an unfair competitive advantage over those employers who do right by their workers.

A growing body of research, including national surveys and industry-specific studies, provides evidence of a broad and growing wage theft crisis across the country. This research demonstrates that wage theft is not isolated to a few bad apples; rather, it is taking place across industries and regions.

This report, the second in a series of reports on

wage theft in North Carolina, provides a current snapshot of the prevalence and effects of this crime in North Carolina based on available state and federal enforcement data, a review of industry-specific survey data, and, as much as possible, the voices of North Carolina's stakeholders—workers, organizers, service providers, employment lawyers, and administrative agency officials.¹

- Available enforcement data from the Department of Labor (NC DOL) and the US Department of Labor (US DOL) show that **employers who engaged in wage theft stole, at a minimum, \$33 million** from North Carolina's workers over the last five years.
- National survey data and industry-specific data on wage theft show that the available **enforcement data likely vastly understates the true scope** of wage theft in the state.
- The rapid growth of the low-wage labor



Available enforcement data show that employers who engaged in wage theft stole, at a minimum, \$33 million from NC workers over the last five years.

The extent of wage theft is difficult to quantify. Insufficient resources for enforcement, limited outreach to workers,

workers' fears of retaliation, and language-access issues are factors that keep many, if not most, cases of wage theft off the official state and federal tallies. However, claims filed with the United States Department of Labor (US DOL) and the North Carolina Department of Labor (NC DOL) can serve as a starting point in assessing the scope of the problem.

The US DOL ensures that employers comply with the Fair Labor Standards Act (FLSA), which requires that employers pay at least a

NORTH CAROLINA VOICES:**The Impact of Wage Theft**

“People’s livelihoods are being ripped apart because they’re going to work and not being paid for it.”

– Roger, a bartender in Raleigh who has worked in the restaurant industry for more than six years and has been a victim of wage theft

“Any theft of a worker’s wage has an adverse effect on that individual, their family, their community and

the resources of the local, state and federal government.”

*– Rick Blaylock,
District Director for North Carolina, US
Department of Labor, Wage and Hour
Division*

“When employees are not paid a living wage, the total economic community is impacted. When people are struggling, it also hurts local businesses because fewer people can buy their goods and services.”

*– Vicki Meath, Executive Director,
Just Economics, Asheville*

market in North Carolina is a reason to believe that **wage theft is on the rise.**

- North Carolina stakeholders, including workers, community organizers, attorneys, and administrative agency officials, **note significant barriers that prevent workers from recovering their wages.**
- **Practical and effective solutions are available** to North Carolina’s lawmakers and agency heads to make it easier for

workers to make claims, to ensure that delinquent employers pay, and to strengthen existing enforcement.

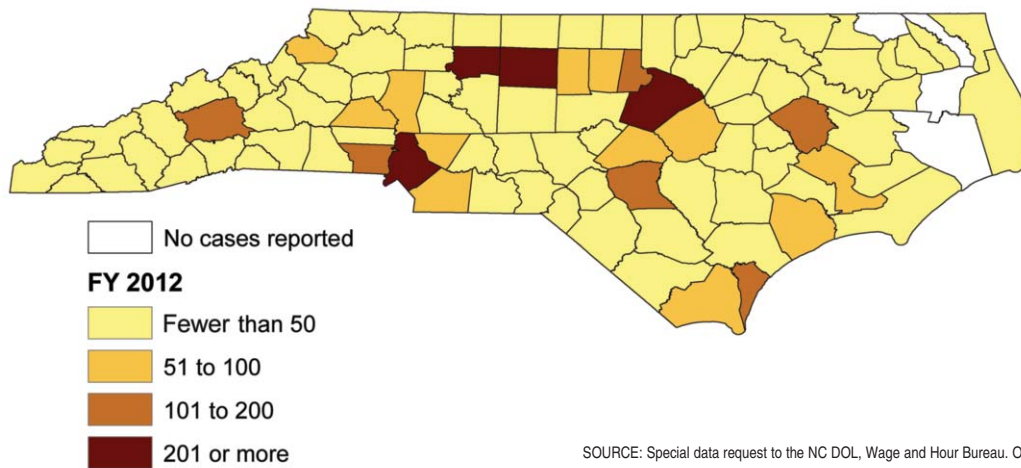
Many of North Carolina’s workers are still struggling in the wake of the Great Recession. At a time when the jobs deficit in North Carolina pushes 600,000 and there are three applicants for every open job, employed workers are clinging to the jobs they have so they can support their families and make ends meet. At the very least, these workers deserve to be paid for their hard work.

federal minimum wage and overtime pay for hours worked in excess of 40 in a standard work week. Workers can file complaints with the agency, and after investigating claims, the agency may assess back wages due. Between 2007 and 2011, the US DOL found employers owed more than \$20 million in back wages to North Carolina workers.²

Workers may navigate a similar process through the NC DOL’s Wage and Hour Bureau,

which administers the North Carolina Wage and Hour Act. The Wage and Hour Act provides employees protection for minimum wage and overtime payments parallel to the FLSA provisions, but it applies to workers who are not covered by the FLSA. The vast majority of cases investigated by NC DOL, however, (87.8 percent of cases in fiscal year 2012) involve the nonpayment of wages—including vacation, bonuses, commissions, and pay owed in excess of the minimum wage.³

FIGURE 1: Cases brought to the NC DOL Wage and Hour Bureau were concentrated in urban areas



SOURCE: Special data request to the NC DOL, Wage and Hour Bureau. October 2012.

In fiscal year 2012, the Wage and Hour Bureau investigated 3,819 employers and found 2,746 workers were due more than \$3.6 million in wages.⁴ From 2007 to 2011, the same five-year time period cited above for the federal findings, the Bureau found more than \$13 million had been stolen from North Carolina employees.⁵

Despite different ways of categorizing these amounts—the US DOL amount refers to back wages employers agreed to pay under the FLSA, and the NC DOL amount refers to wages it found to be due to workers under the Wage and Hour Act—the two sources together show that employers engaging in wage theft stole at least \$33 million from North

NORTH CAROLINA VOICES:
Wage Theft puts Honest Employers at a Disadvantage

“Finally, it dawned on me. ...My competitors were cheating.”

– Doug Burton, owner of Whitman Masonry, discussing how his competitors outbid him by misclassifying employees (as quoted in the The News & Observer on August 19, 2012)

“[The food industry] has created a race to the bottom to provide the lowest price for produce at any rate possible. This creates

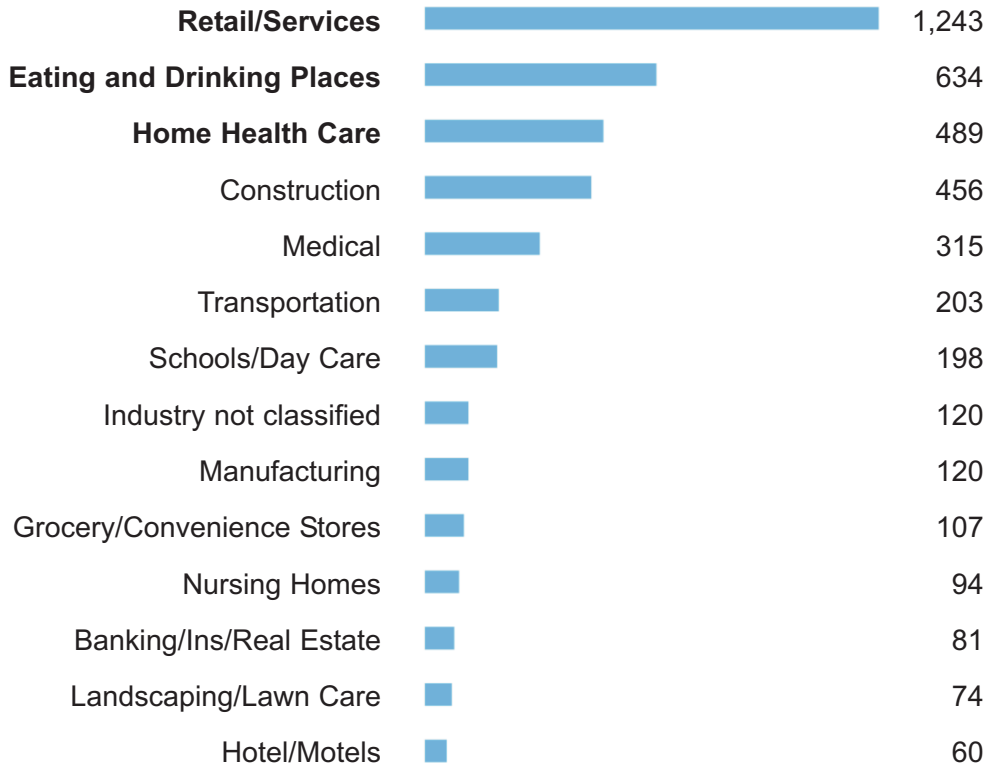
pressure on growers who are attempting to do the right thing and pay their employees more—if they do so, they will simply be undercut by less scrupulous growers.”

– Justin Flores, Organizer and Director of Programs, Farm Labor Organizing Committee, Dudley

“We’ve created this race to the bottom in which employers are rewarded when they find ways to save money, even if that means on the backs of low wage workers.”

– Vicki Meath, Executive Director, Just Economics, Asheville

FIGURE 2: Retail, restaurants, and home health are low-wage industries with highest numbers of wage and hour cases in 2012



SOURCE: Special data request to the NC DOL, Wage and Hour Bureau. October 2012.

Carolina workers between 2007 and 2011—a number that almost certainly underestimates the true scope of the problem.

Breaking down the NC DOL data by geography and industry provides further information about the claims filed. A mapping of all cases brought to the Wage and Hour Bureau demonstrates the significant concentration of cases in urban areas (Figure 1).⁶

A breakdown by industry shows that the distribution of wage theft complaints in North Carolina aligns with national trends. Wage theft complaints are more likely to occur in low-wage industries, with the highest number of NC DOL cases in 2012 coming from the industries of retail, eating and drinking establishments, and home health care.⁷

National survey results show that enforcement data are just the tip of the iceberg.

While \$20 million assessed by the US DOL and \$13 million found due by the NC DOL over five years total a significant sum, national survey data suggest that the scope of wage theft is drastically understated in enforcement numbers. In 2009, the National Employment Law Project (NELP) used an innovative survey technique designed to reach a full range of workers in the low-wage labor market—workers who are often missed in traditional surveys—to conduct the largest and most rigorous survey on wage theft to date.

NORTH CAROLINA VOICES: The Scope of Wage Theft

“[Wage theft] is very common, and it happens all across North Carolina. ...There are many people who are either embarrassed or just don’t want to reveal that they have been taken advantage of. Also, sometimes people don’t know who to go to. There are different reasons why we don’t have a full view of the problem, but it is very much alive everywhere you go.”

*– Mauricio Castro, Community Organizer,
NC Latino Coalition, Durham*

“A lot of people are not getting paid wages in various industries, from low-wage temporary workers to typical white-collar workers.”

*– Robert Willis, Employment Attorney,
Raleigh*

“We have local folks come into the office with wage theft claims very often and unfortunately, many do not have the necessary information or resources to bring a successful claim. Even more people are likely to just move on



Photo courtesy of J. Flores

when cheated by an employer, especially when they are undocumented. Such cases will never make it on record but happen every day and can have devastating effects on the workers' families.”

*– Justin Flores, Organizer and
Director of Programs, Farm Labor
Organizing Committee, Dudley*

“If you work as a day laborer or [if you are] not with a business that is taking out taxes and providing proper pay stubs, then my experience is that people have just as much of a chance of not getting their wages as they do of being paid. It seems like it is very common. People are taking some jobs out of desperation and then have a high chance of not getting paid.”

*– Alice Tejada,
Employment Attorney, Raleigh*

The survey included more than 4,000 workers in three of the largest US cities and exposed widespread workplace violations across low-income industries. More than two-thirds (68 percent) of workers surveyed had experienced at least one pay-related workplace violation in the previous week. Twenty-six percent of

workers were paid below the minimum wage. Of those who worked overtime, 76 percent were not paid the legally required overtime rate, and 70 percent of workers who came in early or stayed late were not paid for the work outside of their regular shifts.⁸

Industry-specific data show that wage theft is particularly rampant in low-wage industries.

No statewide survey on wage theft has been conducted in North Carolina, though one survey of workers in the state's tobacco industry showed a significant rate of minimum wage violations (see page 8). However, a sample of national and regional industry-specific surveys illuminates the scope of the issue in industries well-represented in North Carolina.⁹

CONSTRUCTION/DAY LABOR:

NATIONAL: Of 2,660 day laborers surveyed across 20 states and Washington, DC, 46 percent were completely denied payment by employers in the two months prior to being surveyed, and 48 percent were underpaid during the same time period.¹⁰

TEXAS: 38 percent of construction workers surveyed in Texas were misclassified as independent contractors.¹¹

CAREGIVING

GEORGIA: A US DOL survey found a 26 percent compliance rate with federal wage and hour laws in the daycare industry in Georgia.¹²

NEW YORK: 67 percent of 547 domestic workers surveyed reported not receiving overtime pay for overtime hours worked.¹³

NORTH CAROLINA VOICES:

Wage Theft in Construction/Day Labor

“I feel bad because I think, ‘No, it’s never going to happen again.’ That is what one says. And in the end, they [the employers] do it ... again and again. ...Nothing can be done.”

– Carlos, working in the construction industry in Carrboro, NC. Carlos was not paid for weeks of work, was underpaid, and received delayed payments.

“Typically [construction and day-labor jobs] are characterized by informal work agreements, in which workers often are unaware who they are working for.”

– Mauricio Castro, NC Latino Coalition, Durham

NORTH CAROLINA VOICES:

Wage Theft in Caregiving

“It’s easy to lose you because you’re replaceable. So they can pay the next person less.”

– Sarah, who worked at a daycare facility in Durham and was not paid for hours worked.

“The Human Rights Center has seen the most abuse occurring in the restaurant industry, in “pink collar” industries like housecleaning and caregiving, and among immigrant day laborers.”

– Rafael Gallegos, Associate Director, Human Rights Center, Carrboro

HOSPITALITY

MULTI-REGION: 46.3 percent of more than 4,000 restaurant workers surveyed in eight regions across the country reported overtime violations.¹⁴

SOUTHEAST REGION: A US DOL survey found a 52-percent compliance rate with federal wage and hour laws in the hotel/motel industry in the Southeast region of the United States.¹⁵

AGRICULTURE

NORTH CAROLINA: A survey conducted in the state's tobacco industry found that about one-quarter of workers interviewed reported receiving less than the federal minimum wage of \$7.25. Nearly all farmworkers feared some form of employer retaliation if they voiced their discontent, and not a single worker who was interviewed chose to file a complaint regarding their wages.¹⁶

NATIONAL: A US DOL compliance survey investigating more than 50 randomly selected poultry processing plants across the country found 100 percent of the plants violated the law by not paying for all hours worked and 65 percent misclassified their employees.¹⁷

NORTH CAROLINA VOICES:

Wage Theft in Hospitality

“I’ve been in the restaurant industry for almost six years total, four different restaurants. I’ve had problems with two of them out of the four.”

– Roger, a bartender in Raleigh who had his paychecks bounce and his pay delayed. He also witnessed employers commonly withholding tips

“We have a large tourist-based economy and the restaurant, hotel, and tourism service jobs are the jobs that we know of where wage theft is really occurring.”

– Vicki Meath, Executive Director, Just Economics, Asheville

NORTH CAROLINA VOICES:

Wage Theft in Agriculture

“I’ve read about it before in the newspaper, but never in [my] life did I think it would happen to me. ...Now what? How do [I] go forward?”

– Freddy, who worked in agriculture in Western NC. Freddy was paid less than minimum wage and did not receive his final paycheck

““This season, we’ve heard a lot about wage theft. The crewleader will put the wrong number of hours or wrong number of buckets, or he changes what he is going to pay the worker per hour or per bucket. To me, that is theft.”

– Leonardo Galvan, North Carolina Farmworkers Project, Benson

The industries with some of the highest incidence of wage theft are high-growth industries in North Carolina.

Those industries with some of the highest reported incidences of wage theft—retail, home health-care services, and food services—are also among the industries with the strongest job growth in North Carolina.

Over the last decade, North Carolina’s economy has experienced an accelerated transition away from higher-wage industries like manufacturing and toward low-wage industries like accommodations and food services.¹⁸ North Carolina’s job gains between 2000 and 2011 were almost entirely concentrated in low-wage industries and occupations. For example, the

accommodations and food services industry accounted for 15 percent of the state’s job creation.¹⁹ Overall, more than 83 percent of the state’s job growth over the last ten years occurred in industries paying average wages below the Living Income Standard (LIS), a conservative market-based standard that measures what it actually takes for North Carolinians to make ends meet (in 2010, the North Carolina Living Income Standard for a family of four was \$23.47 an hour).²⁰ Many of the occupations that are projected to have stronger job growth over the next decade also pay below the LIS (Figure 3, page 10).

The rapid growth of the low-wage labor market in North Carolina is a reason to believe that wage theft is on the rise. Moreover, the current economic conditions may make it more likely employers will resort to wage violations, and with the unemployment rate continuing to hover around 9 percent, it is less likely workers will speak up for fear of losing their jobs.²¹

NORTH CAROLINA VOICES:

Wage Theft and the Low-income Labor Market

“The workers who are most vulnerable are those in low-wage industries. These are workers who often have few resources and less education.”

– Rick Blaylock, District Director for North Carolina, US DOL Wage and Hour Division

“Generally, low-income families who do not have the resources to fight back [are impacted most].”

– Mike Morrow, recent director of the NC DOL Wage and Hour Bureau

North Carolina Stakeholders Report Barriers to Redress.

For this report, we interviewed advocates and service providers from community organizations and worker centers, as well as lawyers and administrative agency officials who have been involved in helping workers whose wages were stolen. They almost uniformly reported significant barriers that prevent most workers from recovering their wages.

THE THREAT OF RETALIATION

The National Employment Law Center’s (NELP’s) national survey of more than 4,000 workers found that although more than two-thirds of the workers surveyed had experience

FIGURE 3: Projected job growth is concentrated in occupations paying below the Living Income Standard



SOURCE: N.C. Commission on Workforce Development, June 2011. Living Income Standard is for a three-person family: one adult, two children.

a workplace violation in the previous week, 20 percent of these workers did not complain. Half of the workers who did not complain noted that they stayed silent out of fear of losing their jobs. Of the workers who did voice a complaint, 43 percent experienced illegal retaliation as a direct result of their recent complaint.²²

In our previous report on wage theft in North Carolina, we interviewed ten workers who had experienced wage violations. By far, the greatest obstacle to redress for these workers was the threat of retaliation, implicit or explicit. Most workers spoke about fragile job stability and feeling expendable. All workers who were still working for the offending employer talked about the fear of job loss.²³

For instance, *Natalia, who cleaned residential homes for a cleaning company*, tried to confront her boss after she noticed the

company had underpaid her and taken out deductions for gas without her consent. She quickly realized that her job was at stake. “I stood up to her one time. ...She said, ‘If you don’t like it you can go.’” Natalia explained.

Leonardo Galvan, an outreach coordinator and community educator with the North Carolina Farmworkers Project in Benson, emphasized that in his experience, wage theft is common, but workers who report wage theft are rare. He said, “[Wage theft] happens all the time, but the people don’t want to speak. ...They are afraid. ...They stay quiet [because] they need to work.”

Similarly, *Eric Jonas, who works as coordinator of the Income Development Center at the Hispanic Liaison of Chatham County*, commented on workers’ fears of speaking up in the current economic climate: “If workers can report [wage theft] without being fired, they would be more likely to report it. If there were more jobs, they would be more likely to report these kinds of issues as well.... [Wage theft] is common; it is just not reported often.”

Similarly, *Rafael Gallegos, associate director of the Human Rights Center in Carrboro*, an organization that works directly with day laborers in the region, said:

Workers are often worried about speaking out about their predicaments for two reasons—not wanting to rock the boat and lose jobs that might otherwise support their families, and not wanting to subject themselves to legal trouble or deportation.

NORTH CAROLINA VOICES: Barriers to Redress

“The biggest hurdle the Wage and Hour Division often encounters is employees are afraid to come forward for fear of losing their jobs or, if they are a former employee, fear the violating employer will provide poor references to prospective employers, even though the Wage and Hour Division keeps all worker information confidential.”

*– Rick Blaylock,
District Director
for North Carolina,
US DOL Wage and Hour Division*

INFORMATION ACCESS BARRIERS

Not having enough information about employers and not having written documentation of hours worked are additional

What is Payroll Fraud?

Payroll fraud, or misclassification, is the illegal practice of designating someone who should be classified as an employee, as an independent contractor. Unscrupulous employers may commit payroll fraud to avoid paying payroll taxes, workers' compensation and unemployment insurance. In the construction industry, for example, employers who commit payroll fraud may be able to submit lower bids, thereby undercutting responsible employers.

barriers mentioned by both workers and advocates. More than half of the workers we interviewed had no control over recording their hours. Most of these same workers worked with no employment contract and received no pay stubs or record of hours worked. They noted that challenges to those records often came down to the employer's word versus the worker's. *Natalia*, for example, described how her boss at the housecleaning company shorted her staff's pay by manipulating their hours.

When we do our own counting, well, I may have not studied much or know math, but I know how to add the numbers, and when we do our own calculations, it doesn't add up to what she said. [Her calculations are] always less.

Alice Tejada, an employment attorney in Raleigh, noted that she receives about two to three calls per week about wage violations, and

that it is not uncommon for workers to not know the full names of their employers. She often has to send workers back out to try to find employers' names, addresses, or even license plate numbers. Without any of this information, it is impossible for her to file a claim.

Justin Flores, an organizer and Director of Programs with the Farm Labor Organizing Committee, remarked that this problem is especially prevalent in the agriculture industry. He noted that, "Labor contractors will hire an employee for a fixed time, promise payment at the end of that time, and then disappear, leaving the employee with no payment and no real way to contact the employer."

OBSTACLES AND A LACK OF FAITH IN THE ADMINISTRATIVE AND LEGAL PROCESS

Stakeholders also spoke about workers' poor experiences and lack of faith in the current administrative and legal avenues for redress.

Jose Torres-Don, who offers direct support to clients at El Centro Hispano in Carrboro, noted that many of the workers who call the center don't believe they can be helped via the legal and administrative options for redress. He noted that the workers who seek out help from El Centro regarding their wages typically have made other attempts at obtaining their lost wages. He said, "Wage theft, discrimination, and worker abuse is prevalent in many low-wage industries in the Chapel Hill area, but it is underreported, with many employees choosing to let things slide due to lack of faith in the legal system."

Filing a claim with the Wage and Hour Bureau

For workers we interviewed who had been let go or who were no longer working for the offending employer, affordability of redress

options or the lack of knowledge about where to turn were the primary obstacles to getting the wages they were owed. Because of language-access issues or simply because no one returned their calls, none of the workers we interviewed who tried to contact the Wage and Hour Bureau navigated the process successfully.

Alice Tejada, a Raleigh lawyer, confirmed these workers' experiences. She noted that, many times in her experience, "[The] North Carolina Department of Labor doesn't even answer the phone. You get an answering machine."

Navigating small claims court

Many workers with wage claims are referred to small claims court, but they may not have the financial resources or the necessary knowledge about the process to be able to successfully pursue this route. Three of the workers we interviewed attempted the small



Karen spoke about the lack of access to small claims court.

claims process on their own, but they found the fees were an obstacle. **Karen, who had been let go from her administrative assistant position** without receiving her last paycheck, explained, "Some of my co-workers have told me we can go to small claims court. But on that paper it says you have to pay \$96. I don't have that."

Professor Kathryn Sabbeth heads up the Civil Legal Clinic at the UNC School of Law, which has increased its focus on wage theft issues because of needs in the community. She noted that the process of going to small claims court can be overwhelming for workers who are not used to navigating the legal system and is especially difficult for non-English speakers.

Some workers do pursue their own small claims cases, but going to court is daunting for most people who don't know the process. Making matters more difficult, the courts are not yet set up for people whose first language is not English, and undocumented workers are often wary of interacting with the legal system. For those few who do go to court and win, they still face the often impossible task of collecting the money that the judgments rightfully award them.

Alice Tejada, who volunteers at El Centro Hispano in addition to seeing clients in her practice, echoed the difficulties she sees workers have in navigating the process. When she sends workers to small claims court, she says, "You know you're sending them to a process they aren't going to be able to navigate without someone who can serve as an interpreter and who understands the American legal process of justice."

Seeking legal representation

Although representation by a private attorney is an option for some workers, others do not have the resources to pay for legal representation. One worker we spoke to, **Francesca, who worked as a housecleaner,** tried for months to get her last paycheck from her employer. She first sought help through a community organization, which made attempts to contact her employer for three

months without success. Then she scraped together the \$50 needed for a lawyer to send a letter on her behalf, but even this had no effect. She became demoralized and gave up.

Mauricio Castro, a community organizer with the NC Latino Coalition, also discussed the financial obstacles workers may face in getting legal assistance. He noted, “If [a worker] wants to recoup \$1000, it would cost them \$3000 to pay a lawyer. So you are talking about the fees for someone who helps you get your money back costing more than what you are trying to recover.”

Even if a worker accesses legal representation, barriers may exist. **Robert Willis, a labor attorney in Raleigh**, spoke about the difficulties associated with an employer’s insolvency. One of the things he first looks at before accepting cases is whether the employer has the ability to pay. It can be difficult for employees who work for low-capital employers to recuperate lost wages because some of those employers are financially incapable of paying what is demanded. “Working with an employer who is not in a position to pay my client some actual compensation and to recover the money and pay me for my time... in those circumstances it makes it really difficult and almost impossible for me to do anything,” he said.

North Carolina Lawmakers and Agency Heads Can Take Action

North Carolina policymakers and agency heads can and should take practical steps to increase workers’ access to the claims process, deter delinquent employers, and strengthen enforcement of existing laws. Only with effective collection mechanisms, tough enforcement, and adequate penalties for breaking the law will delinquent employers be persuaded to pay their workers what they are owed.

1. MAKE IT EASIER FOR WORKERS TO MAKE CLAIMS.

When employers do not pay workers for their labor, workers must have access to quick, effective ways to recover the wages owed. The process for making a claim with the Department of Labor must be accessible to be effective.

- **Require employers to notify workers of the full name, mailing address, telephone number, and tax identification number of the employer at the time of hire. Extend the statute of limitations for wage theft claims.**
- **Require the posting of wage and hour protections in English and Spanish at every workplace, and translate Wage and Hour Bureau materials into Spanish.**
- **Require employers to keep records of hours worked, pieces produced, and wages paid, and to provide this information to employees at the time of payment.**

2. MAKE DELINQUENT EMPLOYERS PAY.

Penalties must be high enough to deter employers from making a practice of not paying their workers.

- **Require employers who commit wage theft to pay three times the amount of wages owed and more if the employer is a repeat offender.**
- **Require employers to pay costs and attorneys' fees when a worker prevails on a wage theft claim in court.**
- **Allow employees who have not been paid to place a lien against the employer's property.**
- **Require prompt payment of wages to workers whose employment has ended.**
- **Impose civil and criminal penalties for wage theft, and publicize the names of violators.**

3. STRENGTHEN ENFORCEMENT.

The North Carolina Department of Labor must have sufficient resources and use smart enforcement to stop this growing problem.

- **Increase resources for the Wage and Hour Bureau to conduct more outreach and education to workers about the claims process; launch a publicity campaign to deter employers from engaging in wage theft; focus enforcement investigations into problem industries; and extend hours workers can reach the bureau by phone.**
- **Require the Wage and Hour Bureau to use a "smart enforcement" approach to affirmatively investigate potential violations, including unannounced audits and sweeps of priority industries. The Bureau should set priorities for investigation and revise intake and screening processes accordingly.**
- **Allow third-party complaints about wage theft.**
- **When the Wage and Hour Bureau**

finds that a worker has not been properly paid, it should extend its investigation to the entire worksite.

- **Require regular public reporting by the Wage and Hour Bureau of its enforcement efforts.**
- **Give the Wage and Hour Bureau the power to issue stop work orders if an employer is not complying with the law.**

Wage theft causes harm to workers and their families, and it creates a ripple effect into local economies by restricting the amount of money low-wage workers spend on essentials. In addition, it punishes those employers who obey the law by giving unscrupulous employers who save costs by stealing from workers an unfair competitive advantage.

Lawmakers can take concrete and practical steps to ensure that workers can access options for redress and that unscrupulous employers are deterred from breaking the law. At the same time, the Wage and Hour Bureau should be proactive in aggressively addressing this issue and using all the tools it has at its disposal.

-
- 1 The first report was published in September of 2012: Schoenbach, Sabine, with Deborah Weissman, H. Esteban Diaz, Sara Milsten, Channell Singh, and Douglas Thie, 2012. "It Doesn't Add Up: Ten North Carolina Workers Share Experiences of Wage Theft," NC Justice Center and the UNC Immigration/Human Rights Policy Clinic. Quotes from workers in this report are excerpted from "It Doesn't Add Up." All workers interviewed for the original report were guaranteed confidentiality at the time of the interview, and names have been altered to protect this confidentiality. Interviews with advocates and administrative agency officials were conducted from June 2012 until November 2012. Special thanks to Cory Wolfe and Laura Arredondo-Santisteban, who worked with Professor Deborah Weissman at the University of North Carolina School of Law, and to Carol Brooke, Clermont Fraser, and Ron Garcia-Fogarty at the North Carolina Justice Center for conducting these interviews.
 - 2 US DOL Enforcement Data; The following amounts were back wages agreed to under FLSA for North Carolina by year: \$5,043,640 (2007); \$3,870,556 (2008); \$4,689,716 (2009); \$3,993,348 (2010); and \$3,119,826 (2011) for a total of \$20,717,086.

- 3 NC DOL Wage and Hour Bureau, "2011-2012 Annual Report."
- 4 Ibid.
- 5 NC DOL enforcement data from NC DOL Wage and Hour Bureau, "2007 Annual Report" and "2011-2012 Annual Report." The following amounts were wages due under the Wage and Hour Act by year: 2007 (\$1,514,141); 2008 (\$1,287,583); 2009 (\$1,972,462); 2010 (\$3,767,344); 2011 (\$4,676,245) for a total of \$13,217,775. The amount due printed in the annual report for fiscal year 2011 was \$3,163,833 with a note that \$1,512,412 had been deducted from this column due to one extreme bankruptcy. The Wage and Hour Bureau confirmed that the total should actually be \$4,676,245.
- 6 Special Data Request to NC Department of Labor, Wage and Hour Division, October 2012.
- 7 Ibid. See Bernhardt et al., 2009. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities", National Employment Law Center. The survey of 4,387 workers was conducted in Chicago, Los Angeles, and New York City.
- 8 Bernhardt et al. 2009. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Center.
- 9 Summaries are excerpted from National Employment Law Project, 2012. "Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States."
- 10 Valenzeula Jr., Abel, Nik Theodore, Edwin Meléndez & Ana Luz González, 2006. "On the Corner: Day Labor in the United States," UCLA Center for the Study of Urban Poverty, University of Illinois at Chicago Center for Urban Economic Development & New School University.
- 11 Workers Defense Project, 2007. "Building Austin, Building Injustice: Working Conditions in Austin's Construction Industry."
- 12 US DOL, 2001. "1999-2000 Report on Initiatives."
- 13 Domestic Workers United & DataCenter, 2006. "Home is Where the Work Is: Inside New York's Domestic Work Industry."
- 14 Restaurant Opportunities Center United, 2011. "Behind the Kitchen Door: A Multi-Site Study of the Restaurant Industry."
- 15 US DOL, 2001. "1999-2000 Report on Initiatives."
- 16 Oxfam America and Farm Labor Organizing Committee, 2011. "A State of Fear: Human Rights Abuses in North Carolina's Tobacco Industry."
- 17 US DOL, 2011. "Poultry Processing Compliance Survey Fact Sheet."
- 18 From 2001 to 2011, the state shed almost 380,000 jobs, almost 75 percent of which were concentrated in industries with average wages above the Living Income Standard, a market based measure of how much a family must earn in order to meet basic expenses. Sirota, Alexandra Forter, 2012. "State of Working North Carolina," NC Justice Center.
- 19 Ibid.
- 20 Sirota, Alexandra Forter and Edwin McLenaghan, 2011. "Making Ends Meet after the Great Recession: The 2010 Living Income Standard for North Carolina," North Carolina Justice Center.
- 21 The December 2012 unemployment rate for North Carolina was 9.2 percent, making it the fifth highest unemployment rate in the country. Bureau of Labor Statistics, Local Area Unemployment Statistics.
- 22 Bernhardt et al. 2009. "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," National Employment Law Center.
- 23 Schoenbach et al, "It Doesn't Add Up: Ten North Carolina Workers Share Experiences of Wage Theft," NC Justice Center and the UNC Immigration/Human Rights Policy Clinic.

NORTH CAROLINA JUSTICE CENTER

Phone – (919) 856-2570
Fax – (919) 856-2175
contact@ncjustice.org
www.ncjustice.org
www.ncpolicywatch.com

Physical Address

224 S. Dawson Street • Raleigh, NC 27601

Mailing Address

PO Box 28068 • Raleigh, NC 27611

© COPYRIGHT 2013

NO PORTION OF THIS DOCUMENT MAY BE REPRODUCED WITHOUT PERMISSION.