

# Wage Theft in Iowa

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## **The Iowa Policy Project**

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## **The Iowa Policy Project**

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By Colin Gordon, Matthew Glasson, Jennifer Sherer and Robin Clark-Bennett

### *Introduction: The Invisible Epidemic*

For at least 30 years, Texas-based labor broker Henry's Turkey Service placed developmentally disabled men in jobs at West Liberty Foods, a West Liberty, Iowa, turkey processing plant. Henry's collected the men's wages, along with their Social Security disability payments. In return, the men were paid a \$65 monthly stipend that did not vary with hours worked or overtime, the equivalent of only 41 cents per hour for grueling full-time work. The rest of their hourly wages disappeared in monthly deductions (usually over \$1,000 for each worker) for room, board and "kind care" at a crumbling, century-old bunkhouse Henry's rented from the city of Atalissa, Iowa. There were no written authorizations for these deductions, some of which charged workers for benefits that had already been paid from the pool of Social Security benefits.

In March 2011, Iowa Workforce Development fined Henry's over \$1 million for over 9,000 violations of state labor laws, including failure to pay the minimum wage, failure to provide pay stubs, and making illegal deductions from paychecks. In July 2011, the U.S. Department of Labor added another \$1.7 million award for FLSA violations — half in unpaid wages, half in penalties.<sup>1</sup> An inspector general found that Henry's was deducting a total of \$67,200 per year from the men's pay for housing, though the company was paying only \$7,200 per year to rent the bunkhouse from the city of Atalissa. Henry's also had deducted from the men's pay \$100,000 that was spent constructing a Texas retirement home for the company's owner.<sup>2</sup>

Iowans were shocked by this case, which followed on the heels of the news of similarly egregious labor and immigration law violations at the Agriprocessors plant in Postville, Iowa.<sup>3</sup> But these seemingly exceptional cases also raised important questions. How could such legal violations continue over years or decades? What underlying public policies or gaps in workplace monitoring and enforcement systems made such illegal, abusive conditions possible in 21<sup>st</sup>-century Iowa? And lastly, were these cases truly exceptional, or did they merely expose problems that are in fact far more widespread? The problem — exposed in its rawest forms in Atalissa and Postville — is **wage theft**. And while we hear about wage theft only occasionally (when public and media attention is drawn to cases such as these), it is a problem so vast that many have described it as an epidemic. It is, at the same time, an epidemic that is nearly invisible — because most of its victims are the invisible workers in our society: low-wage workers in factories and homecare, construction, day labor, immigrants and the disabled, the poor and the powerless.

### **What is Wage Theft?**

Wage theft occurs whenever a worker is robbed of legally owed wages because an employer breaks the law or a contract. Common forms of wage theft include:

- **Nonpayment of wages:** An employer fails to pay workers for some or all hours of work performed, or fails to pay workers in a timely fashion.

- ***Underpayment of wages:*** An employer pays workers less than they were promised or less than they are legally owed under state or federal minimum wage or overtime statutes.<sup>4</sup>
- ***Tipped job violations:*** An employer pays tipped employees less than the legally mandated minimum wage for tipped jobs, forces tips to be “shared” with managers or steals workers’ tips.
- ***Deduction violations:*** An employer diminishes workers’ pay by making unauthorized or illegal deductions from paychecks
- ***Misclassification of employees:*** An employer falsely labels an employee as an “independent contractor” in order to avoid obligations to pay minimum wage and overtime (along with a host of other employment laws, and unemployment insurance, workers’ compensation, and income tax payments). The “independent contractor” exemption was meant to apply only to individuals such as physicians, lawyers, dentists, veterinarians and construction contractors who are paid for services, but who do not work under the direction and control of others who hire, fire, direct their work, and pay them.<sup>5</sup> Misclassification also includes, for example, calling a cashier a “salaried manager” to avoid the overtime provisions of federal law.<sup>6</sup>

Recent studies, employing innovative survey techniques, have begun to expose the scope of the problem.<sup>7</sup> *Broken Laws, Unprotected Workers*, a 2009 survey of low-wage workers in the nation’s three largest cities (New York, Los Angeles and Chicago), found that over a quarter were paid less than the minimum wage, over half did not receive a paystub, over two-thirds experienced “off the clock” or meal break violations, and over three quarters were unpaid or underpaid for overtime hours. More than two-thirds (68 percent) of those surveyed had suffered at least one pay-related violation in their previous week of work. More than two-thirds of all low-wage workers experience wage theft in a given week, losing an average of \$51/week or \$2,634/year — or 10 to 15 percent of their total earnings (averaging less than \$18,000/year).<sup>8</sup>

Wage theft, in turn, is abetted by weak and poorly enforced labor laws at the state and federal level. An analysis of national data from the U.S. Department of Labor found evidence of substantial non-compliance with federal law and regulations regarding overtime pay and exemptions.<sup>9</sup> And recent assessments of state law have found both gaping statutory holes, and meager commitment to (or resources for) basic compliance.<sup>10</sup>

Wage theft is particularly prevalent in specific industries, where stealing from the paychecks of low-wage workers has almost become a business model (see sidebar, next page).<sup>11</sup> Across the workforce, wage theft is more likely to be experienced by women, by Latino/a workers, and by those born outside the United States. And it is more commonly experienced by workers paid in cash or on a non-hourly basis (by the job or by the day, for example), and by those working for small employers.<sup>12</sup>

Reports like these are important because wage theft is dramatically underreported in the official record, since many of the contributing factors (including diminished resources for enforcement, lack of worker education on legal rights, limited protections against retaliation for workers who come forward with complaints, and jurisdictional gaps in state and federal law) make it unlikely that most cases will ever show up on the dockets of state or federal agencies.

We have every reason to conclude that the problem is getting worse. Labor markets in Iowa and beyond have been characterized in recent decades by steep losses of higher-wage jobs, and disproportionate gains in low-wage sectors where wage theft is most prevalent.<sup>13</sup> The long-term decline in enforcement has been sharpened by the recent economic downturn — which has both savaged state enforcement budgets<sup>14</sup> and allowed regulatory innovations to be portrayed as a “burden” on business.<sup>15</sup> Current economic conditions make it both more likely that employers will resort to such violations, and less likely that workers will be in a position to object.

## **National Patterns of Wage Theft by Industry**

### **Food Service**

A 2010 survey of workers in Chicago restaurants found 33 percent underpaid for overtime, 30 percent working “off the clock” for no pay, 15 percent reporting stolen tips, and 5 percent earning less than the minimum wage.<sup>16</sup> A 2011 study investigated restaurant conditions in eight regions — New York, Chicago, Detroit, Los Angeles, Maine, Miami, New Orleans and Washington, D.C. — by collecting more than 4,000 worker surveys, 240 employer interviews, and 240 worker interviews and analyzing government data. Results showed that 46.3 percent of workers surveyed had experienced overtime violations, and that (in part due to various forms of wage theft) a \$3.71 hourly wage gap existed between white restaurant workers and workers of color.<sup>17</sup>

### **Construction/Day Labor/Landscaping**

One common form of wage theft particularly prevalent in construction involves the willful misclassification of employees as “independent contractors,” and the associated practice of paying employees “off the books” or “under the table.” For example, research including surveys with over 312 construction workers, interviews with industry leaders, and review of existing government data, found 38 percent of construction workers in Texas misclassified as independent contractors. One in 5 workers surveyed reported being denied payment, and 50 percent reported receiving no overtime pay.<sup>18</sup> Nonunion construction workers, often in very short-term jobs or as “day laborers,” are especially likely to be victims of wage theft and other employer abuses. In a 2011 survey of day laborers in New Jersey, more than half reported facing at least one instance of wage theft in the last year, and nearly all (94 percent) reported underpayment of overtime.<sup>19</sup> A U.S. GAO report based on over 25 structured interviews with nonprofit, local government or temporary staffing agencies in NY, CA, IL and VA, found over half of day laborers studied were not paid wages due, corroborating agency reports that day laborers complain at least once a week about nonpayment of wages.<sup>20</sup> A national survey of 2,660 day laborers randomly selected at 264 hiring sites in 139 municipalities in 20 states and the District of Columbia found nearly half of workers had experienced wage and hour violations in the two months prior to the survey, 44 percent had been denied food/water or breaks while on the job, 1 in 5 had experienced a work-related injury (and of those injured, more than half did not receive medical care).<sup>21</sup> Other local studies have confirmed similar problems in Atlanta,<sup>22</sup> Cleveland,<sup>23</sup> Fairfax County (VA),<sup>24</sup> and New York.<sup>25</sup>

### **Care-Giving/Domestic Workers**

The U.S. Department of Labor (DOL) 1997 Nursing Home compliance survey found 30 percent of nursing and other personal care facilities surveyed were not in compliance with the FLSA. Of those found in violation, 83 percent had violated overtime regulations, and nearly 20 percent had violated the FLSA’s child labor provisions. A survey of over 240 domestic workers in San Francisco found 11 percent reported earning less than the minimum wage, over 90 percent did not get paid overtime wages, 31 percent had to work more hours than agreed upon, 22 percent were paid less than the agreed upon wages, 16 percent were not paid or were paid with a bad check, 83 percent did not receive paid work breaks and 78 percent did not receive the meal breaks they were entitled to under California law.<sup>26</sup> DOL compliance audits found dismal rates of wage and hour violations in Georgia, Alabama, Kansas City, Pennsylvania, Seattle, Springfield (IL), South Carolina, St. Louis and Tennessee.<sup>27</sup>

### **Low-Wage Service Workers**

Other studies have shown high incidences of wage theft among low-wage workers in Chicago,<sup>28</sup> immigrants in Colorado,<sup>29</sup> building service workers in Miami,<sup>30</sup> workers in the “informal” economy in Los Angeles,<sup>31</sup> and Korean immigrants in New York City.<sup>32</sup> Surveys of taxi drivers in Los Angeles, New York and Chicago found many were misclassified as independent contractors and/or were charged for operating costs so high that they did not make minimum wage or even lost money at the end of the day.<sup>33</sup>

This report analyzes available data and examples to generate a preliminary assessment of the prevalence, extent, and impact of wage theft — the nonpayment or underpayment of legally owed wages — occurring in Iowa workplaces. The findings are stunning:

- Wage theft causes low-wage Iowa workers to miss out on an estimated \$600 million in wages each year.
- Wage theft may be costing the state at least \$45 million annually in unpaid tax revenue plus another \$14 million in lost revenue to the state's unemployment fund.
- Iowa's commitment to enforcing wage and hour laws lags far behind national and regional peers. Iowa employs just a single investigator, who is responsible for enforcing the law for 1.2 million private-sector workers.
- Wage theft is disproportionately affecting workers in certain sectors of Iowa's economy, including restaurants, construction, small businesses and the meatpacking and food processing industry.
- Wage theft is having a disproportionate impact on Iowa's growing low-wage workforce and on immigrant workers.

The report also assesses the current state of public policy and enforcement systems intended to prevent wage theft in Iowa, and surveys models for how state and local governments, workers and community groups are effectively addressing the problem of wage theft across the country. Though wage theft is a growing and urgent problem in Iowa, it is also a problem for which clear and achievable solutions exist.

### **Wage Theft in Iowa**

Available evidence strongly suggests that wage theft is occurring in Iowa in the same industries and in the same ways as elsewhere in the country. Every year, thousands of Iowans are cheated out of wages they have earned. Some aren't paid for some of the hours they actually worked; some are paid "off the books" at less than the legally mandated minimum wage; some earn tips but are illegally required to "share" them with an employer; some work overtime but aren't paid at the legally mandated overtime rate; some leave a job but never receive their last paycheck; others complete contract or freelance work and wait for weeks or months for promised payments that never materialize.

It is clear that wage theft is occurring in Iowa based on complaints filed with the U.S. Department of Labor and

### **Wage Theft at Joe's: The case of an Iowa restaurant**

In August 2010, six months after Joe's Italian Grill opened in Marshalltown, employees came forward to report that the restaurant's owner had repeatedly failed to pay their full wages.

At least eight employees alleged that the owner, Joe Dika, had paid them less than minimum wage and failed to pay overtime. Heather, a waitress at Joe's, first reported problems at the restaurant when, after working a total of 218 hours plus 12 hours of overtime over several weeks, she was paid only \$263. The owner paid Heather and other wait staff only \$2.25 an hour (well below the Iowa tipped wage minimum of \$4.35), and required that they share at least 20 percent of their tips with him (also illegal under state and federal law). Dishwashers had worked 12-hour shifts, six days a week, for \$60 a day. Other workers were required to start prep work at 10 a.m. each day, but were paid only from 11 a.m. on. Many reported working up to 72 hours per week without overtime.

With the assistance of staff from Iowa Citizens for Community Improvement, seven employees submitted wage claims to Iowa Workforce Development (IWD). Because Dika had also paid workers "off the books" in cash, and appeared to have failed to withhold payroll, unemployment and other taxes, the workers also filed a complaint with the Iowa Misclassification Task Force Unit.

In this case, repeated communications with the restaurant owner, organized community pressure, and threats of further legal action led to recovery of each worker's wages well before IWD took any action on the complaints.

*Misty Rebik, "Stories from victims of wage theft," (Iowa Citizens for Community Improvement, 2012);  
Jens Manuel Krogstad and Adam Belz, "Iowa workers feel pay theft pinch," Des Moines Register*

with Iowa Workforce Development, from court records of wage litigation in Iowa and anecdotal information from community organizations and individuals. Though Iowa survey data does not yet exist to supplement these sources, enough information is available to generate estimates of the scope of the problem and to identify where violations are most often occurring. Knowing where wage theft is most likely to occur can help policy-makers, state and federal enforcement agencies, and community organizations focus education, legislative reforms and enforcement efforts where they are most needed.

**Enforcement data.** A preliminary assessment of wage theft patterns in Iowa can be generated using data on wage claims filed by Iowa workers with either the U.S. Department of Labor (responsible for enforcing the Fair Labor Standards Act [FLSA], the federal law that sets minimum wage and overtime standards) or the Labor Services Division of Iowa Workforce Development (responsible for enforcing Iowa’s minimum wage and wage payment collection laws). It should be borne in mind, however, that national surveys have also underscored that most workers who experience wage theft do not file claims, so data drawn from wage claims records should be viewed as providing only a *partial* glimpse of the problem.

Available data suggest that national wage theft patterns generally hold true for Iowa — although industries and occupations most affected appear slightly different. This is to be expected, since industrial and occupational wage theft patterns shift with local labor market patterns.<sup>34</sup> While neither federal nor state databases provide demographic information on the workers involved in wage theft claims, anecdotal evidence suggests that Iowa follows national patterns, with violations more common and extreme among low-income workers, immigrant workers, and Latinos.<sup>35</sup>

### ***FLSA Violations in Meatpacking: Tyson Inc., Storm Lake, Iowa***

In 2007, workers at a Tyson pork slaughter and processing plant in Storm Lake sued their employer claiming that thousands of workers had not being paid for time they were required to spend each day completing activities such as putting on and taking off required safety gear and sanitary items, or preparing and sanitizing equipment before and after working on the line. Tyson’s practice had been to pay workers not based on when each clocked in and out, but based on “gang time,” measured according to when a given group of workers started and ended production on a certain line. Some workers, based upon the type of equipment they were required to use, had been assigned a standard increment of time (between four and seven minutes per day) that was added to their “gang time” pay to compensate for time spent on work away from the production line.

But workers argued that their paychecks did not reflect the time they actually spent on work-related activities at the start and end of their shifts as well as during an unpaid 30-minute meal break. Required activities performed at these times, the workers argued, routinely took more than four minutes, and in some cases up to 35 minutes per day. Depending on a worker’s job, these activities included variable amounts of time waiting for the company to issue required equipment, changing in and out of hard hats, work boots, hair and beard nets, frocks, aprons, gloves, sanitary whites, and earplugs, or preparing and sanitizing knives. They argued that the employer’s practices were routinely violating the FLSA and Iowa’s Wage Payment Collection Act by failing to pay them for all time worked and for failing to pay overtime when actual time worked was in excess of 40 hours in a week.

A federal court certified the case as a class action, and in September 2011, a federal jury awarded over \$2.8 million to the affected workers.

*Bouaphakeo v Tyson Foods, Inc., No. 07-4009 (N.D. Iowa Aug. 4, 2011)*

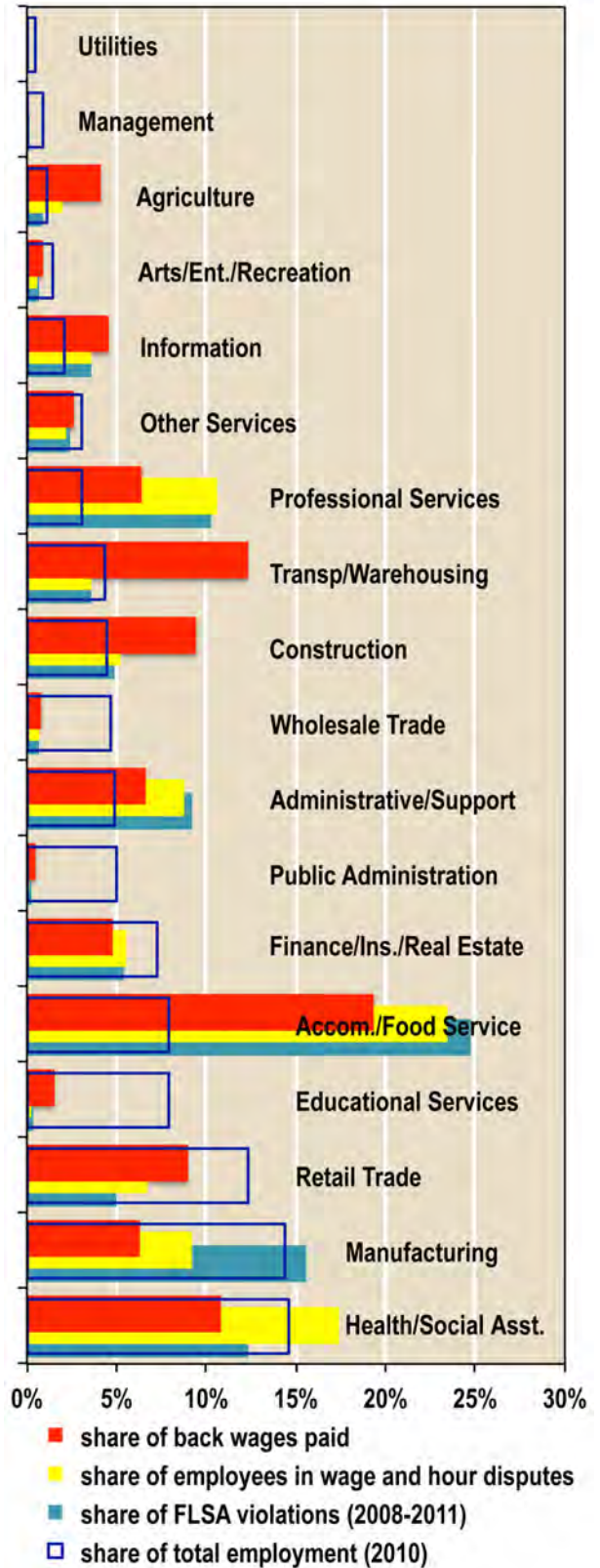
Figure 1 (right) summarizes the distribution by industry of three years' worth of FLSA claims determined by the Department of Labor (DOL) to be violations.<sup>36</sup> The hollow blue bar shows each sector's share of state employment. The colored bars show each sector's share of FLSA violations (teal), employees involved in each case (yellow), and back wages paid (red).

Three sectors claim a disproportionate share of FLSA violations: (1) accommodation and food services account for only about 8 percent of Iowa's total employment, but nearly a quarter of all FLSA violations and nearly a fifth of all back wages paid; (2) administrative and support services (which includes waste management) has a share of FLSA violations nearly double its share of total employment; and (3) professional services has a violation share (over 10 percent) more than triple its share of employment. In a few other sectors — including construction, information, transportation and warehousing, and agriculture — fewer FLSA violations were resolved by the DOL, but those that were tended to involve much larger payments of back wages.

These sectors cover a wide range of employers and occupations, so examining the distribution of cases within each sector is just as important. Within the category of health care and social assistance, for example, fully two-thirds of all FLSA violations resolved by the DOL occurred in nursing homes, child care and home health care. Within the administrative and support services category, three-quarters of FLSA violations occurred in landscaping, telemarketing and temporary employment agencies. Within accommodation and food services, only about 15 percent of cases were in hotels and motels; the vast majority were in full (65 percent) and limited service (another 18 percent) restaurants.

Nowhere is the skewed distribution within sectors more apparent than in manufacturing. Figure 2 (next page) shows the distribution of employment and FLSA violations across more specific subsectors that account for over 90 percent of Iowa manufacturing employment. Over three-quarters of all FLSA violations in Iowa manufacturing are in food processing, the bulk of these (44 percent of the manufacturing total) in animal slaughtering and processing. This is a subsector — as shown by a raft of recent cases — in which industry practices and vulnerable workforces make wage theft both more likely and more possible.

Figure 1. Iowa FLSA Violations Vary by Industry

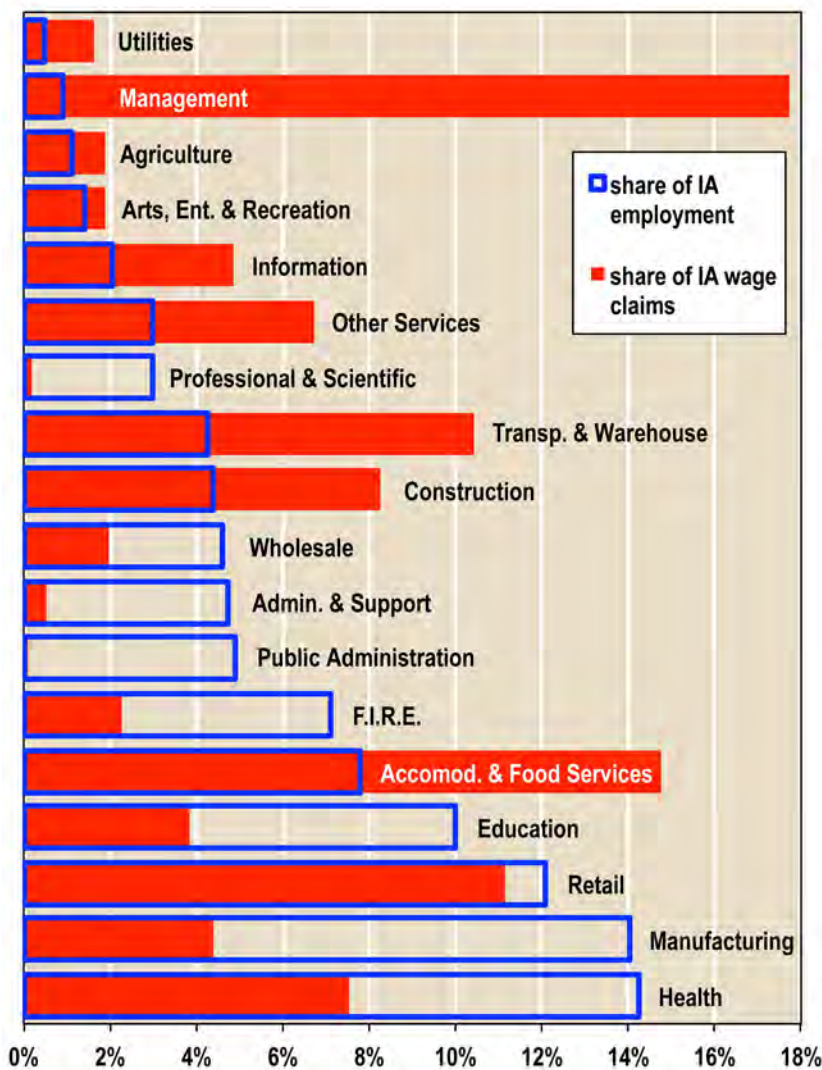


Source: Sectoral (NAIC) share of total employment, employees in wage/hour disputes, back wages paid, and FLSA violations from Department of Labor enforcement database (<http://ogesdw.dol.gov>); Jan 2005-April 2011; 752 employers; 9,148 cases.



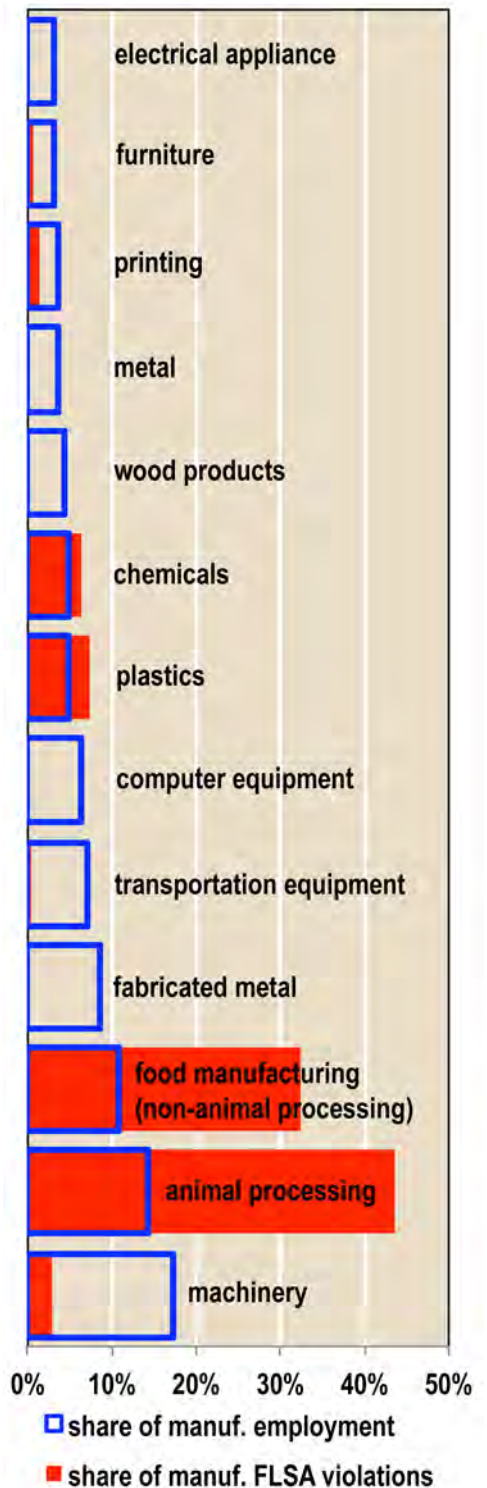
State data from the wage and hour enforcement branch of the Iowa Workforce Development’s Division of Labor Services provide a slightly different picture (Figure 3). IWD data includes all wage and hour claims filed, regardless of resolution. These data follow many of the same general patterns, including a disproportionately high number of claims filed in accommodation and food services, and construction and transportation. A spike in claims in the “management” category is explained in part by the fact that many small businesses are covered by state but not federal law; many of the claims in this category arise from small retail or service enterprises (like photo studios or travel agencies) over which the DOL would not have jurisdiction.<sup>37</sup>

**Figure 3. Disproportionate Iowa Wage Claims in Certain Industries**



Source: Sectoral (NAIC) share of total employment and wage claims, Iowa Division of Labor Services, Iowa Workforce Development ( database of cases provided to authors in response to FOI request) Jan 2008-Aug 2011; 3342 individual cases

**Figure 2. Food Processing Leads FLSA Violations in Iowa Manufacturing**



Source: U.S. Department of Labor; Jan 2005-Apr 2011.

**Construction.** An Iowa sector of particular concern is construction, where various forms of wage theft are often abetted by fluid employment (contractor-employee) relationships and constantly shifting worksites. The absence or weakness of “threshold” standards for construction in Iowa — such as project labor agreements or prevailing wage standards<sup>38</sup> — make construction workers especially vulnerable.

Unlike the other sectors under discussion, good data exists about the extent of wage theft in the Iowa construction industry, thanks to research done in 2008-09. Strong preliminary evidence that worker misclassification is a widespread problem in Iowa was gathered in 2008 by the state’s interagency Misclassification Task Force, established in response to growing complaints, both from workers and law-abiding businesses concerned about unfair competition. Many Iowa construction workers testified to instances of misclassification by unscrupulous contractors, resulting in missed overtime pay, lack of access to unemployment in the event of job loss, high unexpected tax bills borne by individual workers at year’s end, and no protection in the event of on-the-job injuries.<sup>39</sup> The Task Force’s December 2008 findings led the Iowa Legislature to allocate funding in 2009 for a special Misclassification Unit within Iowa Workforce Development to enhance enforcement, educate Iowa workers and businesses about the problem of misclassification, and improve sharing of information between agencies.

Two years later, the Task Force reported that initial efforts at “enhanced enforcement” had confirmed that “the impact of misclassification is broad and deep” and that the problem was affecting “thousands of Iowa workers.”<sup>40</sup> Within its first 18 months of operation, the special unit had identified 230 Iowa employers who had misclassified 2,602 workers and failed to report more than \$61 million in wages. Of the 230 employer violators identified, 112 were in construction.<sup>41</sup>

Misclassification is endemic in the construction industry, but also exists in other industries. For example, the Task Force received testimony from companies like United Parcel Service, expressing concerns about how competitors’ practices of misclassifying workers had distorted competitive bidding within the package delivery sector.<sup>42</sup>

**Wage Litigation.** In addition to violations logged by the DOL, in the past decade thousands of Iowa workers have been party to significant class action lawsuits to redress FLSA violations attributed to major corporations operating in both the retail and manufacturing sectors. For example, in 2001, Walmart employees in Clinton, Iowa, filed a class-action suit alleging the company had regularly

## ***Wage Theft and Worker Misclassification in Iowa’s Construction Industry***

### **Euro-Masonry, Des Moines**

Heavily publicized instances of wage theft involving worker misclassification in Iowa’s construction industry have included the case of Euro-Masonry, a Des Moines contractor that in 2010 failed to pay multiple workers thousands in wages for work performed on school buildings in Panora and Waukee, Iowa State University’s Lloyd Veterinary Medical Center, and other central Iowa sites. One unpaid Euro-Masonry worker injured in a workplace fall also found himself individually responsible for thousands in medical bills because Euro-Masonry had not purchased legally required workers’ compensation coverage, based on the company’s claim that he was an “independent contractor.”

Over several weeks, a combination of media exposure, threats of legal action, and organized community pressure persuaded Euro-Masonry’s owner to pay over \$43,000 in back wages and medical bills owed to multiple workers. Remarkably, less than two months later, yet another worker came forward with a new report that Euro-Masonry had fired him after failing to pay him for 164 hours of work he had performed. He too had been misclassified as an “independent contractor” and lacked any pay stubs or documentation of the promises made to him when first hired.

*Misty Rebik, “Stories from victims of wage theft” (Iowa Citizens for Community Improvement, 2012); Jens Manuel Krogstad, “Iowa workers feel pay theft pinch,” Des Moines Register (Oct. 26, 2010), A1.*

required employees to work overtime without pay. Walmart settled the suit in 2008 (along with 62 other wage and hour class-action suits it was facing across the nation), agreeing to pay \$11 million distributed among 97,259 people who had worked at Walmart stores in Iowa between June 1999 and May 2009.<sup>43</sup>

More recently, two companies that provided workers to ADM (Archer Daniels Midland) in Clinton, Iowa, settled a similar class-action filed on behalf of over 250 employees. In this case, employees alleged that KBR (Kellogg, Brown and Root Inc.) and its predecessor BE&K Inc. had routinely failed to pay them fully for time worked and failed to pay overtime for work in excess of 40 hours in a week. Routine employer violations described by plaintiffs included requiring uncompensated work before and after clock-in times and failing to record all hours worked in official payroll records.<sup>44</sup>

Along with a disproportionately high number of FLSA complaints, Iowa’s meatpacking industry has generated a high level of wage and hour class action litigation in recent years. In addition to the Tyson case noted above (see box on p. 5), in 2011 Cargill settled a suit affecting hundreds of meatpacking workers in Ottumwa, Iowa, who also argued they were denied pay for time they were required to be at work to set up, clean up, prepare equipment, or change in and out of required gear at the start and end of their work days.<sup>45</sup> Similar suits filed against Tyson by workers at the company’s Perry and Waterloo, Iowa, meatpacking plants are set to go to trial in 2013.<sup>46</sup>

These cases, along with scores of others nationwide, illustrate that major employers — sometimes as a matter of policy, on a chain-wide or industry-wide basis — may use a variety of means to “shave time” off workers’ paychecks, resulting in underpayment of minimum wage or overtime.<sup>47</sup>

### **The Impact of Wage Theft in Iowa**

Wage theft has enormous costs and consequences — for workers, for responsible employers, for communities, and for state and federal budgets. Every dollar stolen from a worker’s wages is a dollar less in the pockets of workers, a dollar not spent on local goods and services, a dollar that is not counted in the calculation of payroll and income taxes.

Assuming a similar rate and scale of wage theft in Iowa, conservative estimates of the impact would look something like this: By the latest estimate, just over a quarter (26.3 percent) of Iowa workers work at or below the poverty wage (calculated as poverty threshold for a family of four, \$22,314 in 2010). In a workforce of just under 1.5 million (1,488,600 as of September 2011), this yields a subset of low-wage workers of just under 400,000.

If two-thirds of those workers experienced wage theft at the low end of national estimates (10 percent of earnings), the cost — to each low-wage worker — would be about \$43/week or \$2,200/year. Statewide, the impact is stunning: unpaid wages of over \$11 million a week, or nearly \$600 million a year (Table 1).

Some of this cost, in turn, is borne by responsible employers, whose businesses may compete directly with

**Table 1. Estimating the Cost of Wage Theft in Iowa: Nearly \$600 Million a Year**

|   |                      |
|---|----------------------|
| Iowa nonfarm workforce (Sept 2011) [a]                          | 1,488,600            |
| Share of IA workers at or below poverty wage (\$22,314) [b]     | 26.3%                |
| Number of IA workers at or below poverty wage                   | 391,502              |
| Est. share of low-wage IA workers experiencing wage theft [c]   | 68.0%                |
| Est. number of low-wage IA workers experiencing wage theft      | 266,221              |
| Est. wage theft per worker (10 percent of earnings), weekly [d] | \$42.91              |
| Est. wage theft per worker (10 percent of earnings), annual     | \$2,231              |
| Est. statewide cost (weekly)                                    | \$11,423,962         |
| Est. statewide cost (annual)                                    | <b>\$594,046,039</b> |

[a] Current Employment Statistics, September 2011

[b] Economic Policy Institute analysis of Current Population Survey

[c] Extrapolating rate from Broken Laws, Unprotected Workers: Violations of Employment and Labor Law in America’s Cities (Annette Bernhardt et al, National Employment Law Project, 2009)

[d] Low end of estimate from NELP, Broken Laws (2009)

those engaged in various forms of wage theft. This problem is starkest in sectors like construction, where competitive bidding processes create persistent incentives for contractors to shave bids and increase profit margins by lowering labor costs. Those engaging in wage theft, as the Iowa Misclassification Task Force concluded recently, “can underbid law abiding businesses”; when such practices are broadly allowed, “conditions for a fair and competitive marketplace are sabotaged.”<sup>48</sup> Likewise, wage theft leaves responsible employers with more than their share of the burden of funding programs like unemployment insurance or workers’ compensation.

Wage theft also ripples through local economies. Chambers of Commerce and economic development agencies routinely underscore the “multiplier” impact — the pattern by which new wages are spent and re-spent in local economies — in trumpeting state and local job growth. Unpaid wages, of course, multiply in the opposite direction. Each dollar unpaid is a dollar unspent. This not only dampens local consumption and business activity, but increases state and local burdens — including workers’ reliance on social services, such as free school lunches and other programs. It is well-documented that some low-wage employers explicitly encourage workers to rely on social programs to supplement meager wages — in effect using public subsidies to sustain dismal, often illegal workplace conditions and practices.<sup>49</sup>

Wage theft imposes deep costs for governments by robbing them of enormous amounts of tax revenue. One form of wage theft — the misclassification of employees as “independent contractors” — has received the bulk of attention. A 1984 IRS study estimated a net loss of about \$1.6 billion to social security, unemployment, and income tax revenues due to misclassification alone. This cost would be nearly double (\$3.3 billion in 2010 dollars) today if merely adjusted for inflation — much higher still if accounting for the marked shift toward contingent labor in the last generation. A 1994 study estimated net federal revenue losses of \$3.3 billion due to misclassification.<sup>50</sup> A 2000 study estimated the annual cost to unemployment insurance trust funds alone at about \$200 million.<sup>51</sup> A number of other states have also completed recent estimates (Table 2) of the tax impact of misclassification on state revenues.

Though Iowa has yet to issue its own comprehensive estimates, the efforts of an Iowa Misclassification Task Force and special enforcement unit, which targeted employers who had illegally misclassified employees as “independent contractors,” provide a

glimpse of the scope of this problem. In its first year-and-a-half of operation (July 2009 through December 2010), this task force tallied more than \$61 million paid to misclassified workers whose employers illegally skirted payments of around \$2.5 million in unemployment insurance taxes.<sup>52</sup>

Of course misclassification is not the only form of wage theft that cuts into tax revenue. When workers are not paid properly, that erodes revenues for all levels of government. Table 3 offers a

**Table 2. Misclassification Costs States Millions in Revenue**

| STATE           | Study year | Est. of workers misclassified | Estimated state tax cost (in \$millions) |            |               |
|-----------------|------------|-------------------------------|--|------------|---------------|
|                 |            |                               | Unempl. insurance                        | Income tax | Workers' comp |
| Illinois        | 2006       | 368,685                       | \$ 39.2                                  | \$ 207.8   |               |
| Maine (con)     | 2005       | 4,792                         | \$ 0.3                                   | \$ 3.5     | \$ 6.5        |
| Maryland        | 2008       |                               | \$ 20.0                                  |            |               |
| New York        | 2007       | 704,785                       | \$ 175.0                                 |            |               |
| Massachusetts   | 2004       | 186,965                       | \$ 35.0                                  | \$ 71.5    | \$ 91.0       |
| Ohio            | 2009       | 257,000                       | \$ 56.0                                  | \$ 134.5   | \$ 285.0      |
| Tennessee (con) | 2010       | 30,000                        | \$ 11.7                                  |            | \$ 77.0       |
| Washington      | 2004       |                               | \$ 14.8                                  |            | \$ 34.5       |
| Pennsylvania    | 2008       | 580,000                       | \$ 200.0                                 |            | \$ 81.0       |
| New Jersey      | 2007       | 26,500                        |  |            |               |
| Michigan        | 2008       |                               | \$ 17.0                                  | \$ 26.5    |               |
| Iowa            | 2010       | 2,508                         | \$ 2.5                                   |            |               |

Source: Based on summaries in Sarah Leberstein, [Independent Contractor Misclassification Imposes Huge Costs on Workers and Federal and State Treasuries](#) (NELP, June 2010).

conservative estimate of the revenues forgone by local, state and federal governments, based on the effective tax rates for low-income workers, and our working estimate of just under \$600 million annually in unpaid wages. These totals include only income, payroll and sales taxes; they do not measure either the impact of stolen wages on the local property tax base, or the considerable costs borne by all levels of government in subsidizing low-wage employment.

**Table 3. Estimated \$60 Million Tax Revenues Lost Annually due to Wage Theft in Iowa**

|  | Tax rate | Lost revenue         |                    |                     |                     |
|--|----------|----------------------|--------------------|---------------------|---------------------|
|  |          | All                  | Local              | State               | Federal             |
| <b>Unpaid wages</b>                      |          |                      |                    |                     |                     |
|  |          |                      |                    |                     |                     |
| State income tax rate [a]                | 2.60%    | \$15,445,197         |                    | \$15,445,197        |                     |
| Sales tax rate                           | 5.40%    | \$32,078,486         |                    |                     |                     |
| General sales [b]                        | 3.20%    | \$19,009,473         | \$2,715,639        | \$16,293,834        |                     |
| Other sales and excise                   | 1.00%    | \$5,940,460          |                    | \$5,940,460         |                     |
| Sales and excise on business             | 1.30%    | \$7,722,599          |                    | \$7,722,599         |                     |
| Employers contribution to UI [c]         | 2.42%    | \$14,375,914         |                    | \$14,375,914        |                     |
| Federal income taxes [d]                 | 2.08%    | \$12,356,158         |                    |                     | \$12,356,158        |
| Employers share of Social Security [e]   | 6.20%    | \$36,830,854         |                    |                     | \$36,830,854        |
| Employers share of Medicare              | 1.45%    | \$8,613,668          |                    |                     | \$8,613,668         |
| <b>TOTALS</b>                            |          | <b>\$120,294,323</b> | <b>\$2,715,639</b> | <b>\$59,778,004</b> | <b>\$57,800,680</b> |
| Cost to state general revenues (less UI) |          |                      |                    | \$45,402,090        |                     |

[a] Estimated of effective state and local tax rates for low income workers (average income \$29,300) based on Institute on Taxation and Economic Policy, *Who Pays? A Distributional Analysis of the Tax Systems in All 50 States* (2009); Iowa fact sheet [http://www.itepnet.org/wp2009/ia\\_whopays\\_factsheet.pdf](http://www.itepnet.org/wp2009/ia_whopays_factsheet.pdf)

[b] The state sales tax rate is 6%. Since the local option sales tax of 1% is now in place in all but a few jurisdictions, the foregone sales tax is distributed at a 6:1 ratio between the state and local governments [http://www.iowa.gov/tax/educate/localoption\\_rates\\_sunsets.html](http://www.iowa.gov/tax/educate/localoption_rates_sunsets.html)

[c] Employer contributions to the state unemployment insurance trust fund are based on both the solvency of the fund and the experience rating of employers (the likelihood that their employees will draw on benefits); the estimate here is based on the average employer rating for 2012. <http://www.iowaworkforce.org/ui/stawrs/70-5007.pdf>

[d] Federal rate based on effective tax rate of all 2009 filers (taxes paid/gross income) reporting incomes under \$30,000. See [http://www.irs.gov/taxstats/indtaxstats/article/0,,id=134951,00.htm#\\_pt2](http://www.irs.gov/taxstats/indtaxstats/article/0,,id=134951,00.htm#_pt2)

[e] Employers share of federal payroll taxes, see <http://www.ssa.gov/oact/progdata/taxRates.html>

### **Aren't There Laws Against All of This?**

In the 1930s, federal laws set basic workplace standards: a minimum wage, rules for overtime, the regulation of child labor, and the right to organize. Most states, including Iowa, followed this lead with their own laws, enhancing federal protections by offering higher standards or covering more of the workforce.<sup>53</sup> A surge in labor organizing expanded the reach of collective bargaining — a powerful protection from wage theft and other violations — to almost 40 percent of the American workforce by the early 1950s. These laws and institutions should be preventing wage theft, but instead it is on the rise.

As union membership has slipped (now around 7 percent in the private sector), workers are increasingly vulnerable to wage and hour violations, and faced with legitimate fears of retaliation should they speak out. Violations of the law — systematic in some industries — are now distressingly common. Federal and state commitments to enforce these laws have withered. The chances of unscrupulous employers getting caught (and the penalties if they are) are slight. As James Leonard, a former Department of Labor lawyer, concedes, “I hate to put it this way, but there’s almost a financial incentive to take a chance that you won’t be caught, because even if you are caught you’ll only have to pay back wages.”<sup>54</sup>

The result — well-documented by community groups, a growing body of academic research, and a raft of lawsuits — is our epidemic of wage theft.<sup>55</sup>

There are two sets of laws that can help to protect workers against wage theft. The Fair Labor Standards Act (FLSA) is a federal law passed in 1938 as part of the New Deal. Among other things, it sets minimum wages and requires premium pay (time and a half) for hours worked in excess of 40 in a week. Many states, including Iowa, and some cities have their own minimum wage laws. Most states have a law that requires prompt payment of wages to workers.

#### Federal Law: The Fair Labor Standards Act

Although the FLSA is a far-reaching and important law that can sometimes be an important tool for fighting wage theft, it also has many limitations. First of all, the FLSA does not apply to all kinds of wage theft. It does not require that employers pay workers the wages that they were promised, only that they were paid at least the minimum wage. So, for example, a worker who hasn't been paid at all may have a claim under the FLSA, but a worker who was promised \$10/hour and paid \$8/hour does not.

Second, the FLSA does not apply to all *employers*. The FLSA applies only to private-sector employers engaged in interstate commerce and most public employers, including the following: 1) any business that has more than \$500,000 in annual sales; 2) hospitals, facilities for disabled people, preschools, schools and colleges; and 3) federal, state and local government agencies.<sup>56</sup>

Finally, certain categories of *workers* are excluded, even if they work for an employer that is covered by the FLSA. Some categories of workers are excluded from both the minimum wage and overtime provisions of the FLSA, others are exempt only from the overtime provisions (see Appendix A for a detailed summary of these exemptions). By these rules, over a third of the American workforce is exempt from FLSA protection.<sup>57</sup> Moreover, increasing numbers of lawsuits suggest that employer misclassification of workers as “exempt” from FLSA may also be on the rise.<sup>58</sup>

#### Iowa Laws

Iowa has two laws that provide some assistance to victims of wage theft. Iowa has its own minimum wage law, *Iowa Code* Chapter 91D, which applies to more employers than the FLSA. Iowa minimum wage law applies to all employers covered by the FLSA, *plus* employers with an annual payroll of at least \$300,000, *plus* laundries and construction firms, without regard to their annual sales. Unlike the FLSA, Chapter 91D does *not* include any requirement for the payment of premium pay for overtime. So, workers who are employed by smaller employers (\$300,000 to \$500,000 in annual revenue) *are* entitled to minimum wage protection under Iowa law, but not overtime.

Iowa also has a separate law, the Iowa Wage Payment Collection Act, *Iowa Code* Chapter 91A, which contains comprehensive provisions about when and how workers in Iowa must be paid. In most circumstances, Chapter 91A affords more protection from wage theft than the FLSA. Unlike the FLSA, Chapter 91A contains very few exemptions or exclusions and applies to almost all private-sector and public-sector employers doing business in the state of Iowa.<sup>59</sup> Unlike the FLSA, Chapter 91A does specifically require prompt payment of the wages that are earned by the worker. It requires regular paychecks and payment in full within 12 days of the end of the payroll period<sup>60</sup>. Chapter 91A severely restricts deductions from a worker's paycheck and requires employers to provide workers with written statements of hours worked, amount earned and any deductions made.

#### Enforcement Agencies

The FLSA is enforced by the U.S. Department of Labor (DOL), Wage & Hour Division. The Iowa minimum wage law and Chapter 91A are enforced by Iowa Workforce Development (IWD), Division of Labor. The federal DOL can only enforce claims brought under the FLSA. A worker seeking assistance

from the DOL may be told that the DOL doesn't have jurisdiction in their case because their employer is too small (*i.e.*, annual sales of less than \$500,000). Iowa Workforce Development has the authority to enforce both laws. The state agency has *sole* jurisdiction over employers with annual sales volumes between \$300,000 and \$500,000 as well as laundries and construction companies not covered by the FLSA.

Although these agencies exist for the purpose of enforcing wage laws, they are not particularly successful in doing so, partly because of the numerous obstacles that deter low-wage workers from seeking their help. Perhaps the biggest single obstacle is that workers are unaware of their rights and options for defending them. Very few workers know what the law requires, how to recognize when the law has been violated, or what legal remedies are available if violations occur. Nor do workers generally know which agency they should contact for assistance. This is not surprising, considering that Iowa Workforce Development does little or nothing to educate workers about their rights under Chapter 91A. The same could be said of the U.S. Department of Labor, at least prior to recent worker education and outreach initiatives such as the DOL's "We Can Help" campaign.<sup>61</sup>

### ***Enforcement Challenges: Bounced Checks, Vanishing Records and Responsibility, and Misclassification***

Josue and his friend Miguel were hired in 2008 as professional floor servicers, scrubbing the floors of a western Iowa grocery store every night, seven days a week from 11 p.m. until around 7 a.m. Their employer was a company contracted by the store.

In November 2010, Josue and Miguel's paychecks stopped coming. Their employer promised their checks would arrive at the end of the month, and then the end of the year. But paychecks issued in December bounced, causing the workers to incur significant bank fees. At this point, they had both worked 62 consecutive days without any pay, and together were owed \$8,414 in unpaid wages.

In January 2011, an unfamiliar man visited the store to announce that he was their new boss, and that their employer had been sold to another company. The workers did not know where to turn to try to recover wages from their now "former" employer. They were directed by friends to Des Moines community group Iowa Citizens for Community Improvement (CCI), which helped them file a complaint with the U.S. Department of Labor (DOL).

In attempting to recover their wages, Josue and Miguel discovered that not only had their first employer failed to pay them. The company had also misclassified them as "independent contractors" — and never paid unemployment insurance or withheld payroll taxes from their paychecks. DOL affirmed the company should have treated them as employees, and began investigating their complaint. After publishing their story in the Latino press in western Iowa, Josue and Miguel heard from three additional workers who were also owed back wages by the firm, which was based outside Iowa and had contracts with large retailers in four other states).

Together, the five workers, who were owed a total of \$21,442.86, continued to work with the DOL to recover their wages. However, after sending one letter to the employer and receiving no response, the DOL Iowa office dropped its investigation of the case. When asked to reopen the case, the DOL refused after finding the employer had subsequently closed down, avoiding any responsibility for paying the debts it owed to the workers — none of which, of course, were possible to document since the company had never issued pay stubs or kept proper payroll records.

Meanwhile, Josue and Miguel learned that the grocery store's new floor service contractor was continuing to treat them and other floor cleaners as "independent contractors." Despite the DOL's previous affirmation that they should have been treated as employees, as of this writing, the workers have been unable to convince either state or federal agencies to intervene on their behalf to change this practice, and presumably most of them continue to work as vulnerable "independent contractors."<sup>\*</sup>

*Misty Rebik, "Stories from victims of wage theft"  
(Iowa Citizens for Community Improvement, 2012)*

Currently, enforcement of wage and hour laws relies on complaints from individual workers. Neither state nor federal agencies engage in any meaningful proactive investigation.<sup>62</sup> This has a number of consequences. There is, for starters, a large gap between the rate of violations and the rate of complaints: for example, workers report only about one of every 130 violations of overtime law.<sup>63</sup> Complaints are driven less by the rate of violation than by a host of other circumstances — including the information costs (often exaggerated by language barriers) of navigating highly complex complaint processes, fear of retaliation, and for some workers, fear of inviting scrutiny of immigration status.

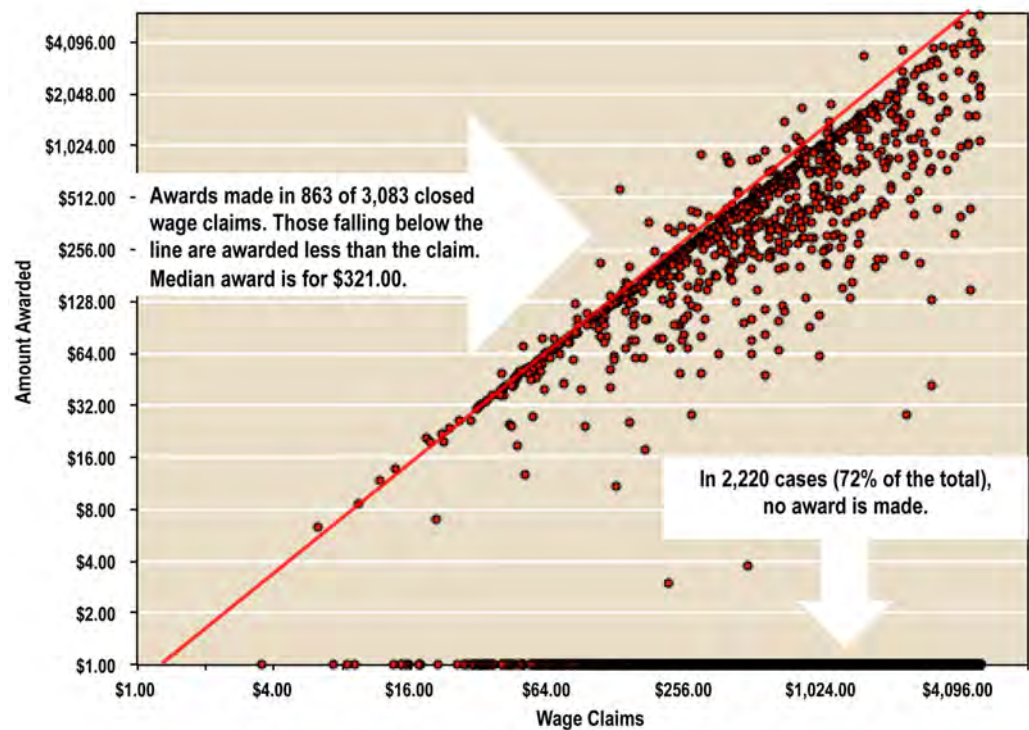
Wage Claim Procedures

IWD currently requires every worker who files a wage claim to complete an extensive written questionnaire and to subsequently respond to multiple rounds of mailed notices and requests for documentation on very strict deadlines. At any point in the process, failure to respond in writing or to provide requested information in a timely manner results in IWD closing the case.<sup>64</sup> Though employers are allowed to have attorneys or other third parties represent them in the claims process, workers are not. In fact, IWD will close a worker’s case if it learns that an attorney or other third party (a pastor, union representative, or community organizer, for example) is assisting the worker in contacting the employer, communicating with enforcement agencies, or using other means to try recover the worker’s wages. When a claim is filed, there is no clear mechanism for updating workers on the status of a claim and — with the exception of the claim form — all communication from the agency (including requests for additional necessary documentation) is in English only.<sup>65</sup>

The Iowa complaint process contains a multitude of procedural obstacles that may actively discourage workers from pursuing claims. Under existing procedural rules, workers with limited literacy skills, limited English, or those who simply lack time or access to documentation, or have no permanent mailing address, would all effectively be precluded from filing claims. And under current rules, where a worker’s burden to provide additional documentation perversely increases in proportion to an employer’s non-responsiveness, even workers who manage to file initial written claims are at high risk of having their cases “closed” at any point in the process for a myriad of procedural reasons.

Indeed, the frequency with which wage theft cases are “closed” by IWD without any clear resolution is borne out by wage claims data (Figure 4). Of the 3,083 cases “closed” by IWD between January 2008 and August 2011, nearly three quarters (2,220 cases) resulted in

**Figure 4. Resolution of Iowa Wage and Hour Claims, 2008-11**



Source: Authors’ analysis of data from Iowa Workforce Development



no award or redress. The remaining cases, involving unpaid wage claims ranging from \$3.00 to over \$5,000, yielded a median award of just over \$300.

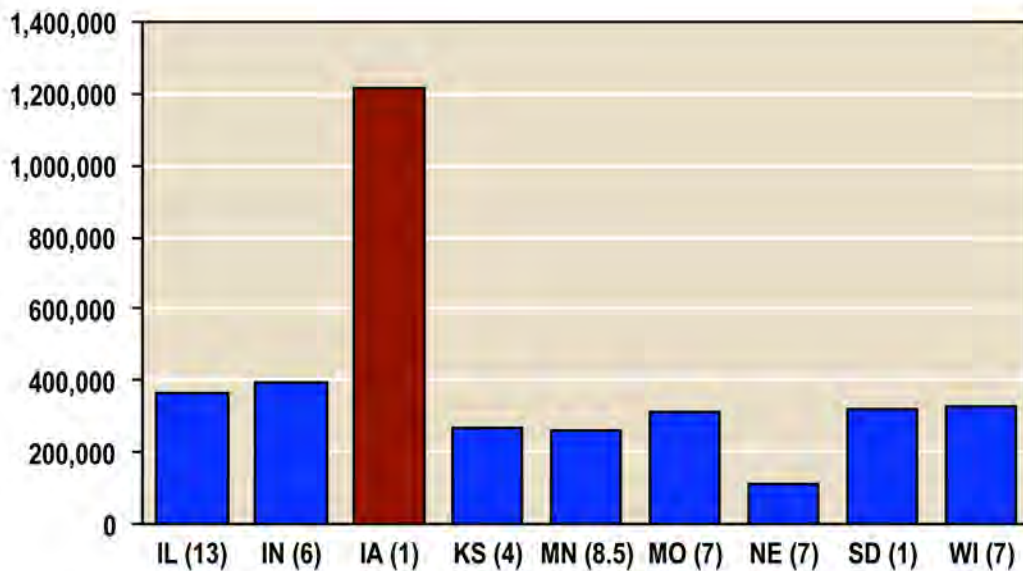
Enforcement Agency Resources

Enforcement of wage and hour standards, of course, has little meaning if agencies lack the resources to investigate workers’ complaints and prosecute violations. At the federal level, budget cuts have steadily reduced the number of investigators in the DOL’s Wage and Hour Division: Between 1974 and 2004, the Division’s investigative staffing fell by 14 percent even as the number of covered workers grew by over 50 percent.<sup>66</sup> This has meant that DOL wage and hour investigators are responsible for a larger and larger number of workers. In 1941 each investigator was responsible for 10,600 workers. By 2009 each investigator was responsible for 141,000 workers.<sup>67</sup> In November 2009, the Obama Administration announced the hiring of an additional 250 investigators, but this initiative has not been matched in the states, where deep cuts in enforcement budgets have been the norm.<sup>68</sup>

Enforcement resources and staff are especially scarce in Iowa. Iowa Workforce Development has in recent years employed but one full-time wage claims investigator — responsible for juggling upwards of 175 cases at once. Wage complaints can take months to process, and the leadership of IWD has candidly acknowledged that it lacks the personnel or resources to do its job adequately.<sup>69</sup>

Iowa is one of only three states in the nation to employ just one investigator.<sup>70</sup> This meager commitment puts Iowa starkly at odds even with its regional peers. Nationwide, state labor departments average one wage and hour investigator for every 146,000 private-sector workers. Though investigator workloads in upper Midwestern states tend to be slightly higher than the national average, none come close to approaching Iowa’s extreme. In Iowa, a single investigator is responsible for over 1.2 million private-sector workers, over eight times the average state workload and over three times the workload of any other wage and hour unit in the upper Midwest. (See Figure 5.)

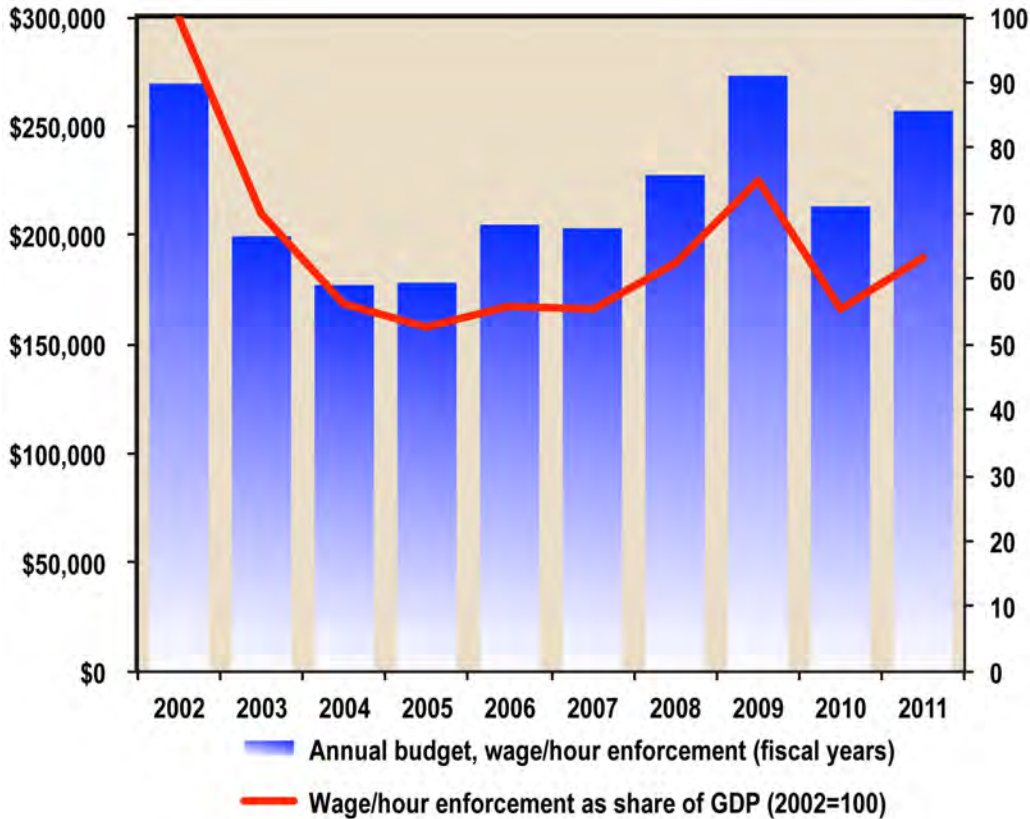
**Figure 5. Shortstaffed: Iowa’s Sole Wage & Hour Investigator Covers Three Times the Private Sector Workers of Investigators in Any State in the Region (2010)**



Source: Schiller and DeCarlo, *Investigating Wage Theft: A Survey of the States* (Policy Matters Ohio, Nov. 2010).

Iowa’s overall enforcement budget (Figure 6) has fluctuated around \$200,000 in recent years. Relative to the size of the Iowa economy, as measured by state GDP, the budget by 2010 had fallen to barely half of what it had been eight years earlier.

Figure 6. Fluctuation of Iowa's Wage and Hour Enforcement Budget, 2002-2011



Source: Authors' analysis of data from Iowa Legislative Services Agency, Fiscal Division

As noted above, the one recent bright spot in Iowa's otherwise dismal commitment to enforcement was its temporary infusion of funding for a special unit focused on worker misclassification. This unit's first 18 months of activity serve as evidence not only that small infusions of funding can generate significant upticks in enforcement, but that effective enforcement can often more than pay for itself. In this case, the state's initial legislative appropriation of \$500,000 for enhanced enforcement quickly helped restore \$2.5

million in state revenue, in the form of unpaid employment insurance taxes, penalties and interest.<sup>71</sup> Unfortunately, despite this initial success, the Task Force has issued no additional reports since December 2010, and it is unclear what level of attention misclassification and recovery of unpaid tax revenue has received since this time.

Private Enforcement

Workers who experience wage theft have the right to pursue legal action against their employers under both federal and Iowa laws. Both laws allow workers to recover lost wages, plus an additional amount equal to the unpaid wages, as "liquidated damages." Liquidated damages are awarded whenever the employer's failure to pay was "willful." The worker must prove that the employer's failure to pay was willful, which is generally not difficult; demonstrating that an employer knew that the wages were due is often enough to meet this standard. In addition to unpaid wages and liquidated damages, victims of wage theft are entitled to recover attorney fees from the employer if they are successful in their lawsuits.<sup>72</sup>

For a worker who is the victim of wage theft, pursuing civil enforcement poses the same challenges it does in other types of cases. Victims of wage theft may have a hard time finding a lawyer to take their case. Only a few attorneys in Iowa have experience assisting victims of wage theft, and the typical Iowa general practitioner may be unreceptive to a victim of wage theft because the amount in dispute is often relatively small, and he/she may not realize that liquidated damages and attorney fees are available on a routine basis. If a willing attorney does take up the case, a worker still may have to wait months before a case goes to trial and then may wait weeks or months for a decision.

Low-wage victims of wage theft are particularly vulnerable to problems posed by these limitations — which include delays associated with overburdened and understaffed enforcement agencies, byzantine claims procedures, or slow-moving courts. Low-wage workers are not uncommonly faced with eviction, or the need to relocate to seek new work, making the logistics of filing complaints or pursuing litigation difficult or even impossible. In addition, wage theft victims (particularly those who were misclassified or paid in cash) may not have good written records to substantiate their employment agreement by giving evidence of their wage rate, hours of work, etc.

Lastly, even workers who are successful in winning a claim or suing an employer for back wages often will be faced with the difficulty of collecting a monetary judgment. As Iowa Workforce Development acknowledges in its guidance to potential claimants, “Gaining a judgment does not guarantee payment of your claim. The wages must still be collected. Often, this is not possible.”<sup>73</sup> Smaller, “fly by night” employers may have few visible assets, may close up shop in order to avoid paying a judgment, or may disappear in bankruptcy.

#### Protection from Retaliation

Both the FLSA and *Iowa Code* Chapters 91A and 91D prohibit retaliation against workers who have made wage claims. *Iowa Code* Section 91A.10, for example, prohibits an employer from discharging or otherwise discriminating against a worker who makes a complaint to IWD or who has filed a civil case or who has “cooperated” with a worker who is doing either of those things. The district court has the authority to order a victim of retaliation to be reinstated with back pay. The protection against retaliation is more illusory than it would appear, however. A worker who claims to be a victim of retaliation must file a complaint with IWD within 30 days of the retaliation. Then IWD will conduct an investigation of the alleged retaliation “to the extent deemed appropriate” by the Commissioner.<sup>74</sup> If the

### ***The Costs of Wage Theft for Workers Copa Cavana, Des Moines, Iowa***

In 2011, workers at a Des Moines restaurant called Copa Cavana reported thousands of dollars in missing wages. The case of one of the workers who came forward illustrates the typical impact wage theft can have on low-wage workers.

Vidalina accepted a \$9 per hour kitchen job at the restaurant in December 2010. She worked an average of 50 hours per week for more than three weeks before receiving a paycheck. When she did finally receive a check, she took it to the bank only to have the teller announce that the employer’s check had bounced. When Vidalina returned to the restaurant to speak with her supervisor about the bad check, she was fired on the spot and told she no longer had a job. She had at that point worked 152 hours without any form of payment, and was owed over \$1,000. She tried again several times to talk with the restaurant’s owner about her unpaid wages, but was told that if she returned she would be reported to the police for trespassing.

With the assistance of a Des Moines community organization, Iowa Citizens for Community Improvement (CCI), Vidalina filed wage claims with Iowa Workforce Development and the U.S. Department of Labor. She made repeated attempts to communicate with her employer to obtain her paycheck. During weeks she spent trying to recover her lost wages, Vidalina fell behind on rent and car insurance payments, went hungry because she had no money for groceries, and was eventually evicted from her apartment.

Ultimately, Vidalina got only part of her money back. As part of a payment plan set up by Iowa Workforce Development — after its investigation revealed that the restaurant owed over \$10,000 to former employees — in April 2011, Vidalina received a portion of initial \$300 weekly payments split among all of the former employees who had filed claims. Shortly thereafter, however, the restaurant closed and dissolved its charter of incorporation prior to paying all the wages it owed.

*Misty Rebik, “Stories from victims of wage theft” (Iowa Citizens for Community Improvement, 2012); Jens Manuel Krogstad, “Growing number of Latino workers report they aren’t paid wages,” Des Moines Register (March 19, 2011), 1A*

investigation confirms retaliation has occurred, IWD is supposed to initiate litigation on behalf of the victim of retaliation. In reality, this is extremely rare, and most employers know that the chances of IWD filing suit against them for retaliation are very small.

Workers, on the other hand, know that the risk of retaliation is very real. According to one major national study, 43 percent of workers who raised complaints faced employer retaliation such as termination or suspension, cuts in wages or hours, and threats to call — or actual calls — to immigration authorities.<sup>75</sup> Unlike claims filed with the DOL, wage claims filed with IWD are not anonymous. After receiving a worker's claim, IWD's practice is to contact the worker's employer and disclose their name and the nature of their complaint. This means that all workers who experience wage violations falling under IWD's jurisdiction must first consider whether to file a claim and face the real risks of discipline, harassment, job loss, or inquiries about their immigration status. Given patterns of wage theft, and the numerous obstacles to redress, workers may well conclude that staying silent is the best choice.

### **Solutions**

As the incidence of wage theft has risen, organizations in Iowa and across the nation have begun to develop community-based and legislative responses to this problem. These initiatives provide useful lessons for reformers and evidence that communities can come together to make progress toward reversing this destructive trend. Wage theft is not a partisan issue — citizens, elected officials, workers and businesses across the political spectrum can agree that workers should be paid for their labor. And there are common-sense enforcement strategies and legal reforms that could make significant progress toward deterring wage theft.

Even a cursory review of research on wage theft reveals an abundance of ideas about how to address the problem. Proposals fall into three main categories: (1) legislative changes; (2) administrative changes; and (3) community and worker involvement. While not every successful initiative can be described here in detail, we provide below several illustrative examples along with key recommendations tailored to Iowa.

#### Strengthening Laws to Discourage Wage Theft

**Federal.** The Fair Labor Standards Act (FLSA) was an important part of the New Deal. However, the American workplace has change significantly since it was passed in 1938. Legal reforms are necessary to recognize and adapt to the changing organization of work in the United States. Two areas that have proved to be particularly troublesome are (1) gaps in coverage and (2) misclassification of workers as “independent contractors.” Congress could address the problem of wage theft by updating and amending the FLSA.

**State.** Recent national surveys of state laws have identified priority strategies for strengthening state wage laws. Both the National Employment Law Project's 2011 report *Winning Wage Justice* and the Progressive States Network's 2012 report *Cracking Down on Wage Theft* propose “Model Provisions” for effective state wage laws.<sup>76</sup> Fortunately, *Iowa Code* Chapter 91A already contains many of these provisions in some form although their effectiveness is lessened in some cases by limitations in the current statute. For example,

- Chapter 91A contains a very broad definition of the terms “employee” and “employer,” but excludes “independent contractors” without defining that term. (NELP and PSN both recommend that “independent contractor” be defined clearly and plainly to prevent misclassification of workers and recommend putting the burden of proving independent contractor status on the employer, not the worker.)<sup>77</sup>
- Individual employees have the right to file their own lawsuits to recover unpaid wages and the court is required to award attorney fees in *all* successful cases.

- Workers who can prove that the employer intentionally failed to pay them the wages that they were due can recover liquidated damages, effectively double damages. (NELP recommends triple damages and both PSN and NELP recommend relieving workers from the burden of proving that the failure to pay was intentional).
- Chapter 91A requires payment at regular intervals, promptly after termination, restricts deductions, and require employers to provide a detailed pay stub in writing or electronically. (PSN recommends that the burden of proving that deductions were properly made should be on the employer.)
- Chapter 91A permits the Commissioner to impose more detailed record keeping and reporting requirements, but the law requires the Commissioner to impose these requirements only if the employer has already paid one wage claim or has been assessed a civil penalty. (PSN recommends the more detailed record keeping requirements in all cases and recommends establishing a rebuttable presumption that a worker was not properly paid, if the employer does not maintain required payroll records.)
- Chapter 91A gives the Commissioner the authority to inspect workplaces and examine wage records, but only if IWD has received a written complaint. (PSN recommends broader inspection powers to enable the agency to enforce the law proactively.)
- Chapter 91A prohibits retaliation against workers who file wage claims or against others who support them. However, this provision can be enforced only by the Commissioner and enforcement is discretionary. In addition, the worker must make a complaint to the Commissioner within 30 days of the alleged retaliation. (Both NELP and PSN recommend longer time limits and allowing affected workers the right to enforce the anti-retaliation provisions of the law.)

In 2011, the Iowa Senate passed a bill (SF311) that would have strengthened Iowa’s wage laws by making them more consistent with the model provisions,<sup>78</sup> but the House did not act on the bill. Republican opponents of the bill commented that it would be an unnecessary “burden” on business.<sup>79</sup> Several other states, including New York and Massachusetts, have recently improved their wage theft laws by adopting many of these model provisions. California has a comprehensive labor code that provides more systematic legal protections for workers. These laws could also serve as models for improving Iowa’s wage payment law.

#### Enhancing Administrative Enforcement of Existing Laws

Even without any legislative changes, much more could be done to effectively enforce existing wage theft laws. Following the lead of recommendations issued in the recent report *Broken Laws, Unprotected Workers*, we suggest below four main areas in which Iowa could tap the “unrealized potential” of existing enforcement agencies to reverse wage theft trends.<sup>80</sup>

1. Move toward proactive, “investigation-driven” enforcement in low-wage industries, rather than reacting to complaints as they come in. Identify industries where violations are systemic, conduct strategic, repeated and well-publicized workplace audits, and crack down on employers who are repeat offenders as well as those who misclassify workers. The goal should be to send industry-wide signals that the government will pursue violations, and that the likelihood of inspection is tangible.
2. Increase funding levels for enforcement agencies to increase the number of investigators and other staff.
3. Strengthen penalties for violations. Aggressively pursue judgments for back wages and use existing authority to impose civil penalties.

4. Increase the reach and effectiveness of enforcement by partnering with other federal and state agencies (e.g., the U.S. Department of Labor, IRS and Iowa Department of Revenue, Iowa Misclassification Unit, etc.), and with immigrant worker centers, unions, service providers, legal advocates and, where possible, responsible employers.

Currently, Iowa Workforce Development only responds to complaints from individual workers. However, that practice could be changed as a matter of policy, without legislative changes. Data such as those contained in this report on the industries and occupations most at risk of violations could help IWD in targeting proactive enforcement efforts. Obviously, significantly increasing agency funding and the number of investigators would be necessary before such policy changes could have any real impact. Also, amending Chapter 91A to give IWD explicit investigatory authority, consistent with the legislative proposals described above, would complement this policy change.

*Iowa Code* Section 91A.12 already allows IWD to impose civil penalties of up to \$500 per pay period for each violation of Chapter 91A. This provision is almost never used, although its potential as an enforcement tool is substantial. Given the prevalence of wage theft, it should not be difficult for IWD to identify potential targets for penalty cases. If IWD were to initiate 100 penalty cases per year, for example, and the average case yielded only two violations, IWD could potentially recover \$100,000 in penalties. Although this is a relatively small amount of money, it would have enormous symbolic value and would likely act as a significant deterrent to prevent future cases of wage theft.

In turn, civil penalties (currently paid to the general fund) could be earmarked for future enforcement efforts — buttressing the Division’s budget in an otherwise lean fiscal environment.

The deterrent effect of civil penalties would obviously be increased if maximum penalties were no longer limited to \$500. Proposed model legislation described above would include penalties of up to \$5,000 per violation, along with other changes to make enforcement more effective, including earmarking of penalties for enforcement, creation of “private attorney general” rules to permit litigation in the public interest by private parties, and allowing agencies to issue “stop work” orders or disbarment orders and to revoke business licenses for repeat offenders.<sup>81</sup>

Closer working relationships and information sharing within and among agencies could significantly improve enforcement. For example, understaffing currently makes it unlikely that workers’ compensation or tax collection cases that turn up wage theft (or vice versa) will be referred to the appropriate agency, or that a worker whose claim falls outside a certain agency’s jurisdiction will be assisted in finding the appropriate place to address it. In recognition of the need for greater inter-agency cooperation in order to crack down on worker misclassification, the DOL in 2011 announced a new information-sharing agreement with the IRS, as well as efforts to partner with relevant state agencies. Several states have since signed memoranda of understanding (MOUs) with the DOL enabling information sharing and coordinated enforcement on worker misclassification cases, but so far Iowa is not among them.<sup>82</sup> The initial success of Iowa’s own Misclassification Unit likewise rested in part on concerted efforts to increase information sharing across agencies.<sup>83</sup>

Even with strong laws and well-funded agencies, government alone will never have enough staff and resources to monitor every workplace in the state on a regular basis. Community partnerships can provide the vital “eyes and ears on the ground” to identify where workplace violations are most concentrated. As Iowa’s own Misclassification Task Force has demonstrated, partnerships between state agencies and community organizations have proven highly effective in combatting wage theft and increasing state revenue, in Iowa and around the country.

Other successful models for state-community partnerships that IWD could consider include initiatives like New York Wage Watch. In 2009, the New York State Department of Labor established enforcement partnerships with community groups and unions targeting neighborhoods and industries with a high incidence of wage theft. Modeled after neighborhood watch programs designed to reduce street crime, New York Wage Watch sought to more systematically educate employers, workers, and neighborhood residents about employment laws. Participating groups such as Make the Road New York and the Retail, Wholesale, and Department Store Union (RWDSU) selected a geographic zone for their efforts, where they conducted know your rights trainings, distributed literature, and provided employers with information about compliance. The groups helped connect potential victims of wage theft with New York State Department of Labor staff, who conducted the investigations.

In addition, Iowa's private bar could do more to help victims of wage theft and enforce existing laws. Agency enforcement and community support are enormously important, but the reality is that not every case of wage theft can be resolved without legal action. Efforts to better inform private attorneys about wage and hour laws could be essential first steps. It is likely that many more attorneys would be willing to accept wage theft cases if they were more familiar with this area of the law and knew about the potential to recover attorney fees in successful cases..

#### *Building Community Alliances to Stop Wage Theft*

Because wage theft is more common among vulnerable workers who may lack the resources to engage in a protracted dispute with an employer, community coalitions can play an important role in giving victims of wage theft the moral, legal and strategic support they need to come forward and challenge exploitative workplace practices. These community coalitions may take many approaches, such as establishing workers' centers, supporting union organizing efforts, or initiating direct action campaigns. What these efforts share in common is that they bring together diverse organizations to hold local employers accountable to community values and standards of workplace fairness.

As noted in several of the case studies included in this report, community organizations like Iowa Citizens for Community Improvement have already been playing an important role in supporting workers who come forward to report wage theft. CCI is a grassroots social justice organization affiliated with the National People's Action network. In the past several years, the group's Latino-led organizing chapters in Des Moines and Marshalltown began to take steps to confront members' growing reports of wage theft. In addition to assisting individual workers with claims, Iowa CCI organized workers and community allies to meet with regulatory agencies, learn about workers' rights, and directly confront employers who refuse to pay their workers. Through these efforts, Iowa CCI members report having assisted workers in recovering over \$135,000 in unpaid wages in the past few years.

Other recent, notable examples of community responses to wage theft include coalitions like the Los Angeles CLEAN Carwash Campaign. In the past decade, community organizations in Los Angeles noted a growing number of complaints by car wash workers who were experiencing wage theft and other workplace abuses. The complaints illustrated a widespread problem throughout the industry. In response to these complaints, a diverse coalition of organizations came together under the Community-Labor-Environmental Action Network (CLEAN) campaign, to educate the public and build support for workers' efforts to improve standards. In addition to helping individual victims of wage theft, the campaign has resulted in successful union organizing efforts by car wash workers, enforcement actions by the California Labor Commissioner, and efforts to better manage the environmental impact of commercial car washes.<sup>84</sup>

Across the country, community workers' centers are often taking on leading roles in combatting wage theft. In the tradition of settlement houses, Jewish Workmen's Circles, and Catholic Labor Schools, workers' centers are safe community spaces where workers can get help, learn organizing skills, and receive support from community-based allies. Interfaith Worker Justice (IWJ), for example, is a national network of more than 60 affiliated organizations, including dozens of workers' centers. Over 16,000 workers come to IWJ centers for help each year; an estimated 80 percent are victims of wage theft. The centers employ a variety of strategies for recouping stolen wages, from connecting workers with attorneys and regulatory agencies, to organizing delegations of workers and faith leaders to confront intransigent employers.<sup>85</sup>

Community education can play an important role in combatting wage theft. Ideally, IWD would actively provide information about wage theft in Iowa through community outreach in much the same way that Iowa's Misclassification Task Force briefly did in 2009-2010, or that the U.S. DOL is attempting to do currently on a national level.<sup>86</sup> In the absence of immediate infusions of funding to make such educational efforts possible in Iowa, however, it is likely that community organizations will need to continue filling this role.

## ***Conclusion***

A person who works hard should be fairly compensated for that labor. This report shows that it is not enough to have laws that prohibit an employer's refusal to pay workers who have spent a sweltering Iowa summer day roofing a barn, or to force a waitress to share her tips with her boss. Enforcement and community attention also are necessary.

Wage theft is a serious problem in Iowa, just as it is in other parts of the country. It may only be visible in exceptional cases that make the news. But it exists on a widespread basis in certain industries, particularly construction, food service, meatpacking and food processing. It primarily affects the workers in our state who are most vulnerable to exploitation, low-wage workers and immigrants. Each year, wage theft deprives these workers of an estimated \$600 million that they have earned, and it deprives state and local government of revenue. Yet, at present our nation and our state appear at best to be tolerating it, if not condoning it.

Practical steps can reduce the incidence of wage theft. Iowa's wage laws need a fresh look governed by 21<sup>st</sup> Century standards. IWD's wage enforcement efforts need adequate funding and staff that they do not have now. Every employer in Iowa must understand its obligations and every worker must know his/her rights. These efforts would protect not only legitimate law-abiding businesses from abusive practices by competitors, but also all workers in Iowa and their families.



## Appendix A: Categories of Workers Exempt from Coverage Under the FLSA

### *Workers exempt from both minimum wage and overtime provisions:*

- Executive, administrative, and professional employees (including teachers and academic administrative personnel in elementary and secondary schools), outside sales employees, and certain skilled computer professionals (as defined in the Department of Labor's regulations)<sup>1</sup>
- Employees of certain seasonal amusement or recreational establishments
- Employees of certain small newspapers and switchboard operators of small telephone companies
- Seamen employed on foreign vessels
- Employees engaged in fishing operations
- Employees engaged in newspaper delivery
- Farm workers employed on small farms (i.e., those that used less than 500 "man-days" of farm labor in any calendar quarter of the preceding calendar year)
- Casual babysitters and persons employed as companions to the elderly or infirm

### *Workers exempt from overtime provisions only:*

- Certain commissioned employees of retail or service establishments
- Auto, truck, trailer, farm implement, boat, or aircraft salespersons employed by non-manufacturing establishments primarily engaged in selling these items
- Auto, truck, or farm implement parts-clerks and mechanics employed by non-manufacturing establishments primarily engaged in selling these items to ultimate purchasers
- Railroad and air carrier employees, taxi drivers, certain employees of motor carriers, seamen on American vessels, and local delivery employees paid on approved trip rate plans
- Announcers, news editors, and chief engineers of certain non-metropolitan broadcasting stations
- Domestic service workers who reside in their employers' residences
- Employees of motion picture theaters
- Farmworkers

### *Workers who may be partially exempt from overtime provisions:*

- Employees engaged in certain operations on agricultural commodities and employees of certain bulk petroleum distributors
- Employees of hospitals and residential care establishments that have agreements with the employees that they will work 14-day periods in lieu of seven-day workweeks (if the employees are paid overtime premium pay within the requirements of the Act for all hours worked over eight in a day or 80 in the 14-day work period, whichever is the greater number of overtime hours)
- Employees who lack a high school diploma, or who have not completed the eighth grade, who spend part of their workweeks in remedial reading or training in other basic skills that are not job specific. Employers may require such employees to engage in these activities up to 10 hours in a workweek. Employers must pay normal wages for the hours spent in such training but need not pay overtime premium pay for training hours

## NOTES

- <sup>1</sup> See [In the Matter of Kenneth Henry and Jane Johnson dba Henry's Turkey Service vs. Iowa Department of Workforce Development](#), IWD CP-003-09, (March 2011) ; Clark Kauffman, "Feds saw no need for fines at bunkhouse," *The Des Moines Register* (March 15, 2009), A1; Clark Kauffman, "Henry's penalties from state now top \$1 million," *The Des Moines Register* (July 3, 2010), B1; Clark Kauffman, "Judge cuts state's proposed Atalissa fine by 85 percent," *The Des Moines Register* (August 5, 2010), A1; Clark Kauffman, "Henry's Fine of \$1.1 million is reinstated," *The Des Moines Register* (March 9, 2011), B1; [Henry's Turkey workers abused, denied pay, new federal suit claims](#), *The Gazette*, Cedar Rapids, (April 6, 2011);
- <sup>2</sup> Clark Kauffman, "Feds saw no need for fines at bunkhouse," *The Des Moines Register* (March 15, 2009), A1
- <sup>3</sup> See [The Shame of Postville](#), *The New York Times* (July 13, 2008); Nathaniel Popper, [In Iowa Meat Plant, Kosher "Jungle" Breeds Fear, Injury, Short Pay](#), *The Jewish Daily Forward* (May 2006).
- <sup>4</sup> [Iowa Statute 91D](#)
- <sup>5</sup> Iowa Administrative Code, Iowa Workforce Development, [871—23.19\(96\) Employer–employee and independent contractor relationship; Iowa Misclassification Task Force, Report to Governor Culver: Findings and Recommendations](#) (December 17, 2008), 8-9
- <sup>6</sup> For a recent example of this type of misclassification (improper exemption from overtime coverage) in Iowa, see ["Peninsula Gaming assessed \\$9,300 in penalties for child labor violations, pays more than \\$46,000 in back wages following US Labor Department investigations."](#) US Department of Labor Wage and Hour Division (Aug. 15, 2012).
- <sup>7</sup> See Rebecca Smith, et al., [Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States](#) (National Employment Law Project, January 2012) for an excellent summary of recent research.
- <sup>8</sup> Annette Bernhardt et al, [Broken Laws, Unprotected Workers: Violations of Employment and Labor Law in America's Cities](#) (National Employment Law Project, 2009), Table 3.1, p20; 27. See also Siobhán McGrath, [A Survey of Literature Estimating the Prevalence of Employment and Labor Law Violations in the U.S.](#) (New York: Brennan Center for Justice, 2005) and Ruth Milkman et al, [Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and labor Law for Low-Wage Workers](#) (Institute for Research on Labor and Employment, UCLA, 2010), Table 2, p18.
- <sup>9</sup> Lonnie Golden and Helene Jorgensen, [Time After Time: Mandatory Overtime in the US Economy](#) (Economic Policy Institute 2002)
- <sup>10</sup> Zach Schiller and Sarah DeCarlo, [Investigating Wage Theft: A Survey of the States](#) (Policy Matters Ohio, November 2010; Tim Judson and Cristina Francisco-McGuire, [Where Theft is Legal: Mapping Wage Theft Laws in the 50 States](#), (Progressive States Network, June 2012); National State Attorney General's Program, [Enforcement of State Wage and Hour Laws: A Survey of State Regulators](#) (Columbia Law School, April 2011); David Weil, [Improving Workplace Conditions Through Strategic Enforcement](#) (Report to the Wage and Hour Division, May 2010),.
- <sup>11</sup> Bernhardt et al, [Broken Laws, Unprotected Workers](#), 39, 50, Figure 4.1 and 3.2, p31, Figures 4.4 and 4.5, p34
- <sup>12</sup> Bernhardt et al, [Broken Laws, Unprotected Workers](#), 42, Table 4.1, p30; Alex Angee and Cynthia Hernandez, [Planting Seeds of Injustice: Combatting Wage Theft Among South Florida's Plant Nursery Workers](#) (RISEP, 2007), 5
- <sup>13</sup> See Colin Gordon and Noga O'Connor, [The State of Working Iowa 2011](#) (Iowa Policy Project, 2011); National Employment Law Project, [The Good Jobs Deficit: A Closer Look at Recent Job Loss & Job Growth Trends Using Occupational Data](#) (July 26, 2011).
- <sup>14</sup> National State Attorneys General Program, [Enforcement of State Wage and Hour Laws: A Survey of State Regulators](#) (Columbia Law School, April 2011), Table 1, 44ff.
- <sup>15</sup> In March 2011, a bill that would have required employers to keep signed documentation to show wages and deductions pass the Iowa Senate but died in the House. The chair of the House committee claimed the bill "would create additional regulatory burdens upon good-acting businesses." Jason Clayworth, ["Iowa's anti wage-theft bill hits a snag,"](#) *The Des Moines Register* (March 23, 2011).
- <sup>16</sup> Restaurant Opportunities Center, [Behind the Kitchen Door: The Hidden Costs of Taking the Low-Road in Chicagoland's Thriving Restaurant Industry](#) (February 2010), 16-18
- <sup>17</sup> Restaurant Opportunities Center United, [Behind the Kitchen Door: A Multi-Site Study of the Restaurant Industry](#) (2011).
- <sup>18</sup> Workers Defense Project, [Building Austin, Building Injustice: Working Conditions in Austin's Construction Industry](#) (2007).
- <sup>19</sup> Immigrant Rights/International Human Rights Clinic, Seton Hall Law School, [All Work and No Pay: Day Laborers, Wage Theft, and Workplace Justice in New Jersey](#) (January 2011), 2
- <sup>20</sup> U.S. General Accounting Office, [Worker Protection: Labor's Efforts to Enforce Protections for Day Laborers Could Benefit from Better Data and Guidance](#), GAO-02-925 (2002).
- <sup>21</sup> Abel Valenzeula Jr., Nik Theodore, Edwin Meléndez & Ana Luz González, [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 (January 2006).

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- <sup>22</sup> Chirag Mehta, Sara Baum, Nik Theodore & Lori Bush, [Workplace Safety in Atlanta’s Construction Industry: Institutional Failure in Temporary Staffing Arrangements](#), University of Illinois at Chicago Center for Urban Economic Development (June 2003).
- <sup>23</sup> Daniel Kerr & Chris Dole, [Challenging Exploitation and Abuse: A Study of the Day Labor Industry in Cleveland](#) (2001).
- <sup>24</sup> Dep’t of Systems Management for Human Services, [An Account of Day Laborers in Fairfax County](#) (June 2004).
- <sup>25</sup> Abel Valenzuela Jr. & Edwin Meléndez, [Day Labor in New York: Findings from the NYDL Survey](#), UCLA Center for the Study of Urban Poverty & New School University Community Development Research Center New School University (2003).
- <sup>26</sup> Mujeres Unidas y Activas, Day Labor Program Women’s Collective of La Raza Centro Legal & DataCenter, [Behind Closed Doors: Working Conditions of California Household Workers](#) (March 2007).
- <sup>27</sup> U.S. DOL [1999-2000 Report on Initiatives](#) (February 2001).
- <sup>28</sup> Rebekah Levin and Robert Ginsburg, [Sweatshops in Chicago: A Survey of Working conditions in Low-Income and Immigrant Communities](#) (Center for Impact Research & Center for Labor and Community Research (2000).
- <sup>29</sup> Suzette Tucker-Welch, [The State of Working Immigrants in Colorado](#), Colorado Center of Law and Policy (March 2004)
- <sup>30</sup> Bruce Nissen, [Employment Practices and Working Conditions in the Building Service Industry in Miami-Dade County, Florida](#) (Center for Labor Research and Studies, Florida International University, June 2004).
- <sup>31</sup> Pascale Joassart-Marcelli & Daniel Flaming, [Working Without Rights: The Informal Economy in Los Angeles](#) (Economic Roundtable 2002).
- <sup>32</sup> Asian American Legal Defense and Education Fund and YKASEC , [Forgotten Workers: A Study of Low-Wage Korean Immigrant Workers in the Metropolitan New York Area](#) (2006).
- <sup>33</sup> Gary Blasi & Jacqueline Leavitt, [Driving Poor: Taxi Drivers and the Regulation of the Taxi Industry in Los Angeles](#), UCLA Institute of Industrial Relations, UCLA Law School & UCLA School of Public Affairs (2006). Urban Justice Center Community Development Project, [Unfare: Taxi Drivers and the Cost of Moving the City](#) (September 2003) [Driven into Poverty: A Comprehensive Study of the Chicago Taxicab Industry](#), University of Illinois School of Labor and Employment Relations (2009).
- <sup>34</sup> Research Institute on Social and Economic Policy, [Wage Theft in Florida: A Real Problem with Real Solutions](#) (Center for Labor Research and Studies, Florida International, 2010), 5.
- <sup>35</sup> See Jens Manuel Krogstad, “Growing number of Latino workers report they aren’t paid wages,” *The Des Moines Register* (March 19, 2011), A1; “Which bills are alive, which are not?” *The Des Moines Register* (April 1, 2011). For the most recent example of a major Iowa wage theft case involving Latino restaurant workers, see [“Las Lomas Mexican Restaurant pays more than \\$60,000 in back wages to 8 workers following US Labor Department investigation.”](#) US Department of Labor Wage and Hour Division (Aug. 6, 2012)..
- <sup>36</sup> Claims reported to federal and state enforcement agencies offer only a glimpse of the problem. Like the Sunday morning police blotter, they offer an imperfect sample of larger patterns — especially since the workers most vulnerable to wage theft are also the least likely to risk making a claim.
- <sup>37</sup> The high number of “Management” claims in Iowa are also a reflection of multiple claims involving a small handful of firms, including Command Center staffing, and The Baking Company of Boone and Burlington.
- <sup>38</sup> Project labor agreements (PLAs) set the terms and conditions of employment on large projects of long duration and complex design. PLAs enable the swift resolution of disputes that can arise in the course of a project, thereby helping to ensure the timely delivery of the project while maintaining quality standards. More elaborate PLAs might include provisions that seek to improve conditions such as health and safety rules on the worksite, and to provide benefits to the community by including job and training opportunities for disadvantaged workers. Prevailing wage laws require firms working under a government contract to pay the “prevailing” wage for each job, that is, at least the median or locally prevailing wage and any fringe benefits paid on similar projects in the region.
- <sup>39</sup> [Iowa Misclassification Task Force, Report to Governor Culver](#) ( December 17, 2008), 10.
- <sup>40</sup> [Iowa Misclassification Task Force, 2<sup>nd</sup> Report, Iowa Workforce Development](#) (December 30, 2010), 1.
- <sup>41</sup> [Iowa Misclassification Task Force, 2<sup>nd</sup> Report](#) (December 30, 2010); David DeWitte, “Task force tally: 2,602 workers misclassified as contractors,” *The Cedar Rapids Gazette* (January 10, 2011).
- <sup>42</sup> [Iowa Misclassification Task Force, Report to Governor Culver](#) ( December 17, 2008), 10
- <sup>43</sup> Steven Martens, [Wal-Mart Wage Suit Settled for \\$11M](#), *Quad-City Times* (Oct. 14, 2009).
- <sup>44</sup> Charlene Bielema, “Men file lawsuit against firms providing workers at ADM,” *The Clinton Herald* (March 15, 2011).
- <sup>45</sup> *Briles et al. v. Cargill Meat Solutions Corp.*, 4:10-cv-00163-JAJ-RAW (S.D. Iowa, 2011).
- <sup>46</sup> See 4:08-cv-00113-JAJ-TJS (S.D. Iowa). Also still working through the courts at the time of writing are suits initiated by former employees of Electrolux in Webster City, Iowa, and by Iowa and Wisconsin employees of Consumer Programs Incorporated (CPI), the company responsible for administering Sears portrait studios. Both suits allege routine violations of the Fair Labor Standards Act and Iowa wage payment laws, resulting in underpayment of wages to thousands of workers over a number of years. See *Nick Harvey, Cindy Sturtz, and David Ausborn v AB Electrolux, Electrolux Home Products Inc.*,

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*Electrolux Home Products North America and Electrolux Home Care Products, Inc.*; and *Chrissy Larkin and Katie Ingles v CPI Corporation, Consumer Programs Incorporated, d/b/a Sears Portrait Studios, and CPI Images, LLC, d/b/a*

<sup>47</sup> Nationally, workers have successfully sued numerous major companies — including Family Dollar, Pep Boys, Kinkos and Taco Bell — for erasing hours from workers’ time cards, preventing workers from taking breaks, or forcing them to work “off the clock.” In each case, large numbers of workers were able to prove that such practices had occurred across multiple sites or franchises. See Steven Greenhouse, [Altering of Worker Time Cards Spurs Growing Number of Suits](#), *The New York Times* (April 4, 2004), and Paul Davidson, “[More American workers sue employers for overtime pay](#),” *USA Today* (April 19, 2012).

<sup>48</sup> Iowa Misclassification Task Force, [Report to Governor Culver](#), 1.

<sup>49</sup> See Center on Policy Initiatives, [Hidden Costs: The Public Cost of Low-Wage Jobs in San Diego](#) (August 2004), Carol Zabin, Arindrajit Dube, Ken Jacobs, [The Hidden Public Cost of Low-Wage Jobs in California](#) (National Economic Development and Law Center, 2004); Annette Bernhardt and Heather Boushey, [Confronting the Gloves Off Economy: America’s Broken Labor Standards and How to Fix them](#), July 2009. Arindrajit Dube and Ken Jacobs, Arindrajit Dube and Ken Jacobs, [Hidden Cost of Wal-Mart Jobs. Use of Safety Net Programs by Wal-Mart Workers in California](#), Briefing Paper Series, Berkeley, CA: Center for Labor Research and Education, University of California (August 2004) estimate that Walmart alone generates a burden on California social programs of just under \$2,000 for each of its employees; Other studies show that about one quarter of Chicago-area restaurant workers rely on social programs such as Medicaid and food stamps to make ends meet; see Restaurant Opportunities Center, [Behind the Kitchen Door: The Hidden Costs of Taking the Low Road in Chicagoland’s Thriving Restaurant Industry](#) (2010), 48ff.

<sup>50</sup> Coopers & Lybrand, [Projection of the Loss in Federal Tax Revenues Due to Misclassification of Workers](#), Prepared for the Coalition for Fair Worker Classification (1994).

<sup>51</sup> Lalith De Silva, et al., [Independent Contractors: Prevalence and Implications for Unemployment Insurance Programs](#), [Planmatics](#), Inc., Prepared for the US Department of Labor Employment and Training Administration (2000). An additional 2009 study by the General Accounting Office offered no new cost estimates, but did note the uptick in misclassification rates noted by recent state and national surveys; see U.S. General Accounting Office, [Employee Misclassification: Improved Coordination, Outreach, and Targeting Could Better Ensure Detection and Prevention](#) (August 2009).

<sup>52</sup> Iowa Misclassification Task Force, [Report to Governor Culver](#), 12.

<sup>53</sup> 45 states have their own minimum wage laws, allow which covered workers not covered by federal laws and 16 of which (and the District of Columbia) have a rate higher than the federal minimum for all covered workers. 32 States have their own overtime rules or rates. See <http://www.dol.gov/whd/minwage/america.htm>.

<sup>54</sup> Clark Kauffman, “Disabled workers paid cents per hour at state-run homes,” *The Des Moines Register* (December 28, 2009), B1. Though civil and criminal penalties for wage theft are available under both state and federal laws, they are rarely imposed. The FLSA permits the DOL to request civil penalties of up to \$1,100 for each violation and/or criminal sanctions of up to two years in prison for willful violations of the FLSA. IWD can request penalties of up to \$500/pay period for violations of either Chapter 91D (minimum wage) or Chapter 91A (wage payment). It is extremely unusual for either agency to pursue penalties, though that trend may be changing, at least at the US DOL.

<sup>55</sup> Weil, [Improving Workplace Conditions Through Strategic Enforcement](#); Janice Fine and Jennifer Gordon, Strengthening Labor Standards Enforcement through Partnerships with Workers’ Organizations, *Politics & Society* (December 2010), 552-585.

<sup>56</sup> Because the FLSA also covers individual workers who are engaged in interstate or foreign commerce (defined as “any work involving or related to the movement of persons or things [including intangibles, such as information] across state lines or from foreign countries”), it is however possible that some individuals (e.g., those who handle credit card transactions, travel across state lines, communicate with customers in other states, etc.) may be covered by the FLSA even if they work for an employer whose annual sales fall below \$500,000.

<sup>57</sup> Annette Bernhardt and Siobhan McGrath, [Trends in Wage and Hour Enforcement by the US Department of Labor](#) (Economic Policy Brief 4, Brennan Center, 2005).

<sup>58</sup> Davidson, [More American workers sue employers for overtime pay](#), *USA Today* (April 19, 2012).

<sup>59</sup> A few categories of workers are excluded from coverage: Spouses and family members of farmers, neighbors of farmers who are exchanging labor, sharecroppers, independent contractors, and licensed professionals (doctors, lawyers, etc.) who provided services to clients or patients on a fee for service basis.

<sup>60</sup> Iowa Code Section 91A.3 also permits workers and employers to modify requirements about when and how the worker will be paid, by mutual written agreement.

<sup>61</sup> See <http://www.dol.gov/wecanhelp/>.

<sup>62</sup> National State Attorney General’s Program, [Enforcement of State Wage and Hour Laws: A Survey of State Regulators](#) (Columbia Law School, April 2011), 25

<sup>63</sup> David Weil and Amanda Pyles, [Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace](#), *Comparative Labor Law and Policy Journal* (2006), p78.

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<sup>64</sup> “Steps in the Wage Claim Process: Thinking of Filing a Wage Claim?” Division of Labor Services, Iowa Workforce Development, available at: <http://www.iowaworkforce.org/labor/wagesteps.html>

<sup>65</sup> IWD’s own explanation of the claims process counsels potential claimants against any expectation of speedy resolution or regular communication about cases: “PATIENCE – The wage claim process is not speedy and can take several months to reach resolution. Copies of all information received from the employer will be sent to you for your comment and you will be notified of any change regarding your claim. You can certainly call for an update about your claim at any time but keep in mind that if you haven’t heard from us, things haven’t changed since you last heard from us,” “Steps in the Wage Claim Process: Thinking of Filing a Wage Claim?” Division of Labor Services, Iowa Workforce Development, available at: <http://www.iowaworkforce.org/labor/wagesteps.html> See also Weil and Pyles, “[Why Complain?](#),” 73-74.

<sup>66</sup> Bernhardt and McGrath, [Trends in Wage and Hour Enforcement](#).

<sup>67</sup> Sources: Interfaith Worker Justice, [Is the Department of Labor Effectively Enforcing Our Wage and Hour Laws?](#), Testimony before the Committee on Education and Labor, U.S. House of Representatives, July 2008; U.S. Department of Labor press release, 3/25/2009. Video excerpt of testimony at <http://www.youtube.com/watch?v=bmxlvUIEng4>

<sup>68</sup> Schiller and DeCarlo, [Investigating Wage Theft](#), 4-5.

<sup>69</sup> See Jens Manuel Krogstad, “Growing number of Latino workers report they aren’t paid wages,” *The Des Moines Register* (March 19, 2011), A1; Adam Belz, “Wage Thefts protested at Forum,” *The Des Moines Register* (October 24, 2010), B1; Iowa Misclassification Task Force, [Report to Governor Culver](#), 7.

<sup>70</sup> Schiller and DeCarlo, [Investigating Wage Theft](#), 5-7.

<sup>71</sup> [Iowa Misclassification Task Force, 2<sup>nd</sup> Report](#) (Dec. 30, 2010), 1.

<sup>72</sup> The availability of attorney fees makes wage theft cases much more appealing to private attorneys who might otherwise be reluctant to accept individual wage claims, since amounts in dispute generally are relatively small in proportion to the costs of litigation. Filing a wage theft case as a class action may also make economic sense and help to give workers more leverage with an employer. The FLSA permits “collective actions,” rather than class actions. While the procedures are more cumbersome, the impact on the employer may be similar, in most cases.

<sup>73</sup> “Steps in the Wage Claim Process: Thinking of Filing a Wage Claim?” Division of Labor Services, Iowa Workforce Development, available at: <http://www.iowaworkforce.org/labor/wagesteps.html>

<sup>74</sup> Iowa Code Section 91A.10(5).

<sup>75</sup> Bernhardt et al, [Broken Laws, Unprotected Workers](#).

<sup>76</sup> Tim Judson and Cristina Francisco-McGuire, [Cracking Down on Wage Theft: State Strategies for Protecting Workers and Recovering Revenues](#) (Progressive States Network, April 2012); National Employment Law Project, [Winning Wage Justice: An Advocate’s Guide to State and City Policies to Fight Wage Theft](#) (April 2011).

<sup>77</sup> Under the simplified criteria used in what is known as the “ABC test,” service performed by an individual shall be deemed to be employment unless and until it is shown that: A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and B) Such service is either outside the usual course of the business for which such service is performed or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.” Judson and Francisco-McGuire, [Where Theft is Legal](#), p 19.

<sup>78</sup> SF311 incorporated model provisions on the burden of proof, mandatory notification of payroll procedures, required better record keeping, imposed of rebuttable presumption against employers who failed to keep required records, increased the amount of liquidated damages. SF311 also would have greatly improved the anti-retaliation provisions of Chapter 91A and would have allowed workers to file their own actions to enforce the anti-retaliation provisions.

<sup>79</sup> Jason Clayworth, “[Iowa’s anti wage-theft bill hits a snag](#),” *The Des Moines Register* (March 23, 2011).

<sup>80</sup> Bernhardt et al, [Broken Laws, Unprotected Workers](#).

<sup>81</sup> Judson and Francisco-McGuire, [Where Theft is Legal: Mapping Wage Theft Laws in the 50 States](#) (June 2012). A “private attorney general” is a private attorney who is authorized to enforce civil laws on behalf of the public. This idea has been successfully used by several states to enforce labor laws, consumer protection laws, etc. especially where state agencies are too underfunded to be able to enforce the laws effectively. In the wage theft context, “private attorneys general” usually are authorized to recover damages for unpaid workers as well as collect penalties on behalf of the state and are compensated by attorney fees awarded by the court in successful cases. Iowa law does not currently permit private attorneys general.

<sup>82</sup> For more information on the DOL Misclassification Initiative, see <http://www.dol.gov/whd/workers/misclassification/>

<sup>83</sup> The Iowa Misclassification Task Force 2<sup>nd</sup> Report (December 30, 2010) summarized new information-sharing protocols as follows: “After the Misclassification Unit finalizes their investigations, they refer cases to the Division of Labor’s Contractor Registration program, the Iowa Workers’ Compensation Division, and the Iowa Department of Revenue to determine what obligations are owed under those laws and programs. Similarly, those entities share information with the Misclassification Unit. IWD also signed an agreement with the Internal Revenue Service that also allows for the transfer of information related to misclassification” (1).

<sup>84</sup> Carwash Workers’ Organizing Committee, United Steelworkers, [Cleaning up the Carwash Industry](#) (March 27, 2008)

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<sup>85</sup> Kim Bobo, *Wage Theft in America: Why Millions of Working Americans are Not Getting Paid – and What We Can Do About It* (New York: The New Press, 2011)

<sup>86</sup> Examples of U.S. DOL public education initiatives regarding wage theft include the Wage and Hour Division’s We Can Help campaign, found at <http://www.dol.gov/wecanhelp/> and the Know Your Rights video series recently produced by the U.S. DOL, on the agency’s website at <http://www.dol.gov/WHD/resources/kyrvideo.htm>.