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COMING UP SHORT:



THE STATE OF WAGE THEFT
ENFORCEMENT IN NEW YORK



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Executive Summary

New York is known for having strong worker protections, including a \$15 minimum wage, paid family leave, and protections against wage theft. Yet, despite statutory protections, wage theft persists at epidemic levels. This report illustrates the huge and growing gap between the scale of wage theft in New York and the insufficient level of enforcement by the New York State Department of Labor (DOL), the most visible and accessible resource for workers, particularly low-wage workers. Based on recent data provided by the DOL in response to a Freedom of Information Law (FOIL) request, as well as a review of 95 wage theft cases currently pending before the DOL, we assess the DOL's current capacity to recover wages stolen from workers, given severe resource constraints.

The Center for Popular Democracy has estimated that wage theft in New York State may impact 2.1 million workers, exceeding \$3 billion annually, including non-payment of minimum wages, overtime and more.[1] The Economic Policy Institute has developed a statewide analysis for just one key category of workers facing wage theft - namely, workers receiving less than the legally mandated minimum wage. For this group of workers alone, and not including overtime and other violations, employers annually steal from an estimated 300,000 New Yorkers, resulting in \$965 million in unpaid minimum wages, affecting nearly one in five low-wage workers.[2] Other researchers have also agreed that New York's wage theft crisis disproportionately impacts low-wage workers, immigrants and workers of color.[3] Stolen wages not



only hurt workers and their families--this problem also leads to reduced spending in our communities, makes it harder for responsible employers to compete,[4] and results in lost tax revenue that is necessary for maintaining basic public services and programs.[5]

Combating wage theft requires a combination of robust public and private intervention. Employers increasingly use forced arbitration clauses to prohibit workers from taking private action in court, effectively closing off one main avenue of enforcement. Although workers subjected to forced arbitration still have the option of filing a claim with local and state enforcement agencies, the DOL - the main forum for workers to pursue claims - is not adequately resourced to effectively hold employers accountable and recover the wages that workers are owed. Increasing limitations on workers' ability to enforce their rights through private litigation, combined with insufficient resources for public labor standards enforcement, have created a crisis in New York State.

[1] Center for Popular Democracy, *By a Thousand Cuts: The Complex Face of Wage Theft in New York*, November 2016, <https://populardemocracy.org/sites/default/files/WageTheft%2011162015%20Web.pdf>.

[2] David Cooper and Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year* (Washington, DC: Economic Policy Institute, May 10, 2017), <https://www.epi.org/125116>.

[3] *Ibid.*

[4] Leo Gartner, *Billions Are Lost to Wage Theft Every Year—New Jersey Must Act to Protect Workers' Paychecks and Level Playing Field for Employers* (New York: National Employment Law Project, March 2019), <https://www.nelp.org/publication/billions-are-lost-to-wage-theft-every-year-new-jersey-must-act-to-protect-workers-paychecks/>.

[5] *Payroll Fraud: Targeting Bad Actors Hurting Workers and Businesses*, before the S. Subcomm. on Employment and Workplace Safety, 113th Cong. 2 (November 12, 2013) (testimony of Catherine K. Ruckelshaus, General Counsel of the National Employment Law Project), <https://www.help.senate.gov/imo/media/doc/Ruckelshaus1.pdf>.

KEY FINDINGS

These findings are based on an analysis of data recently received from the DOL through Freedom of Information Law requests and a detailed review of 95 cases currently pending before the DOL filed with the assistance of MRNY attorneys.

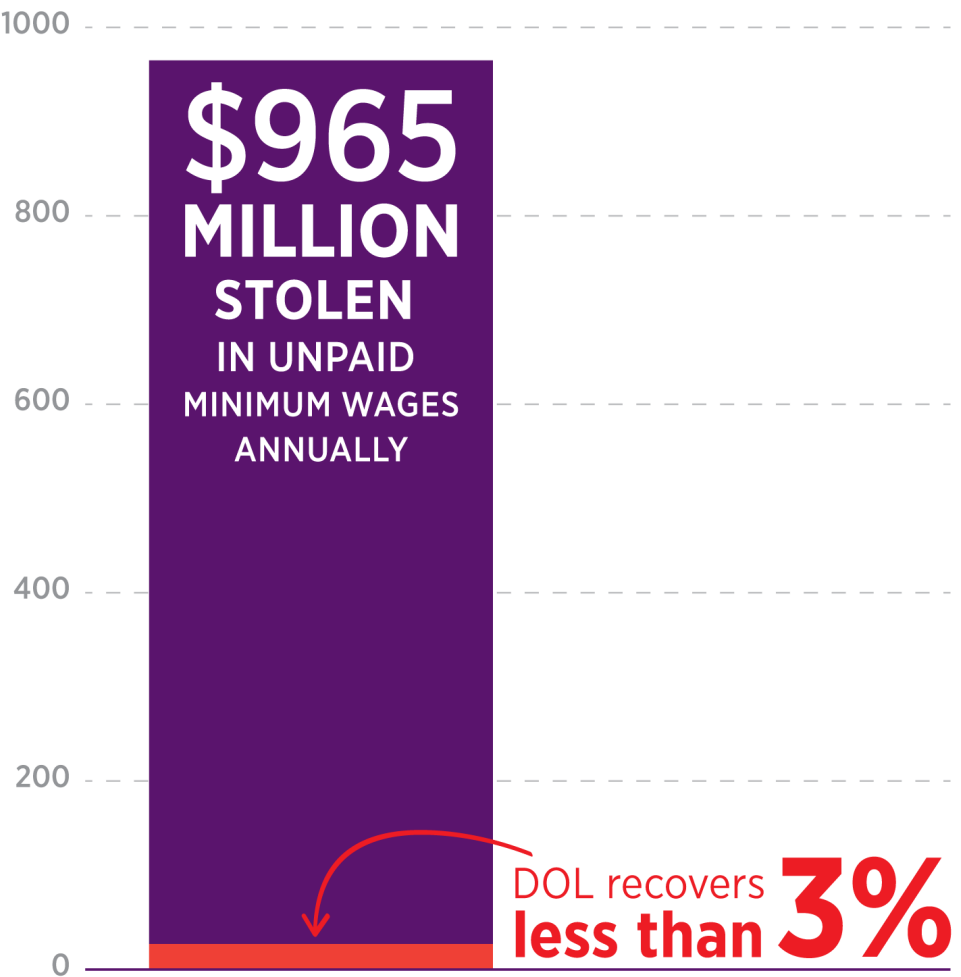
Finding #1: The DOL’s constrained capacity severely limits our ability to fight wage theft, leading to the recovery of less than 3 percent of minimum wages stolen from workers.

Due to skyrocketing corporate use of forced arbitration (which disproportionately impacts low-wage workers[6]), the remaining percentage - at least 97 percent and likely more - of unpaid wages cannot be made up by private enforcement.

The DOL has insufficient resources to manage growing caseloads. Average caseload has doubled since 2008 to approximately 142 cases per investigator. Over the same period, the backlog of open cases increased by 76 percent.

Indicative of the gap between need and capacity, the DOL no longer investigates the full statutory maximum of six years, but rather only looks back three years. As a result, workers who file claims with the DOL receive a maximum of half the back wages and statutory damages they are entitled to recover.

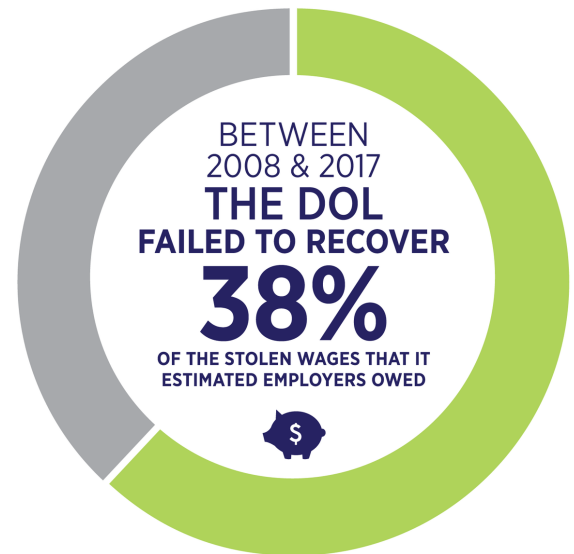
Wage Theft of New Yorkers Earning Minimum Wage



[6] Alexander J.S. Colvin, The Growing Use of Mandatory Arbitration, (Washington DC: Economic Policy Institute, April 6, 2018), <https://www.epi.org/144131>. [7] Cooper and Kroeger, Employers Steal Billions.

Finding #2: The resource-intensive work of collecting stolen wages from recalcitrant employers, once an investigation is completed, is beyond the DOL's current capacity.

Between 2008 and 2017, the DOL failed to recover fully 38 percent of the wages that it estimated employers owed in stolen wages.[7]



Finding #3: Justice delayed is justice denied.

In 17 percent of cases filed by MRNY and pending before DOL low-wage workers still have not seen a penny after four years or more of DOL investigation time. On average, workers have been waiting over two years for any resolution in their cases. Because it takes so long to resolve cases, and low-wage workers experience frequent housing instability, the DOL is unable to distribute approximately \$4.1 million[8] in recovered wages to workers each year.[9]



In short, severe resource constraints at a time of increasing need for effective enforcement services make it impossible for DOL to live up to its mandate[10] to prevent wage theft in New York State.

[7] The 38 percent statistic about the wages the DOL failed to collect after finding them due is a comparison between the amount of wages dispersed in those years to the total amount found due, which was provided in a FOIL Response (FL 17-1102). This report shows a number of ways the Department of Labor undercounts stolen wages. This statistic is only in reference to the number of stolen wages that the DOL has actually found due. The percentage of recovered wages of all stolen wages is significantly lower.

[8] DOL, FOIL Response (FL 17-1102). See footnote 63 below for methodological details.

[9] If the DOL cannot find a worker that it has collected on behalf of, it eventually sends the unclaimed funds to the New York State Comptroller.

[10] N.Y. Lab. Law § 21.

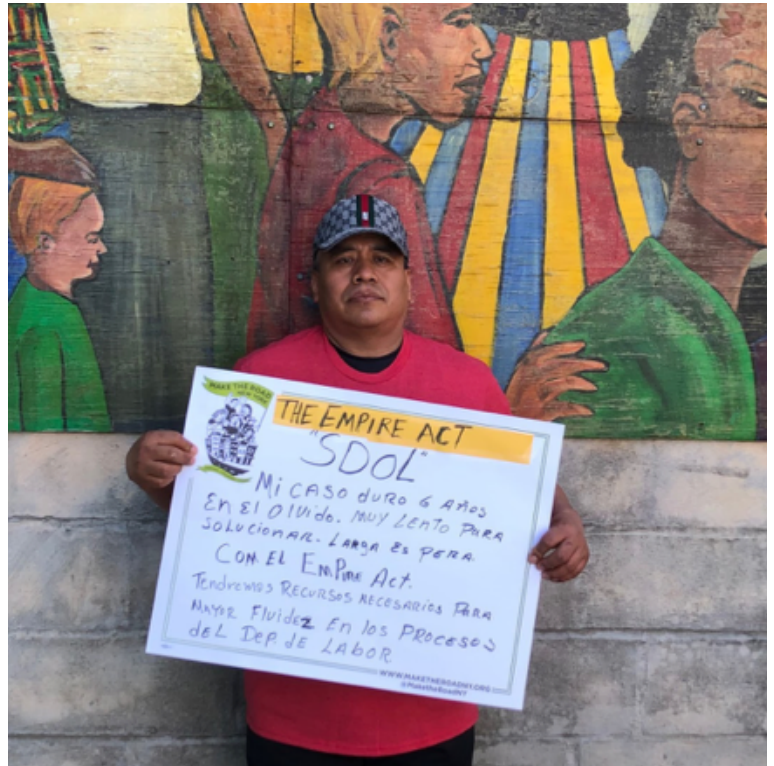
RECOMMENDATIONS

Fully Resource the DOL.

New York must dramatically increase the DOL's enforcement capacity by hiring a sufficient number of investigators to fully investigate all claims of wage theft, and conduct necessary outreach to workers who are particularly at risk of wage theft.

Pass the EmPIRE Worker Protection Act.

Employers' use of forced arbitration clauses has stripped an estimated 55 percent of nonunion workers in New York of the right to go to court.[11] Workers blocked from suing their employers are completely reliant on the DOL to enforce their rights. The EmPIRE Act extends the reach of the DOL by allowing an employee, whistleblower, or an organization selected by the employee to initiate a public enforcement action to collect penalties on behalf of the Labor Commissioner for violations of any provision of the New York Labor Law. We project that the EmPIRE Worker Protection Act would generate approximately \$17.7 million[12] in annual revenue for the DOL.



“My case went silent for over six years. I waited far too long with no resolution. With the EmPIRE Act, we will have the necessary resources to improve the processes of the Department of Labor.”

*Etiquio Hernandez,
MRNY member for over 18 years.*

[11] Colvin, Mandatory Arbitration.

[12] For methodological information regarding this project, see page 22.

METHODOLOGY

This report relies on two major categories of sources:

- 1. Documents obtained from the NYS Department of Labor through two FOIL requests sent to the DOL in 2013 and 2017, the responses to which included over 350 pages.** The FOIL's requested Labor Standards Cases Opened/Closed Report yearly totals, summary annual reports of reasons for cases closed, unclaimed funds summaries, budget documents, staffing information, and more. Using data from DOL, this report evaluates the DOL's current capacity to recover stolen wages using the latest estimates of the wage theft experienced by minimum wage workers in New York from the Economic Policy Institute. While the Economic Policy Institute's methods are rigorous, they do not attempt to calculate the full amount of wage theft. Consequently, our estimate that the DOL collects less than three percent of wages stolen in New York State should be viewed as a conservative ceiling. The actual percentage is likely substantially lower.
- 2. A detailed review of 95 cases currently pending before the NYS Department of Labor.** The authors and researchers of this report reviewed this sample set in order to address a major gap in the data available from the DOL via FOIL, namely to address the lack of data about the length of time that cases stay open at the DOL. The sample of 95 cases represents all cases pending at the time of this writing, where Make the Road New York attorneys or legal team members supported one or more workers in filing an administrative complaint with the DOL related to unpaid or underpaid wages. The authors compared the date the complaint was filed with the DOL to the report date of 3/29/19 in order to calculate the average length of time that the cases have been open. Report authors excluded cases where the DOL said they had closed the case, the worker has started receiving payments, and/or the Make the Road New York legal staff aided in the filing of complaint but is no longer actively involved in the case and therefore has limited information about the current status of the case.

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INTRODUCTION: WAGE THEFT IN NY

New York is facing an epidemic of wage theft. An estimated 300,000 minimum wage New Yorkers have wages stolen from them each year, resulting in a total loss of \$965 million in lost wages.[13]

The term "wage theft" refers to a variety of violations that occur when workers are deprived of the wages their employers are legally obliged to pay them.[14] The denial of overtime pay, paying below the minimum wage, tip stealing, and misclassifying employees as independent contractors are all common forms of wage theft. Despite an overlapping tapestry of federal, state, and local labor laws, and a variety of enforcement mechanisms, wage theft remains a widespread problem.[15]

The wage theft crisis is particularly harmful to low-wage and immigrant workers, who are disproportionately people of color.[16] According to a study conducted by the National Employment Law Project, in any given week, approximately 68 percent of low-wage workers in the sample encountered at least one pay-related violation.[17] The majority of low-wage workers are primary breadwinners for their families. A national study found that low-wage workers on average contribute more than half of the family budget and live with an average of two additional family members.[18] A missing, incomplete, or late paycheck has dire consequence for workers living paycheck to paycheck. In many cases,

this prevents them from putting food on the table or providing their families with other basic necessities. This problem is heightened for undocumented immigrants. In fact, in New York, undocumented workers are more than three times as likely to be at risk for wage theft than documented workers.[19]

Wage theft causes both direct harm to workers and their families, as well as indirect harm to these workers' communities and society at large. Wage theft is often associated with employers paying workers "off-the-books" - without contributing to worker's compensation and unemployment insurance or transmitting payroll taxes.[20] This means that the government loses out on much-needed tax revenue and vital safety net programs are underfunded. Lost tax revenue inevitably leads to reduced spending in our communities necessary for maintaining basic public services and programs.

Finally, persistent wage and tax violations by some employers create an uneven playing field in which law-abiding employers are unable to compete fairly. [21] When labor law violations go unenforced, unscrupulous businesses have an incentive to adopt wage theft as a business model. Consequently, ethical employers struggle to keep pace, as they must shoulder a higher cost of doing business for simply complying with the law.

[13] Cooper and Kroeger, *Employers Steal Billions*.

[14] Brady Meixell and Ross Eisenbrey, *An Epidemic of Wage Theft Is Costing Workers Hundreds of Millions of Dollars a Year* (Washington, DC: Economic Policy Institute, September 11, 2014), <https://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>.

[15] Cooper and Kroeger, *Employers Steal Billions*.

[16] *Ibid*.

[17] Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violation of Employment and Labor Law in America's Cities* (New York: National Employment Law Project, 2009), <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

[18] Economic Policy Institute, "60 Million People Depend on the Income of Low-Wage Workers in America," December 16, 2014, <https://www.epi.org/press/60-million-people-depend-on-the-incomes-of-low-wage-workers-in-america-increasing-the-federal-minimum-wage-would-benefit-on-average-more-than-135000-people-in-each-congressional-district/>.

[19] *The Social and Economic Effects of Wage Violations: Estimates for California and New York*, prepared by Eastern Research Group, Inc. for the Chief Evaluation Office, U.S. Department of Labor (Washington: December 2014), 39, <https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>.

[20] Elizabeth J. Kennedy, "Wage Theft as Public Larceny," *Brooklyn Law Review* 81, no. 2 (2016): 530, <https://brooklynworks.brooklaw.edu/blr/vol81/iss2/2/>.

[21] Gartner, *Billions Are Lost to Wage Theft*.

CARLOS' STORY



Carlos Jiménez,
Make the Road Member

In 2013, Carlos worked in construction for a local business in Queens, NY. For approximately five months, he worked 80 hours per week at an agreed rate of \$90 per day, but was ultimately paid only \$700 total - a fraction of what he was owed. Carlos went to his employer directly to ask for the money he was owed, but his employer refused. Carlos then decided to file a claim with the DOL in March 2014.

Out \$10,375.94* and with mounting bills, Carlos was frustrated when the DOL did not immediately begin investigating his case. Carlos approached an attorney at Make the Road NY to help. Only after Carlos was represented by an attorney, and they re-submitted the claim, did the DOL start investigating his case in July 2014. Over a year later, in July 2015, Carlos found out that the DOL had determined he was owed wages but that they were unable to reach a settlement with Carlos's employer. It then took another two years before the DOL issued a final warning to comply to the employer and another year to finally issue a "final determination to comply" and pay Carlos what he was owed.

Carlos's employer appealed the DOL's final determination but then did not appear at the appeals hearing in January 2019. Five years after filing his initial claim, Carlos is still waiting for the wages he is owed.

“It was discouraging to finally have a hearing before a judge, after five years of waiting, and the employer did not even bother to show up. This case has taken a lot of time-every stage has taken months, years! And it has taken a lot of time from me, to prepare for interviews with the DOL, to review the evidence against my employers, to meet with my attorneys. This is time I could have spent working a job or with my family. I don't have confidence in the DOL anymore. It took over five years to determine that I have a claim and that it is just, and I still haven't seen any of the wages I was owed.”
- Carlos

* This figure is based off of the DOL's calculations.

PUBLIC ENFORCEMENT LANDSCAPE

The New York Labor Law gives the statutory authority to the Commissioner to enforce all provisions of the labor law.[22] The DOL's enforcement arm, the Division of Labor Standards, is delegated enforcement authority and equipped with a wide array of tools to identify employers in violation of the New York Labor Law and recover both wages and statutory damages[23] on the workers' behalf. The DOL should serve as a visible and accessible resource for aggrieved workers, particularly low-wage workers, who face high barriers to entry for filing claims in court, or before other enforcement authorities such as the New York Attorney General (NYSAG), or federal agencies like the U.S. Department of Labor (USDOL).[24] A low-wage worker can file a civil lawsuit in court but may have difficulty accessing private attorneys[25] who may not be located in the communities where these workers live and work or may not speak the worker's language.[26] Workers may be unsure how to find an attorney or may be afraid to contact employment attorneys on their own.[27] Additionally, low-wage workers are often fighting for relatively small amounts of money, such that the dollar amount of the claim makes it prohibitive for an attorney to even accept the case unless it can be brought on a collective basis.[28] Moreover, an upsurge in the use of forced arbitration clauses means that many aggrieved workers are unable to pursue claims in court. A recent study suggests that more than 55 percent of employees are now subject to mandatory arbitration clauses.[29] Given the enormous barriers to private enforcement for many workers, especially the most vulnerable workers, public enforcement is key.

What is forced arbitration?

Increasingly, employers are using forced arbitration clauses to deny workers the right to take their employers to court when they break the law. In fact, recent studies suggest that more than 55 percent of employees are now subject to mandatory arbitration clauses.[30] Workers are often unaware that they are signing away their rights, as these clauses are often buried deep within routine pre-employment paperwork. Many times, employers will require employees to sign these agreements as a condition of employment. Once a worker has signed a forced arbitration clause, their only option to hold their employers accountable if they break the law is through private arbitration or through the DOL, which is under-resourced and over capacity.[31] In the private arbitration system, the deck is stacked against workers. Forced arbitration allows corporate bad actors off the hook for breaking the law.

[22] N.Y. Lab. Law § 21

[23] Statutory damages (also referred to under the New York Labor Law as liquidated damages) refers to damages that the New York Labor Law awards to a worker in addition to the wages they are owed, the intent being to punish the employer for stealing wages from their workers and to deter the employer from committing future violations. The amount awarded is equal to either an established dollar amount or a percentage of wages owed.

[24] In addition to the DOL, the NYSAG, and the USDOL, district attorneys throughout the state have jurisdiction over at least some aspects of wage enforcement in New York. However, unlike the Attorney General, district attorneys have jurisdiction only to enforce criminal laws forbidding wage theft; the majority of the wage theft cases in New York State implicate civil laws and penalties that award an aggrieved worker in amounts that far exceed the amounts awarded under any applicable criminal penalties.

[25] Sara Sternberg Greene, "Race, Class, and Access to Civil Justice," Iowa Law Review 101, no. 6 (2016): 1263-1321, <https://ilr.law.uiowa.edu/print/volume-101-issue-6/race-class-and-access-to-civil-justice/>; The Justice Gap: Measuring the Unmet Civil Legal Needs of Low-income Americans, prepared by NORC at the University of Chicago for Legal Services Corporation (Washington, DC: June 2017), <https://www.lsc.gov/sites/default/files/images/TheJusticeGap-FullReport.pdf>.

[26] New York Legal Assistance Group, "When Language is a Barrier to Justice," December 15, 2014, <https://www.nylag.org/news/2014/12/when-language-is-a-barrier-to-justice>

[27] Legal Services Corporation, Justice Gap.

Low-wage workers have similarly limited access to other enforcement agencies in the state. The USDOL can only enforce the federal Fair Labor Standards Act. Unlike New York's labor laws, which cover all private employers, federal labor law only covers employees who work for enterprises with sales of at least \$500,000 a year.[32] Consequently, workers in small businesses are not covered. The most recent data from the USDOL in 2014 shows that the federal agency had only 29,483 total compliance actions nationwide,[33] roughly 600 actions per state, a relatively small number compared to the approximately 6,000 cases filed with the New York State DOL that same year.[34] Furthermore, while the NYSAG and the DOL have overlapping jurisdiction to enforce and deter wage theft in New York, the NYSAG's Labor Bureau is leanly staffed and generally focuses on wage and hour cases that would have a broad impact or rise to the level of criminal violations. This is evidenced by the fact that the NYSAG assisted approximately 3,200 workers[35] per year from a period of August 2011 through August 2017.[36] In contrast, the DOL paid 25,900 workers per year during that time span.[37] The DOL is thus often the only forum for low-wage workers to seek recovery of the wages they are owed.

THE WAGE THEFT PREVENTION ACT

In response to an epidemic of wage theft and worker exploitation, workers, community organizations and advocates fought for and ultimately won passage of a ground-breaking wage theft prevention law called the Wage Theft Prevention Act (WTPA). Thanks to that fight, New York Labor Law has some of the strongest legal protections against wage theft in the nation. The passage of the WTPA in 2010[38] and key



amendments in 2014 have been hailed as necessary steps towards creating a robust enforcement environment that protects workers and brings employers into compliance. The WTPA is designed to more effectively facilitate wage theft prevention and enforcement in the courts as well as government enforcement agencies, specifically the DOL.

[28] Nicole Hallett, "The Problem of Wage Theft," Yale Law and Policy Review 37, no. 1 (2018): 105, <https://ylpr.yale.edu/problem-wage-theft> ("Paying a private attorney out-of-pocket is prohibitively expensive for all but the highest paid workers. Filing fees and court costs alone might dwarf the amount that the worker might recover in damages at the end of the case, if he or she recovers anything at all."); Andrew Elmore, "Collaborative Enforcement," Northeastern University Law Review 10, no. 1 (2018): 82-83 ("Private, for-profit attorneys have little incentive to represent plaintiffs where labor standards are the worst because these employers are often small and judgment proof.").

[29] Colvin, Growing Use of Mandatory Arbitration.

[30] Colvin, Growing Use of Mandatory Arbitration.

[31] Some courts will not enforce an arbitration agreement if they find it both procedurally and substantively "unconscionable," i.e. the agreement is so one-side or oppressive both in terms of the way it was signed as well as what it requires, that it would be unfair to enforce the agreement as a matter of policy. However, courts have enforced arbitration agreements even where the agreement was not in the worker's primary language, ETC

[32] Irene Lurie, "Enforcement of State Minimum Wage and Overtime Laws- Resources, Procedures, and Outcome," Employee Rights and Employment Policy Journal 15, no. 2 (2011): 2; see also Janice Fine and Jennifer Gordon, "Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations," Politics & Society 38, no. 4 (2010): 555, <https://journals.sagepub.com/doi/abs/10.1177/0032329210381240>.

Even before the WTPA went into effect, the New York Labor Law provided a relatively generous six-year statute of limitations period to bring a claim, as opposed to the two-year statute of limitations under federal law.[39] The six-year statute of limitations means that workers are allowed to collect up to six years of unpaid wages. This allows courts or the DOL to hold employers accountable for longstanding practices that cheat workers. The 2011 enactment of the WTPA broadened the DOL's scope of enforcement in three key areas: first, it increased civil and criminal penalties for nonpayment and underpayment of wages from 25 percent to 100 percent liquidated damages of wages owed.[40] Second, it closed loopholes in the law's definition of "retaliation" and strengthened protections for workers who speak up against wage theft. In addition to heightened penalties, the DOL gained the ability to reinstate workers fired in retaliation for claiming unpaid wages. Third, it provided the DOL with specific tools to facilitate collection of wages after it has reached a final determination of what is owed.

In 2014, New York's legislature amended the WTPA to further expand the range of enforcement mechanisms available to the DOL, including increased penalties for retaliation and requiring the DOL to notify affected employees when the DOL's investigation does not cover the entire six-year lookback period.[41] In 2015, this law was amended to remove this notification requirement.[42]



[33] FY 2016 Congressional Budget Justification, Wage and Hour Division, U.S. Department of Labor, <https://www.dol.gov/sites/default/files/documents/general/budget/2016/CBJ-2016-V2-09.pdf>, 24.

[34] DOL, FOIL Response (FL 17-1102).

[35] This number is derived by averaging the total number of workers served between 2011-2017, as stated in the report Working for Justice, Labor Bureau, Office of the New York State Attorney General (August 2017), 3.

[36] NYSAG statistics: Working for Justice, Labor Bureau, Office of the New York State Attorney General (August 2017), https://ag.ny.gov/sites/default/files/labor_report_2017.pdf

[37] DOL, FOIL Response (FL 17-1102).

[38] "Wage Theft Prevention Act Signed Into Law," New York State Department of Labor, December 14, 2010, <https://www.labor.ny.gov/pressreleases/2010/december-14-2010.shtm>.

[39] The U.S. Department of Labor will look back three years in cases where there is proof that the employer's conduct was willful.

[40] Some states—Arizona, Massachusetts, Idaho, New Mexico, Ohio—provide for a higher level of liquidated damages (200 percent or "triple damages") but only allow for a statute of limitations in wage theft cases of two to three years, whereas New York's six-year statute of limitations increases the potential recovery of workers who suffered wage theft for a number of years before recovery.

[41] 2014 N.Y. Laws 537 (amending, inter alia, N.Y. Lab. Law §§ 198, 215, 218, 219, 663, 861-g.).

[42] 2015 N.Y. Laws 2, §§ 3-4 (amending N.Y. Lab. Law §§ 198, 663).

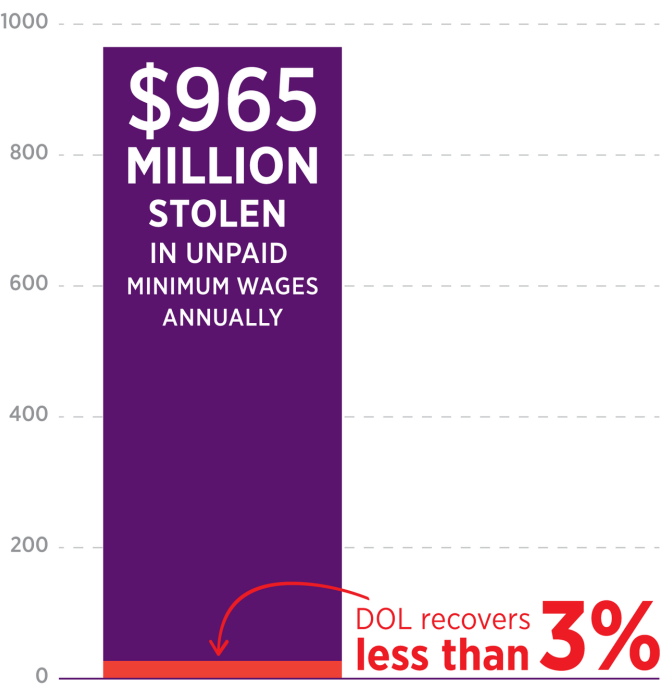
FINDINGS

Despite having some of the strongest laws protecting against wage theft in the country, wage theft remains a significant problem for New Yorkers. In order to better understand the current wage theft crisis and how the DOL has responded as the main agency responsible for enforcing New York’s labor law, Make the Road New York analyzed data from 2013 and 2017 Freedom of Information Law (FOIL) requests[43] as well as data from 95 currently pending wage theft cases that workers filed with the DOL. Our findings highlight the vast disparity between the department’s current and potential capacity to fight wage theft in the state.

Finding #1: The DOL’s constrained capacity severely limits our ability to fight wage theft, leading to the recovery of less than 3 percent of minimum wages stolen from workers.

The Economic Policy Institute estimates that employers steal \$965 million,[44] counting non-payment of minimum wage only, from New Yorkers each year.[45] Yet during the same time period, the DOL collected an average of only \$27 million a year - including underpayment of minimum wage, nonpayment of overtime, and other damages as well. [46] That means that the DOL recovered less than 3 percent of the amount stolen in the form of minimum wage nonpayment - assuming that the DOL’s entire collection was recovery of unpaid minimum wages. This analysis does not even attempt to count additional wage theft, like nonpayment of overtime, which likely exceeds the scale of wage theft in the form of minimum wage under-payment. Due to skyrocketing corporate use of forced arbitration (which disproportionately impacts low-wage workers[47]), the remaining percentage - at least 97 percent and likely more - of unpaid wages cannot be made up by private enforcement.

Wage Theft of New Yorkers Earning Minimum Wage



[43] DOL, FOIL Response (FL 17-1102). The request was submitted on December 19, 2017. It requested Labor Standards Cases Opened/Closed Report yearly totals, summary annual reports of reasons for cases closed, unclaimed funds summaries, budget documents, staffing information, and more. This FOIL was based on prior FOIL’s Make the Road New York has submitted and experience representing low-wage workers. While we did receive significant information, we did not receive records that were responsive to many questions about the wage theft enforcement process.

[44] The Economic Policy Institute’s annual estimate was calculated using data from 2013-2015.

[45] Cooper and Kroeger, Employers Steal Billions.

[46] DOL, FOIL Response (FL 17-1102). The request was submitted on December 19, 2017. It requested Labor Standards Cases Opened/Closed Report yearly totals, summary annual reports of reasons for cases closed, unclaimed funds summaries, budget documents, staffing information, and more. This FOIL was based on prior FOIL’s Make the Road New York has submitted and experience representing low-wage workers.

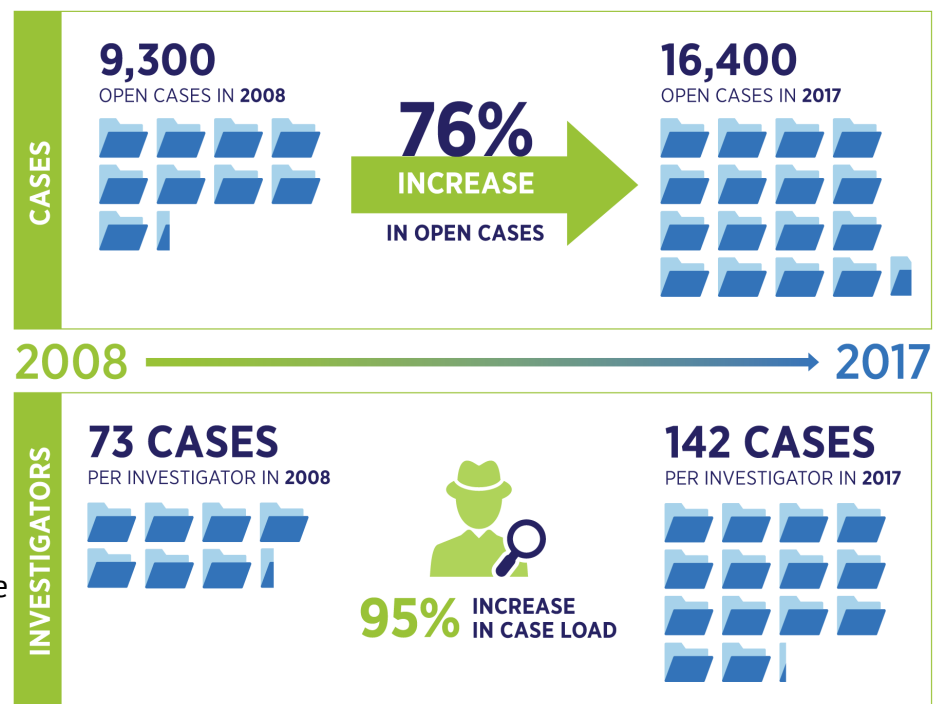
[47] Alexander J.S. Colvin, The Growing Use of Mandatory Arbitration, (Washington DC: Economic Policy Institute, April 6, 2018), <https://www.epi.org/144131>.

The DOL has insufficient resources to manage growing caseloads. DOL investigators' caseloads have grown extensively over the past decade, becoming too large to effectively manage. In 2008, each investigator was responsible for approximately 73 cases at a time, whereas in 2017 there were approximately 142 cases per investigator - a two-fold caseload increase.[48] No improvements in efficiency nor technology has enabled investigators to handle this increase. On the contrary, the backlog of cases has skyrocketed. The DOL had a backlog of nearly 16,400 open cases at the end of 2017 -- an increase of 76 percent over the 9,300 open cases at the end of 2008.[49]

The current investigatory staffing levels of the DOL actually represent a major decrease from decades ago. In fact, the DOL has fewer than half the investigators than it had several decades ago.[50] In 1966, the DOL had over 300 labor inspectors.[51] As of the end of 2017, the DOL had 115 investigative officers handling 16,400 open cases.[52]

In short, the DOL's Labor Standards Division has received the same percentage of funding and manpower to investigate and enforce against wage theft, even as the workforce and the number of wage theft cases being reported in New York has grown.

Backlog Stops Wage Theft Enforcement at NYS DOL



Indicative of the gap between need and capacity, around 2012, the DOL made sweeping policy changes that intentionally limited the Labor Standard Division's scope of enforcement authorized under the New York Labor Law.[53] Perhaps the most significant policy change is that, except in the most "egregious cases,"[54] the DOL no longer investigates the full statutory maximum of six years, but rather only looks back three years.[55] As a result, workers who file claims with the DOL receive a maximum of half the back wages and statutory damages they are entitled to recover. Despite the original language of the WTPA requiring that all impacted workers are to be notified when the DOL's investigation does not cover

[48] Ibid.

[49] DOL, FOIL Response (FL 17-1102).

[50] Fine and Gordon, "Strengthening Labor Standards," 557.

[51] Ibid.

[52] DOL, FOIL Response (FL 17-1102).

[53] DOL, FOIL Response (FL 13-0534).

[54] In an internal memorandum dated May 1, 2013 by then Deputy Commissioner for Worker Protection Vilda Mayuga, circulated to DOL staff, egregious cases "may include" cases where an employer is a repeat offender or faces multiple violations or has attempted to conceal or falsify records. The memorandum was obtained as a part of the DOL's response to MRNY's 2013 FOIL request (FL 13-0534). For more information about this request, see Appendix.

[55] "Governor Cuomo Announces More Wage Theft Cases Resolved in 2013 Than Ever Before," DOL, February 11, 2014, <https://www.labor.ny.gov/pressreleases/2014/february-11-2014.shtm>.

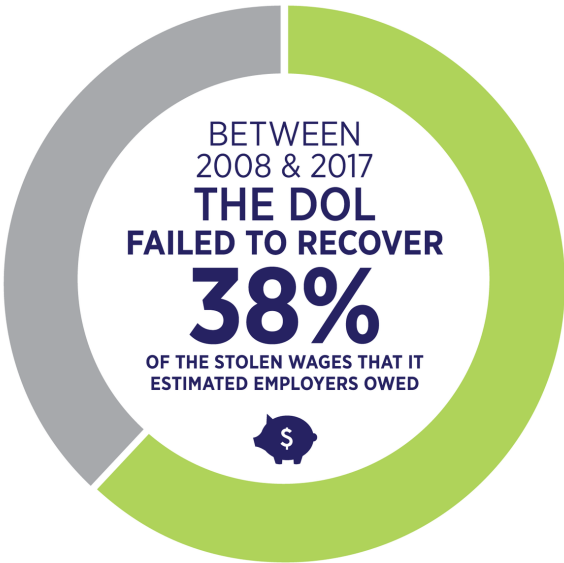
the entire six-year lookback period, the 2015 amendment removing this provision means that workers are not currently required to be notified when the lookback period is shortened.[56]

The cumulative result of this policy change is that the DOL is systematically undercounting the wages and damages that a worker should receive. For example, a worker who claims six years’ worth of unpaid wages will, in almost all cases, be unable to recover their wages from the first half of that six-year period, because of the DOL’s policy of “looking back” only three years as opposed to six years under the statute. The DOL will often refuse to accept a claim filed more than three years after the worker has stopped working for their employer.[57] This also notably creates an inequity between what workers who must go to the DOL might recover, and what workers with the privilege of accessing the NYS Office of the Attorney General or private counsel might recover.

The DOL’s current enforcement policies evidence an acute lack of capacity, resources and inability to even attempt to deter and remedy wage theft in New York State.

Finding #2: The resource-intensive work of collecting stolen wages from recalcitrant employers, once an investigation is completed, is beyond the DOL’s current capacity.

Many employers refuse to submit payment when the DOL issues a citation. Recovering wages may require asset research, negotiating and monitoring payment plans, or litigation to force joint employers or parent companies to pay up. DOL appears to lack the resources for these collection activities. Between 2008 and 2017, the DOL failed to recover fully 38 percent of the wages that it estimated employers owed in stolen wages.[58]



Even when the DOL has conducted a full investigation and made a final determination in favor of an aggrieved employee, the DOL is only able to recover a portion of wages they determine to be due. As stated above, even these determinations, calculated by the DOL, are likely to be merely half of what the worker might be entitled to recover under the Labor Law Statute of Limitations, due to the DOL seeking only three of the six eligible years. Even though the DOL is halving the amount it attempts to collect, as compared to the full amount due under NY Labor Law’s State of Limitations, between 2008 and 2017, the DOL was only able to recover 62 percent of that total.

[56] 2015 N.Y. Laws 2, §§ 3-4 (amending N.Y. Lab. Law §§ 198, 663).
[57] The DOL has said that it may at its discretion look back the full six years for egregious cases, which may include cases where the employer has prior violations, multiple violations, has attempted to falsify records, or has given verbal or written instruction to staff leading to violations. It is otherwise unclear what standard or process the DOL uses to determine whether a case falls under this exception. Memorandum from Vilda Mayuga, Deputy Commissioner for Worker Protection, to DOL Staff, “Worker Protection - Labor Standards Policy,” May 1, 2013 (available upon request).
[58] The 38 percent statistic about the wages the DOL failed to collect after finding them due is a comparison between the amount of wages dispersed in those years to the total amount found due, which was provided in a FOIL Response (FL 17-1102). This report shows a number of ways the Department of Labor undercounts stolen wages. This statistic is only in reference to the number of stolen wages that the DOL has actually found due. The percentage of recovered wages of all stolen wages is significantly lower.

Finding #3: Justice delayed is justice denied.

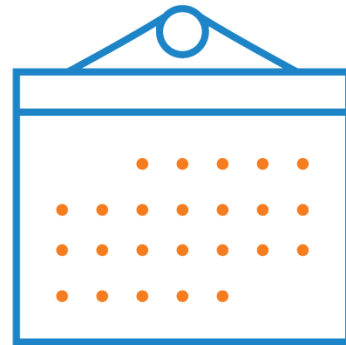
This study analyzed a sample of 95 wage theft cases currently pending before the DOL. In 17 percent of cases, low-wage workers still have not seen a penny after four years or more of DOL investigation time. On average, workers have been waiting over two years for any resolution in their cases. This report also details several cases where workers have received nothing - or only nominal payment - after five years or more. For workers who do not have access to legal representation, the wait time is likely to be even longer. Because it takes so long to resolve cases, and low-wage workers experience frequent housing instability, the DOL often recovers at least some money only to find that it cannot locate the worker. As a result, the DOL is unable to distribute approximately \$4.1 million[59] in recovered wages to workers each year.[60]

From 2011 through 2017, the DOL collected an estimated \$28.5 million [61] that it then failed to ever return to the initial claimant.[62] That is on average \$4.1 million in unclaimed funds every year, a full 16 percent of the wages recovered.[63]

One reason for the DOL's struggle to recover wages may be that there is a significant time lag between when a claim is filed, when the DOL arrives at a final determination, and when it attempts to collect. Long delays throughout the investigation process provide employers with ample opportunity to move their assets elsewhere, making enforcement of a wage determination incredibly difficult if not impossible.



Analysis of sample set of 95 open cases before the DOL shows that **17% of workers have been waiting over 4 years** to recover **any** unpaid wages.



While DOL has not provided data sufficient to determine the amount of time it takes to investigate a claim or to enforce a post-investigation determination, a review of the 95 currently pending sample cases analyzed suggests that workers are currently waiting for over two years on average before they start to receive some portion of the wages owed, if they receive anything at all.[64]

[59] DOL, FOIL Response (FL 17-1102). See Finding #3 below for methodological details.

[60] If the DOL cannot find a worker that it has collected on behalf of, it eventually sends the unclaimed funds to the New York State Comptroller.

[61] DOL, FOIL Response (FL 17-1102).

[62] It is unclear what steps the DOL takes to find the worker and at what point the DOL would mark the wages as unclaimed.

[63] The DOL sends the Comptroller's office unclaimed funds once a year, which has recently occurred in March. We estimated the amount of unclaimed funds for each year by calculating the average disbursement for January through May, not including March, and subtracted that from the March disbursement (both unclaimed funds sent to the Comptroller's office and payments to workers are counted as disbursements). This estimation method was suggested by the DOL's General Counsel, Pico Ben-Amotz, during negotiations around FOIL number FL 17-1102 on January 16, 2019.

[64] During negotiations around FOIL number FL 17-1102, the authors learned that the DOL does not have a standard report that can be requested through the Freedom of Information Law that tracks how long cases have been open.

For workers seeking justice, the lengthy wait for the DOL to investigate a claim and recover stolen wages is made more challenging by the inability of the overwhelmed DOL investigators to keep claimants apprised of the status of their claims. Consequently, many workers only learn of a settlement when they receive a settlement check in the mail. This is particularly problematic for low-wage workers and workers of color. Low-income and people of color are on average more transient compared to other populations.[65] A low-wage worker who waits over a year to receive a determination of their claim may have moved since the initial filing. [66] The DOL's current process is to stop issuing letters to a worker, effectively ending the investigation, after one failed attempt to contact the worker by mail.[67] In other words, it is the worker's burden to notify the DOL every time they move, and if they fail to do so, they may never receive the wages they are owed even in the most egregious cases.

[65] Robin Phinney, "Exploring Residential Mobility Among Low-Income Families," *Social Service Review* 87, no. 4 (2013): 780-815; Claudia Coulton et al., "Residential Mobility and Neighborhood Change: Real Neighborhoods Under the Microscope," *Cityscape* 14, no. 3 (2012): 55-90, https://www.huduser.gov/portal/periodicals/cityscpe/vol14num3/Cityscape_Nov2012_res_mobility_neigh.pdf; Peter Mateyka and Matthew Marlay, "The Duration and Tenure of Residence: 1996 to 2009" (working paper, Housing and Household Economics Statistics Division, U.S. Census Bureau, Washington, DC, August 2010), <https://www.census.gov/content/dam/Census/library/working-papers/2010/demo/mateyka-01.pdf>; Peter Mateyka, "Who's Dissatisfied? Race and Ethnic Differences in Residential Dissatisfaction and Migration: 2010 - 2011" (SEHSD Working Paper 2015-2, Social Economic and Housing Statistics Division, U.S. Census Bureau, Washington, DC, March 19, 2015), <https://www.census.gov/content/dam/Census/library/working-papers/2015/demo/SEHSD-WP2015-02.pdf>;

[66] One report found that the USDOL "ends up returning, on average, \$16 million annually to the Treasury Department because it's unable to locate the workers who are owed the back pay. Typically that's because the claim has taken so long to work its way through the system that the employee has moved and is unreachable. Low-wage workers tend to be more transient than higher-paid workers, and some are undocumented, which makes them reluctant to keep the government fully abreast of their moves." Marianne Levine, "Behind the Minimum Wage Fight, a Sweeping Failure to Enforce the Law," *Politico*, February 18, 2018, <https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644>

[67] Letter from advocates to James Rogers, Deputy Commissioner, , December 21, 2017 (available upon request).

RAUL'S STORY

Raul Vasquez had been a member of Make the Road NY for over ten years, when he first approached MRNY in hopes of receiving legal services after being a victim of wage theft. In September of 2010, while working at the Associated Supermarket in Washington Heights, Raul and six other workers filed wage theft claims against their employer. A little more than a month later, Raul and his six coworkers were fired. Two weeks later, he was allowed to return to work and continued there until early August of 2013. While Raul was able to return to work, he did not receive any of the wages he was owed nor did he see any progress in his wage theft case. Nearly three years later, on August 8th, 2013, Raul received a call from the his boss who told him he, and all the other workers who had made complaints to the DOL, were fired. Raul then went back to the DOL where they took down his information. After an investigation, the DOL made a determination in Raul's favor. His employer then appealed the complaint to the Industrial Board of Appeals and Raul's amount was reduced to \$63,000 in owed wages and damages. It wasn't until three years later, six years since Raul first began pursuing this claim, that the judgement was filed in court. However, the judgement submitted to the courts in



Raul Vasquez, Make the Road Member

2016 did not include the full amount of interest owed. The DOL then proceeded to file a new order determining a final total of \$97,000 owed to Raul in 2017. In 2018, collection agencies were unable to locate any assets on the Associated Supermarket. Despite taking all the right steps to report his experience of wage theft, fight for a determination with the DOL and hold his employer accountable, it's 7 years later and Raul Vazquez has not seen a dime.

“

**...it's 7 years later and
Raul Vazquez has not seen a dime.**

”

RECOMMENDATIONS

New York has some of the strongest labor laws on the books of any state. In recent years, low-wage and workers of color have been on the front lines organizing and winning powerful victories on a range of workplace rights including the fight for \$15, wage theft prevention, and protections against unpredictable work schedules. Yet, in order to make these wins real for working New Yorkers, we need effective enforcement of the state's labor law.

Effective enforcement is a combination of both public and private systems of enforcement. In the public realm, the Department of Labor struggles to ensure compliance and hold bad actors accountable due to limited resources and capacity. In the private sphere, dramatic increases in the corporate use of forced arbitration clauses prevent workers from holding bad acting employers accountable. Furthermore, workers (especially women^[68] and undocumented immigrant^[69] workers) often do not pursue claims due to intimidation, harassment or fear of retaliation.^[70]



Fully Resource the Department of Labor

Working New Yorkers deserve the full protection of New York's labor law. But the law only works when there is strong enforcement and a culture of compliance. As this report demonstrates, the New York State Department of Labor currently fails to ensure full compliance with the law, pursue and remedy wage theft claims in a timely manner, and ultimately get wages that are owed back into the hands of workers. Consequently, we recommend that the State of New York fully resource the DOL in order to increase its enforcement efficacy and capacity. This means the DOL must hire a sufficient number of investigators to fully investigate all claims of wage theft, proactively work to create a culture of compliance and conduct necessary outreach to workers. Furthermore, the DOL must use all the tools at its disposal to zealously pursue wage theft violations and effectively remedy these claims. Without a credible threat of enforcement, bad actors are empowered to break the law and violate the rights of workers.

[68] Charlotte S. Alexander and Arthi Prasad, "Bottom-

Up Workplace Law Enforcement: An Empirical Analysis," *Indiana Law Journal* 89 (2014): 1113-18, <http://ilj.law.indiana.edu/articles/8-Alexander-Prasad.pdf>.

[69] Shannon Gleeson, "Labor Rights for All? The Role of Undocumented Immigrant Status for Worker Claims Making," *Law & Social Inquiry* 35, no. 3 (2010): 561-602, <https://digitalcommons.ilr.cornell.edu/articles/1234/>.

[70] Bernhardt et al., *Broken Laws*; Nicole Taykhan, "Defying Silence: Immigrant Women Workers, Wage Theft, and Anti-Retaliation Policy in the States," *Columbia Journal of Gender and Law* 32, no. 1 (2016): 96-144, <https://cjl.cdrs.columbia.edu/article/defying-silence-immigrant-women-workers-wage-theft-and-anti-retaliation-policy-in-the-states/>.

A significant increase in the number of investigators would allow the Labor Standards Division to simultaneously tackle its current backlog and ensure that investigations span the full six-year lookback period. It may also free up capacity to fully deploy the tools granted to it under the WTPA to facilitate collection of unpaid wages once the DOL has issued its final determination. These tools include ordering employers who have not satisfied a final order to make an account of their assets or to deposit a bond in order to secure payment of any outstanding wages still owed.[71] The DOL also has the power to impose an additional 15 percent penalty for outstanding monies owed.[72] It may also allow the Labor Standards Division to take actions that deter future wage theft, such as publicly posting information of the wage violation at the employer's worksite when the violation is willful,[73] or electing to investigate an entire worksite as opposed to just claims specific to the individual complainant worker. While the DOL claims to do workplace-wide investigation in certain circumstances,[74] we recommend that the DOL conduct workplace-wide investigations in more cases, especially those arising in high-violation industries and workplaces.

Fully resourcing the DOL would also allow it to put in place policies to effectively engage with claimants and their representatives. Keeping claimants apprised of developments in their cases and fostering meaningful worker participation in the investigation, mediation, and enforcement of their claims is one way the DOL can ensure that it is accurately assessing the wages owed and ultimately getting those wages back to the worker. This is especially critical when an employer is willing to negotiate a settlement with the DOL so that the settlement that is reached reflects the worker's best interests. Furthermore, the DOL should be more transparent about the designated format, procedures, priorities and expected outcomes for mediation conferences and other settlement-related meetings with the employer. Finally, if the DOL reaches a settlement with the employer, workers and their representatives should immediately thereafter receive notices including clear explanations of the terms of the settlement, the amount of money to be paid out and when.[75]

Accompanying an expansion of DOL resources must be efforts to assess whether the current policies of enforcement are adequate and how the DOL can tackle wage theft violations more strategically. Ongoing changes to the structure of our economy have fundamentally altered employment relationships such that traditional approaches to enforcement against wage theft are increasingly inadequate. The DOL must deepen relationships with key partners, including other government agencies both in and out of state, as well as community-based organizations, industry groups, and other stakeholders. The DOL should meaningfully assess its current enforcement strategies and prioritize enforcement against industries that have a high concentration of low-wage workers and where workplace violations are prevalent.[76] The DOL must also conduct necessary outreach to low-wage workers in those industries so that they are aware of their rights before a violation occurs. Strategic outreach targeting New York's most vulnerable worker populations would broaden the DOL's impact and help both workers and the DOL detect wage theft early on.

[71] N.Y. Lab. Law § 196.

[72] N.Y. Lab. Law § 218.

[73] N.Y. Lab. Law § 219-c.

[74] Letter from advocates to James Rogers.

[75] Ibid.

[76] See generally, David Weil, Improving Workplace Conditions Through Strategic Enforcement, prepared for the Wage and Hour Division, U.S. Department of Labor (Boston: May 2010), 16, <https://www.dol.gov/whd/resources/strategicEnforcement.pdf>.



Pass the EmPIRE Worker Protection Act

Due to the increased use of forced arbitration clauses, the private systems of enforcement have also been decimated, further allowing law-breaking employers off the hook. That's why New York needs to pass the EmPIRE Worker Protection Act to increase enforcement capacity and protect working New Yorkers and good employers, generate additional revenue for the DOL and create a culture of compliance in New York State.

In January 2019, Senator Brad Hoylman and Assemblymember Latoya Joyner, re-introduced the “Empowering People in Rights Enforcement (“EmPIRE”) Worker Protection Act” (“EmPIRE Worker Act”), S.1848 / A.2265. The EmPIRE Worker Act would authorize an aggrieved employee, whistleblower or organization on behalf of the employee, to initiate a public enforcement action on behalf of the state for violations of any provision of the New York Labor law. If an EmPIRE action is successful, the Department of Labor would receive a majority of the civil penalties recovered in the action with the rest distributed to the aggrieved worker.

The EmPIRE Act adapts a long-standing “qui tam” mechanism for worker-assisted enforcement.[77] The federal government and 30 states use this strategy by allowing qui tam actions under False Claims Act statutes to deter and punish fraud committed against the government. The EmPIRE Act is modeled off California’s Private Attorneys General Act (“PAGA”),[78] passed in 2004, which expanded the qui tam model to enlist workers in enforcing state labor laws with enormous success. The EmPIRE Act would significantly expand the state’s enforcement capacity by empowering citizens to investigate violations and enforce its laws, and to share the benefit with those whom the violations harmed.



The EmPIRE Act is a proven model for strengthening labor law enforcement

The EmPIRE Act is based off a successful law in California, the Private Attorneys General Act (PAGA).[79] PAGA was enacted in 2004 in order to curb California’s rampant worker exploitation and drastically expand enforcement capacity. PAGA created a mechanism which allowed individuals to initiate a “representative” action, where they file suit against employers and collect civil penalties on behalf of the state for violations

[77] The EmPIRE Act adopts a long-standing “qui tam” mechanism for citizen-assisted enforcement. The federal government and 30 states use this strategy by allowing qui tam actions under False Claims Act statutes to deter and punish fraud committed against the government. Qui tam actions are the oldest example of actions that incentivize private citizens to help the government stop unlawful behavior.

[78] Cal. Lab. Code §§ 2698–99.5.

[79] Ibid.

of California's labor code. Prior to PAGA, much of California's labor code went unenforced, affecting workers in all industries, but especially those in the underground economy,[80] including undocumented workers in industries such as hospitality, landscaping, construction, and agriculture.[81]

New York is not alone in pursuing the use of qui tam procedures to expand public enforcement of state laws in the face of under-resourced enforcement agencies and the increased use of forced arbitration clauses. Also modeled off of California's PAGA, bills have been introduced in New York,[82] Oregon,[83] Vermont,[84] Massachusetts,[85] Maine, and Washington[86] in 2019.



EmPIRE Would Generate \$17.7 Million Annually for the DOL

When a lawsuit is brought under EmPIRE, 60 percent to 70 percent of the penalties recovered (depending on whether the state intervenes in the action) are returned to the state, generating desperately needed revenue to expand capacity of the DOL. California has seen enormous success in this area. In 2017-2018, PAGA brought in \$34.6 million in revenue.[87] This revenue not only covers all associated administrative costs of implementing PAGA but also helps to increase the capacity of the state enforcement agency.

If New York were to pass the EmPIRE Act, it has the potential to raise \$17.7 million in annual revenue for the DOL. This calculation is based on the revenue generated by PAGA[88] scaled by the relative size[89] of New York's workforce in 2017.[90] This is 88 percent of the Division of Labor Standards budget, suggesting that the bill could almost double DOL enforcement capacity.[91]

[80] The "underground economy" was defined by the legislature as "businesses operating outside the state's tax and licensing requirements," resulting in an estimated tax loss of three to six billion dollars annually, due to lack of regulation, in 2003. Testimony to the H. Comm. on the Judiciary: H. 789, An Act Delegating Public Enforcement Powers to Private Attorneys General, 2017-18 Leg. 2 (Vt. 2018) (testimony of Michael Rubin) (quoting Assemb. Comm. on Judiciary, Analysis of S.B. 796, 2003-04 Leg. 3-4 (Cal. 2003)), <https://legislature.vermont.gov/Documents/2018/WorkGroups/House%20Judiciary/Bills/H.789/H.789~Michael%20Rubin~Written%20Testimony~4-6-2018.pdf>.

[81] Ibid.

[82] A. 2265, 2019-20 Leg. (N.Y. 2019); S. 1848, 2019-20 Leg. (N.Y. 2019).

[83] S.B. 750, 80th Leg. Assemb., 2019 Sess. (Or. 2019).

[84] H. 483, 2019-20 Leg. (Vt. 2019); S. 139, 2019-20 Leg. (Vt. 2019).

[85] S. 1066, 191st Gen. Ct. (Mass. 2019).

[86] H.B. 1965, 2019-20 Leg. (Wash. 2019).

[87] Mark Janatpour, Deputy Labor Commissioner, California Department of Industrial Relations, email message to Michael Rubin, February 20, 2019 (available upon request).

[88] Ibid. PAGA revenue has increased steadily over the 15 years since the law was enacted. Assuming a similar pattern of gradual uptake, it could take several years after enactment of the EmPIRE Act to achieve the revenue levels on which this calculation was based. On the other hand, many employees blocked by forced arbitration clauses are now bringing PAGA actions instead. It is therefore possible that EmPIRE could be used more broadly at the outset, given that the legal options available to workers are more constrained than at the time of PAGA's enactment.

[89] Using the 2017 American Community Survey 1-year estimates of California and New York's population 16 and over and the employment-to-population ratio, we scaled the revenue estimates in California by a factor of 0.51.

[90] 2017 American Community Survey, Table S2301: Employment Status, U.S. Census Bureau, https://factfinder.census.gov/bkmk/table/1.0/en/ACS/17_1YR/S2301.

[91] DOL, FOIL Response (FL 17-1102).

CONCLUSION

This report shows how the main forum for public enforcement of wage theft, the New York State Department of Labor, is unable to address the epidemic of wage theft due to significant lack of capacity and resources. Furthermore, given that the advent of forced arbitration simultaneously decimating the private right of enforcement that has historically accompanied public enforcement, far too few workers suffering wage theft see justice. A significant expansion of enforcement capacity is necessary to curb wage theft. Both a major investment in the Department of Labor and the implementation of the EmPIRE Act, in order to extend the reach of the DOL, are critically needed.



