California: Employers stealing pay of low-wage workers

David Levine
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A new report by the National Employment Law Project and the University of California, Los Angeles, documents the widespread and gross injustices faced by workers in California who are cheated out of wages owed them by their employers.

" Hollow Victories: The Crisis in Collecting Unpaid Wages for California 's Workers" documents that the most common victims of wage theft are low-wage workers, particularly retail, restaurant, and custodial workers. In California, these jobs are commonly performed by immigrants who have limited understanding of English and who are the most heavily exploited and socially vulnerable.

The report's authors reviewed records of the California Division of Labor Standards Enforcement (DLSE) covering the period 2008-2011 and tallied the following statistics:

¥ The DLSE verified a total of $390 million owed to employees who had filed claims against their employers. Out of that amount, only 42 percent, or $165 million, was eventually paid out to the employees.

¥ Out of those workers who were unable to settle with their employers out of court but managed to obtain a judgment from the DLSE awarding them compensation for unpaid wages, only 17 percent actually collected any of that compensation.

¥ Out of the total amount awarded to employees by the DLSE, only about 15 percent was actually collected.

¥ The DLSE was able to collect only 20 percent of the penalties it imposed on employers for unpaid wages and other labor violations, including only 10 percent of penalties for minimum wage and overtime violations.

¥ In more than 60 percent of cases where the DLSE found that a worker was due unpaid wages, the employer was found to be a non-active business entity. That is, the business owner had either abandoned, sold, or transferred the business after the judgment ordering payment of unpaid wages to an employee was entered.

The last statistic results from business practices of systematic under-capitalization with the purpose of shutting down operations when debts begin to accumulate. This does not mean that employers who fail to pay wages to employees are going out of business. Instead, they organize their businesses from the beginning in such a way that they can allow those businesses to "fail" while keeping their assets elsewhere. This way they can reestablish business under a different name with the same assets, but without the liabilities—including debts to former employees.

Even under such circumstances, various forms of legal recourse are available to the former employees whose wages were never paid. However, as the report indicates, "Workers may face great difficulty finding attorneys or collections agencies to assist them in their cases, and may lack the time and resources to engage in time-consuming efforts after an already lengthy process to prove their claims before the court or administrative agencies." In other words, low-wage workers' poverty essentially prevents them from obtaining just compensation even in the face of outright theft and fraud by their employers.

In reality, conditions for low-wage workers can only be worse than suggested by the figures in the report because they do not count those workers who failed to assert their rights against their employers through available legal mechanisms. Such failure is especially common among undocumented immigrants. The statistics also do not account for the fact that employers typically are much more capable of obtaining thoroughgoing and competent legal representation than

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are employees, and therefore average legal results are likely skewed in their favor.

The researchers' interviews with low-wage workers who made claims against their employers revealed that many tolerated wage theft for months and even years before making a claim, while their coworkers never made claims despite suffering the same injustices. Those who made claims were commonly fired in retaliation. Many went without food and medicine as a result of their inability to collect the wages owed them.

A carwash worker owed thousands in unpaid overtime told his interviewer, "I couldn't collect my unpaid wages because the employer sold off the business immediately and the new owners did not know anything about the [wage] claims that were filed. The new owners weren't informed of any of this when they bought the business. I feel bad because it has been two years since the judgment was issued, but it doesn't seem like the employer ever felt any pressure to comply, and still does not feel like he has to pay what is owed, and he continues to do what he wants without consequences.

"I am disappointed that in a country as powerful and large as the United States, where a judge has decided a worker is owed their wages, a person can still get by without facing any consequences and that the judge's ruling means nothing."

The report also quotes a survey of low-wage workers conducted in 2008, which found that 26 percent of low-wage workers were paid less than the minimum wage in the preceding week, and 76 percent of those who worked more than 40 hours were not paid the legally required overtime rate. More than two thirds of low-wage workers had experienced at least one pay-related violation in the previous workweek—leading workers to lose an average of $2,634 annually due to workplace violations.

The report's authors, however, are incapable of presenting any solution to the problem. Their recommendation is to implement nationwide a law in Wisconsin that allows workers to impose a lien on their employers' property when the employer fails to pay wages. Those liens still only result in 25 percent recovery of stolen wages.

Especially when compared to the lengths that the courts and law enforcement will go when persecuting workers in debt to companies, this large-scale wage theft demonstrates the underlying relationship between the judicial system and the corporate elite.

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