

WHITEPAPER

# Wage Theft: What Employers Need to Know



# EXECUTIVE SUMMARY

## AS LAWMAKERS ACROSS THE U.S. HAVE ADDRESSED WAGE AND HOUR ISSUES IN RECENT YEARS, ONE MAJOR COMPONENT OF THESE LAWS IS WAGE THEFT.

While federal officials enforce the provisions of the Fair Labor Standards Act (FLSA), several states and local jurisdictions have passed their own wage theft laws, which impose additional burdens on employers to remain compliant. Additionally, these jurisdictions have been moving from education to enforcement, making wage theft a major concern for HR and compliance teams.

- More than \$1.12 billion in back wages was recovered for workers by the U.S. Department of Labor in the last five years
- The top 10 wage & hour class action settlements last year totaled \$614.55 million

This whitepaper provides a comprehensive overview of wage theft, including:

- Types of wage theft and specific examples
- How state wage theft laws impact employers
- How to comply with these laws

## SECTION 1: TYPES OF WAGE THEFT

While the most obvious form of wage theft is simply not paying employees the correct rate, there are a number of other ways employers can run afoul of these laws.

### Overtime Violations

Starting with overtime violations, if an employer wrongfully denies overtime pay to an eligible employee, it can be considered wage theft.



**Did you know?**

### Overtime Violation

One example of an overtime violation came a couple years back in Arizona where an employer settled a \$3.5 million class action lawsuit after workers alleged they were not paid time and a half at their regular rates of pay for hours worked over 40.

In fiscal year 2024, federal officials recovered more than \$202 million in back wages, impacting nearly 152,000 workers. The average amount of wages recovered was \$1,333 per worker.

On a federal level, these actions are in violation of the FLSA, which requires employers to pay one-and-a-half times the regular rate of pay to employees for hours worked over 40 in a workweek. The FLSA defines a workweek as any fixed and regularly recurring period of 168 hours – seven consecutive 24-hour periods.

The FLSA does not require overtime pay for work on weekends, holidays, or regular days of rest, unless overtime is worked on such days, and there is no limit on the number of hours employees 16 years or older may work in any workweek.

Employers should note that some jurisdictions, California for example, have different, more generous overtime laws than the FLSA.

## Minimum Wage Violations

Wage theft regarding minimum wage is straightforward — an employer simply pays an employee less than the correct minimum wage.

While this may seem like a hard mistake to make, the growing number of jurisdictions that have set a rate higher than the federal level makes it difficult to track for employers, especially those with locations across the U.S.

Plus, there are other factors that contribute to determining the correct minimum wage, including:

- Industry/sub-industry
- Tipped wages
- Employer size
- Company revenue
- Subminimum wage
- Whether the employer provides health benefits

Some economists say wage theft is so rampant that it costs workers at least **\$15 billion** a year, far more than the amount stolen in physical robberies.

—CBS News



**Did you know?**

### Minimum Wage Violation

In this example, a poultry farm in New York State — where minimum wage laws are fairly complex — was hit with a class-action lawsuit because the employer allegedly misclassified employees and did not pay the required minimum wage rate.

Defendants sought injunctive relief, an award of unpaid wages with pre- and post-judgment interest, liquidated damages, attorneys' fees and costs for the defendant's violation of the FLSA and the New York labor Law.

On average, workers who are victims of minimum wage violations lose \$64 a week, or \$3,300 annually for year-round workers. These employees lose almost one-quarter of their earnings, receiving, on average, only \$10,500 in annual wages.

Additionally, many jurisdictions with minimum wage laws have moved from scheduled increases to basing annual bumps based on a consumer price index (CPI). So, instead of a round number, a minimum wage rate could be \$10.33. Other examples of recent minimum wage laws that keep employers on their toes include:

- On Jan. 1, 2026, the tipped employee minimum wage in South Dakota will be \$5.925
- Over 70 jurisdictions increase their minimum wage rates on Jan. 1 each year
- Fremont, Calif., updated their minimum wage twice in 2025 due to a calculation error

## Misclassification Violations

Misclassification of employees can lead to other types of wage theft. But misclassification does have some separate issues to consider.

For example, employers who misclassify a worker as an independent contractor are on the hook for more than misclassification of an exempt/non-exempt worker. If an employer misclassifies an employee as an independent contractor, the employer will be required to cover not only potential overtime and wage laws but also will need to pay for benefits, employment taxes, workers compensation and unemployment for the misclassified worker.

## Illegal Deductions

Illegal deductions are also a form of wage theft. These occur when an employer takes a portion of an employee's paycheck for items that do not qualify, including:

- Business expenses
- Gratuities
- Required pre-employment physical or medical examinations

Legal deductions are items such as taxes, health care premiums, uniforms, meals, etc.

Also, deductions that would bring an employee below the corresponding jurisdiction's minimum wage rate are also illegal.



**Did you know?**

“When employers misclassify their employees as independent contractors, they deny them the wages and benefits they are due such as a minimum wage, overtime pay, and protections under the Family and Medical Leave Act. Misclassification may also result in a higher tax burden on the employee and a reduced social security benefit,” **U.S. Wage and Hour District Director Timolin Mitchell said.** “Regrettably, this violation has become all too common. The Wage and Hour Division offers online tools to help employers understand the law and encourages them to contact the division with questions.”

Plus, many states require documentation of deductions.



**Did you know?**

## Off-the-Clock Violations

Employers can also commit wage theft through off-the-clock violations, which comes into play with nonexempt employees.

Failing to pay an employee for work performed when not technically on duty can take many forms.

Off-the-clock violations occur when an employee:

- Begins work before clocking in
- Clocks out but keeps working
- Hits the 40-hour overtime threshold off the clock
- Responds to email outside work hours
- Works at home

### Illegal Deduction Violation

An Oregon restaurant owner withheld employees' tips for nearly two years, keeping the majority of earned cash and credit card tips. The owner paid workers an hourly "tip wage" that was lower than the amount of tips the employees earned.

More than \$280,000 in back wages was recovered for 36 employees.

### Off-the-Clock Violation

A construction company in California in 2021 did not track employee work before and after their scheduled shifts.

By not paying required overtime rates, the employer was forced to pay more than \$72,000 in back wages, as well as being assessed an \$8,460 fine.

In California alone, more than \$6 million in unpaid wages for more than 4,000 workers has been recovered since 2019 in the construction industry.



## Rest Break Violations

Generally, absent state law, rest breaks of 20 minutes or less are paid while meal periods of 30 minutes or more are unpaid. Not adhering to this rule of thumb, and related state-specific laws, is our last example of wage theft. Again, this primarily applies to nonexempt employees.

And it can become difficult for large employers to keep track of workers:

- Are they working through their lunch period?
- Are they still responsible for work-related tasks during a meal break?
- What about state-specific laws? Lactation breaks? "Day of rest" laws?



**Did you know?**

### Rest Break Violation

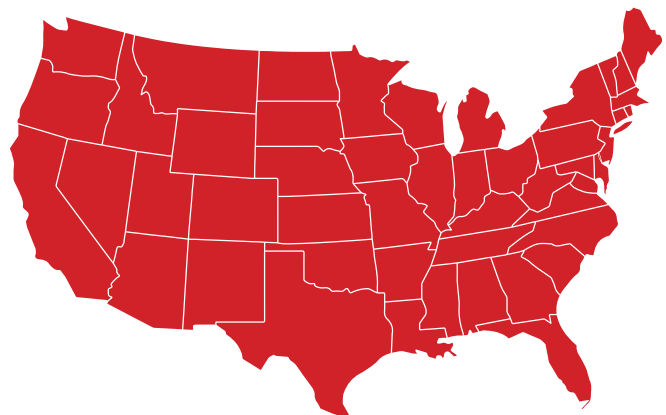
An employer in 2024 was delivered a \$98 million verdict for unpaid wages due to meal break violations in Washington. A jury found that the employer did not provide a second meal break when an employee worked a shift of more than 10 hours.

## SECTION 2: STATE WAGE THEFT LAWS

While the requirements of the FLSA have been in place for years, many states have recently enacted their own wage theft laws – making it harder for employers to fail to pay employee wages, applying criminal penalties and obligating employers to provide detailed notices to employees about their wages.

These laws are notable because many bring with them criminal penalties for wage theft which did not exist previously.

Below are some states that have enacted their own wage theft laws. However, employers will find a law in almost every jurisdiction that requires them to pay employees their due wages, as well as providing detail on how to file a wage claim.



# California

Long an employment law pacesetter, California has several wage theft laws on the books.

Notably, however, the state in September 2021 passed a new law regarding intentional wage theft. It allows prosecutors to determine whether an employer could be charged with a misdemeanor or felony for intentionally committing theft of wages, benefits, tips or other compensation:

- More than \$950 for one employee and more than \$2,350 for two or more employees in any 12 consecutive month period

Because intentional wage theft would be considered a new type of grand theft, company individuals (not just the company as an entity) found in violation could also face jail time or even be sent to prison in certain circumstances.

Meanwhile, general definitions were expanded like never before. Independent contractors are included under the definition “employee,” and hiring entities are included within the definition of “employer.”

The law authorizes wages, gratuities, benefits, or other compensation that are the subject of a prosecution under these provisions to be recovered as restitution in accordance with existing provisions of California law.

The California Equal Pay Act has been in existence for decades, followed by the Wage Theft Protection Act of 2011 and the 2015 signing of the California Fair Pay Act.

Employers can face liens on property for unpaid back wages, and the state has provided resources for employees and allows broad leeway for state investigative authorities.

# Colorado

In January 2020, Colorado’s new wage theft law went into effect, making it a felony for employers that do not pay wages or pay less than the minimum wage.

The law defines wage theft as a felony when the amount is more than \$2,000. The fine for theft ranges from \$50 to as much as \$1 million, depending on the circumstances.



## Did you know?

California Assemblywoman Lorena Gonzalez, the sponsor of the intentional wage theft law, cited a report that says wage theft violations cost California employees nearly **\$2 billion** annually.

One impetus behind the law was an effort by state officials to combat human trafficking, and the law covers migratory workers, who may not have a full grasp of Colorado wage laws.

Lastly, the Colorado's updated wage theft law removed an existing exemption from criminal penalties applicable to an employer that is unable to pay wages due to Chapter 7 bankruptcy or other instances.

Approximately half a million Coloradans suffer from wage theft every year, with losses amounting to over \$750 million.

—City of Denver

## Connecticut

Connecticut has had a wage theft law since 2015.

Its law requires employers found to have committed wage theft to repay double the stolen wages, along with "costs and such reasonable attorney's fees as may be allowed by the court."

Previously, Connecticut employees had to prove "bad faith, arbitrariness or unreasonableness" on the employer's part in addition to wage theft.

And employers who commit wage theft must show they engaged in an investigation regarding how a mistake was made.



**Did you know?**

In fiscal year 2024, the U.S. DOL recovered back wages for workers in the following industries:

**Health care workers:** more than \$37.8 million

**Construction workers:** more than \$32 million

**Retail workers:** more than \$6.3 million

**Food service workers:** more than \$35.1 million

# Iowa

Known as the Iowa Wage Payment Collection Act, the law requires employers to pay wages due on regular paydays and pay the employee all wages on the first regular pay day after the employee's termination of employment.

Iowa's law also prohibits an employer from withholding wages for several reasons:

- A cash shortage unless there is a written agreement
- Losses of the employer due to customer non-payment, breakage or bad checks
- Lost or stolen property
- Tips received by the employee
- Protective equipment
- Costs of more than \$20 for employee relocation expenses

The Iowa Wage Payment Collection Act prohibits an employer from withholding employee wages because they believe they have a claim against that employee. The law also allows an employee to recover back wages along with liquidated damages and attorneys' fees and expenses.

# Illinois

Illinois updated provisions of its wage theft law in July 2021.

An employer found in violation of the Illinois Wage Payment and Collection Act is liable not only for the amount of any unpaid wages or final compensation owed to an employee but also for:

- Damages equal to 5 percent of the underpayment, per month (calculated from the date of the underpayment) for each month during which wages or final compensation remain unpaid. Damages are payable to the employee and continue to accrue, without limitation, until the amount found owing is paid

Meanwhile, an employer that has been ordered to pay wages or final compensation to an employee must also pay a \$250 non-waivable administrative fee, which fee increases to \$500 if the amount ordered by is more than \$3,000, and \$1,000 for orders of \$10,000 or more.

In Illinois, the law also has penalties for employers that fail to comply with repayment orders:

- A penalty to the state of 20 percent of the underpayment
- A penalty, payable to the employee, equal to 1 percent per day of the underpayment, for each day that payment is delayed. Again, this penalty continues to accrue without limitation until the amount found owing is paid



## Did you know?

Low-wage Iowa workers are robbed of about **\$600 million** a year.

—*Iowa Policy Project*

Lastly, in addition to an individual who is deemed to be an employer under the act, any officers of a corporation or agents of an employer who knowingly permit such employer to violate the law are personally liable for an employee's unpaid wages or final compensation and any fees or penalties assessed.

## Massachusetts

Massachusetts has a law that allows employees to sue for up to three times the unpaid wages (which includes commissions, non-discretionary bonuses and earned vacation), plus attorney's fees.

## Minnesota

In Minnesota, the requirements of its law went into effect July 1, 2019, with the criminal wage theft and sanctions provisions going into effect Aug. 1, 2019.

The Minnesota wage theft law requires employers to provide notices to new employees at the start of employment. If an employee requests the notice be provided in a language other than English, the employer must comply with that request and provide the notice in the requested language. Initial notices for Minnesota employees must be signed by the employee.

Also, employers must provide additional information on earnings statements, including:

- Employee's rate or rates of pay, and basis, including whether employee is paid by hour, shift, week, salary, piece rate, commission or other method
- Allowances claimed for permitted meals and lodging
- Total amount of gross pay earned in the pay period
- Net amount of pay after all deductions are made
- List of deductions from pay
- And more

## New Jersey

In 2019, New Jersey enacted a new wage theft law that lawmakers hailed as one of the nation's strongest.

The legislation enhanced penalties for violating employers, which could result in 18 months of prison time and fines reaching nearly \$15,000 for repeat offenders.



### Did you know?

The Minnesota Department of Labor and Industry estimates more than 39,000 workers — many of them immigrants — are victims of wage theft each year to the tune of nearly **\$12 million** in wages owed to them.

—*Minnesota Public Radio*



### Did you know?

Violations of the wage theft measure include penalties that could result in:

- Potential suspension or revocation of an employer's business license
- A fine of \$500 to \$1,000 for first violation and/or 10-90 days of jail time
- A fine of \$1,000 to \$2,000 for second or further violations, and/or 10-100 days of jail time

The New Jersey Wage Theft Act also further discourages employers from retaliating against employees who report suspected wage theft. The law assumes retaliation if an employer takes adverse action against an employee within 90 days of an individual filing a complaint.

"We must ensure that every hardworking individual in New Jersey receives the wages they worked hard to earn. I am proud to sign this legislation that will protect the rights of workers, furthering the Murphy-Oliver Administration's commitment to build a **stronger and fairer** New Jersey through protecting the right to earn a fair wage."

—Acting Gov. Sheila Oliver (2019)

Meanwhile, employers who are found in violation of the law may have to pay back both the wages plus attorney's fees and 200 percent of the unpaid wages.

## New York

The Wage Theft Prevention Act (WTPA), which gives more protection to workers in New York State, took effect April 9, 2011.

New York's law has several provisions for employers to be aware of, including posting violations for employees to see for up to a year. And, in willful instances of wage theft, the state may post the violation where the public can see it.

Other parts of New York's law include:

- Fines up to \$20,000
- Antiretaliation measures
- Notices of wage rates and other information
- Recordkeeping



The law provides for liquidated damages on up to 100 percent of the unpaid wages. Also, once the New York Department of Labor issues an order to comply, it includes 100 percent liquidated damages, as well as other civil penalties and interest.

If state officials issue an order to comply against an employer who does not pay the money owed, then 10 days after the appeal period ends, the New York Department of Labor (NYDOL) can require them to post a bond and/or provide a list of their assets.

If employers fail to do so, officials may bring a court case against them. For failure to provide the list of assets, the NYDOL may impose a penalty of up to \$10,000.

In August 2021, the law was updated to make it easier for employees to bring wage theft claims against employers, and added measures regarding the construction industry.

## Virginia

The Virginia governor in 2020 signed a handful of bills related to wage theft, imposing stiff penalties for violations and creating new employee protections.

The new wage theft legislation includes:

- Increased fine amounts
- Making general contractors liable under certain conditions
- Expanded investigative authority for the Virginia Department of Labor and Industry
- Employee protections for reporting suspected wage theft

Virginia's wage theft law allows employees to sue their employers for unpaid wages under a private right of action. If a court determines an employer deliberately failed to pay an employee's appropriate wages, the employee could be entitled to attorneys' fees in addition to triple the amount of wages due.

Virginia's law also carries potential criminal penalties for violations and if the amount of unpaid wages is more than \$10,000, or if an employer has similar previous offenses, the employer can be found guilty of a felony and be subject to a corresponding prison sentence.

"We are **taking critical steps** forward to eliminating wage theft.

This legislation protects the interests of hardworking construction workers over unscrupulous subcontractors.

Wage theft is a crime of opportunity that disproportionately affects people who are already living paycheck to paycheck. With this legislation, New York State will ensure that construction workers are no longer exploited and will be able to collect any unpaid wages. Hard work deserves hard earned compensation."

—*New York Assemblymember  
Latoya Joyner*

## Other Wage Theft Laws

Of course, there are local jurisdictions with wage theft laws. In addition to major cities such as Chicago, Philadelphia, Seattle, Minneapolis and Washington, D.C., smaller jurisdictions have also passed wage theft laws, such as Somerville, Mass.

And state departments of labor enforce their own wage and hour laws, which often include items such as:

- Regular paychecks
- Information to be included on pay stubs
- Rules on deductions
- Manner of payment
- Late payment remedies
- Final paycheck rules

Lastly, some new federal wage theft bills have been introduced in recent years, which would strengthen the FLSA provisions and create additional requirements for employers.

## SECTION 3: HOW TO COMPLY WITH WAGE THEFT LAWS

Misclassification. It's the simplest way for employers to unwillingly fall prey to wage theft. And it can lead to other forms of wage theft, as well.

But taking any of the items listed in Section 1 and reversing them is likely a good idea.

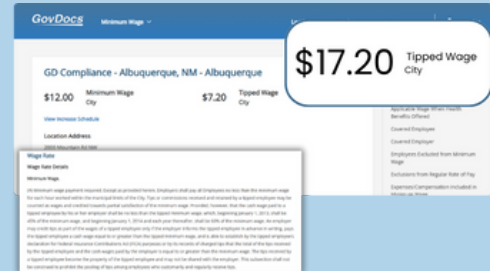
Employers must ensure location managers are trained in the specifics of the FLSA and any state and local wage laws. Auditing wage and hour basics is always a good start:

- Make sure employees aren't working before or after they clock in
- Track and applying accurate minimum wage rates
- Simply paying agreed upon rates
- Make sure you are compliant with the salary threshold levels for your exempt workers
- Ensure your non-exempt workers are not working during their unpaid breaks
- Ensure overtime is paid out accurately



Did you know?

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While most employers don't set out to commit wage theft, it can happen. The fear is that these incidents appear in headlines or U.S. Department of Labor News releases. The damage to a company's reputation can go beyond consumer confidence. Hiring may become an issue. It could result in increased oversight from government agencies.



**Did you know?**

**Among all U.S. workers:**

25 percent have experienced **minimum wage violations**

16 percent have experienced **working off the clock**

19 percent have experienced **overtime violations**

58 percent have experienced **meal break violations**

—*Social Justice Resource Center*

Sources:

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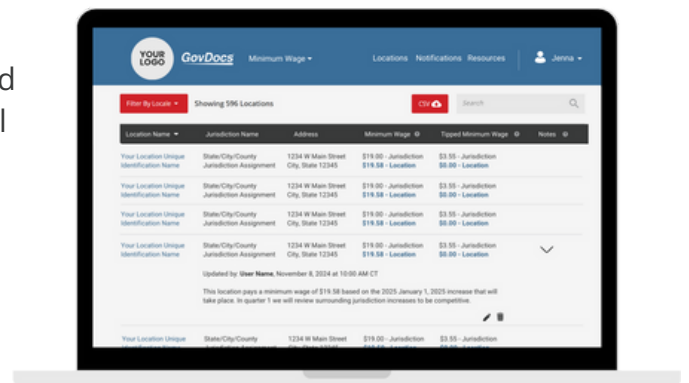
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