CAMPAIGN FOR WORKING AMERICA

Ensuring Working Americans Get Paid What They Deserve

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PROGRESSIVE POLICY INSTITUTE

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ABOUT PPI'S CAMPAIGN FOR WORKING AMERICA

The Progressive Policy Institute launched its Campaign for Working America in February 2024. Its mission is to develop and test new themes, ideas, and policy proposals that can help Democrats and other center-left leaders make a new economic offer to working Americans, find common ground on polarizing cultural issues like immigration, crime, and education, and rally public support for defending freedom and democracy in a dangerous world. Acting as Senior Adviser to the Campaign is former U.S. Representative Tim Ryan, who represented northeast Ohio in Congress from 2003 to 2023.

Since 2016, Democrats have suffered severe erosion among non-college white voters and lately have been losing support from Black, Hispanic, and Asian working-class voters as well. Since these voters account for about three-quarters of registered voters, basic electoral math dictates that the party will have to do better with them to restore its competitiveness outside metro centers and build lasting governing majorities. The party's history and legacy point in the same direction: Democrats do best when they champion the economic aspirations and moral outlook of ordinary working Americans.

To help them relocate this political north star and to inform our work on policy innovation, PPI has commissioned a series of YouGov polls on the beliefs and political attitudes of non-college voters, with a particular focus on the battleground states that have decided the outcome of recent national elections.

This report is the eighth in a series of Campaign Blueprints that can help Democrats reconnect with the working-class voters who have historically been the party's mainstay.

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INTRODUCTION

A core component of the Trump campaign's pitch to working Americans is a package of costly tax cuts that sound targeted toward their interests, such as exempting income from tips and overtime pay from taxation.[1] But amongst the many problems with these budget-busting proposals, they wouldn't meaningfully increase the take-home pay of the many working-class individuals, who have little to no income tax liabilities at all.[2]

A better way for Democrats to boost the incomes of working Americans is to ensure they are actually paid what they are owed in the first place. Tackling wage theft, a crime that takes thousands of dollars out of working Americans' pockets each year, will do far more to improve the lives of the millions of tipped and overtime workers who are at risk of being cheated than misguided tax proposals.

WAGE THEFT IS A SERIOUS PROBLEM IN THE UNITED STATES

America has a pervasive problem with wage theft, which is the practice of not paying workers what they are legally owed.[3] Wage theft takes many forms: dishonest employers might pay less than the minimum or agreed-upon wage, refuse to pay for overtime at the legally required rate, take secretive deductions from paychecks, withhold earned tips, fail to make final payments, or demand unpaid work after a shift has ended. Because these violations often occur routinely in a workplace, they can become normalized and systemic.[4] Furthermore, many workers might not know their rights under current law, making it difficult for them to even recognize that they have lost wages, let alone pursue legal action to recover them.

Wage theft primarily affects working-class Americans, especially in low-wage industries such as retail, construction, agriculture, hospitality and food services.[5] For example, in 2021, a San Francisco fast food franchisee was found responsible for stealing up to $1.9 million in wages at his several locations by refusing to pay employees overtime or pay them during lunch breaks.[6] Similarly, in 2024, Minnesota dairy farmers allegedly stole up to $3 million in back wages from their employees, after consistently paying them for substantially fewer hours than they had actually worked.[7] Donald Trump and his businesses have an especially lengthy history with wage theft, having cheated hundreds of workers across dozens of cases. In one case, dishwashers at his prized Mar-A-Lago property were denied legally required overtime payments for several years. In another, he paid the hundreds of contractors who built his Taj Mahal Casino at a mere 30 cents on the dollar on what they were owed in wages.[8]

These incidents are frequent in industries with high risk for wage theft. An older but landmark study found that amongst low-wage industries in three major metro areas, violations were fairly common: 68% of surveyed workers had experienced at least one violation in just the previous week.[9] For the average worker in this group, wages equal to 15% of their annual earnings, or $3,827 in 2023 dollars, were stolen. A more recent survey from the Department of Labor investigated the Southern California garment industry, finding astonishing levels of wage violations: 80% of surveyed employers had at least one violation of labor law, with wages as low as $1.58 in some locations. The average amount rightfully owed but not paid to workers in this survey was $3,123 in 2023 dollars.[10]

Overall, the frequency and scale of wage theft contributes to a massive overall loss for America's workers every year. According to one estimate of all violations, workers could lose as much as $50 billion annually to dishonest employers.[11] This amount is more than three times what the federal government spends annually on cash welfare, as well as roughly 70% of the annual cost of the Earned Income Tax Credit, one of the nation's largest low-income wage subsidies.[12, 13]

The loss of their rightful earnings can also push employees into safety net programs, in effect transferring the costs of wage theft to taxpayer-supported social assistance. According to one report prepared for the Department of Labor, wage-theft victims saw increases in their safety-net benefits, while their employers pocketed their earnings.[14] For example, consider a single worker with one dependent making an income just over the eligibility limit for the Supplemental Nutrition Assistance Program (SNAP), which is roughly $27,000 a year or $13.50 an hour at a full-time job. If their employer illegally skims just $1 an hour off the top, the employee's annual income drops by enough to make them potentially eligible for SNAP.[15] For workers already receiving SNAP benefits, a reduction in their wages might instead increase their SNAP benefit amount, again shifting costs onto the taxpayer.

HOW FEDERAL POLICY FAILS TO ENFORCE OUR LAWS AND PROTECT WORKERS

Yet, despite the scale and frequency of the issue, current federal policy fails to adequately protect workers from wage theft. Insufficient legal tools and a lack of enforcement funding to tackle violations have left federal authorities unable to recover most back wages.

At the federal level, wage theft is handled by the Wage and Hour Division (WHD) at the Department of Labor, which is responsible for enforcing the federal minimum wage law, overtime laws, child labor laws, anti-retaliation measures, and the many additional provisions included in the Fair Labor Standards Act.[16, 17] When the WHD finds that these laws have been violated, they work to recover back wages for workers and levy small civil monetary penalties on the law-breaking employers.

However, WHD lacks the ability to really punish offenders for wage theft, prevent them from doing so again, or even recover full wages for employees. At the federal level, wage theft is a civil offense carrying a maximum $2,451 monetary penalty for each violation, with no additional punishments for repeat offenders. This penalty is relatively low even when compared to other penalties in the Fair Labor Standards Act.[18] For example, violating child labor provisions in the law yields an initial penalty of $15,629, with willful and egregious violations running as high as $142,062. The WHD also cannot recover full-back wages for wronged employees. Under current law, they are unable to pursue back wages in excess of the minimum wage, meaning that a worker owed wages for $10 an hour can only recover up to the federal minimum wage in hourly wages, $7.25.[19]

In addition to a relatively empty toolbox, funding, and staffing declines make it difficult for the WHD to effectively execute its mission. Congressionally appropriated funding for the WHD has fallen from $307 million in 2012 to $260 million in 2023 (both in 2023 dollars).[20, 21] This decline in funding has caused a steep decline in WHD investigators as well.[22] Currently there are only 810 investigators, down from its recent peak of 1,067 in 2012. This is unlikely to be the result of increased worker productivity either, as the agency caseload has dropped from 34,000 in 2012 to only 20,000 in 2023.[23] This decline comes despite an increase in the overall size of the workforce.[24]

As a result, the WHD has struggled to maintain consistent enforcement actions and resolve cases quickly. This has forced the agency to pare back how many cases it can accept, prioritizing complaints from high-priority industries on cases with high probabilities of success. Even with this limited scope, roughly 26% of the complaints they accept end up with no compliance action taken.[25] Even for the cases that are taken by the WHD, individuals have often faced long wait times as myriad staffing challenges make it difficult to really pursue lengthy legal action.[26, 27]

Because civil penalties are so low and enforcement is so thin, it is cheaper for employees to repeatedly violate the law than pay owed wages.[28] If they are caught, it is unlikely the offending employer will be forced to pay any additional damages beyond simply paying back wages. From 2005 to 2020, the WHD punished only about 1 in 4 repeat offenders, and pursued damages in excess of allowable back wages only 14% of the time.[29] Limited enforcement resources and low penalties, combined with the added complexities of litigation, leave the WHD unable to really punish prolific and repeat offenders under current law.

Despite these many handicaps, and despite the many other labor provisions that the WHD is tasked with enforcing, it still manages to recover substantial back wages for affected workers relative to their budget. In 2023, WHD was able to recover more than $274 million in back wages and damages for workers.[30] Even if one assumes that the entire budget is used for wage theft cases, unlikely given their myriad responsibilities, this is still a positive return on investment of at least 5%, or roughly $1,273 for each victim in an agency-initiated investigation. Furthermore, this return was higher in years when funding for the WHD increased. In 2012, the most recent funding "peak" for the WHD, $379 million in 2023 dollars was won back for workers, a return on investment of 23%.[31]

EMPOWERING WORKERS BY EXPANDING LEGAL TOOLS AND ENFORCEMENT RESOURCES

Rather than tolerate a status quo that shortchanges workers, policymakers should take serious steps to remedy the problem. The best place for them to start is to expand the legal toolbox for enforcement. Policymakers should increase the pitifully low civil penalty for initial offenders, while ensuring that there are escalating penalties for repeat offenders. The most flagrant and repetitive offenders might also face criminal penalties for their violations. These changes will help to change the calculus for employers to deter potential violators. Another important legal tool is to increase how much investigators can recover for workers. Rather than stop at the minimum wage, WHD cases should be permitted to pursue the full value of worker's wages in addition to any relevant punitive damages.

In addition, policymakers should explore transparency requirements so that workers can easily track their pay. This would allow workers to more easily notice when they have not been paid what they are owed and relieve some of the burden on the WHD to identify violations on their own. For example, these requirements might take the form of having employers provide regular pay stubs or the official terms of employment to their employees at the start of every job. Since this sort of payroll recordkeeping is already required under the Fair Labor Standards Act, it should help prevent or identify violators while posing minimal additional burdens for compliant businesses.[32]

When the WHD has more tools to pursue wage theft cases, it should come with more enforcement resources to actually use them. Congress should increase appropriations for the WHD to enforce wage theft while ensuring that funding is still delivering results for workers. The most recent congressional appropriation for the WHD sits at merely $260 million. Raising this to at least its recent historical peak of roughly $310 million annually would make a promising down payment toward protecting workers and rewarding their labor. Similar to the expansion of IRS funding passed in the IRA, additional money for WHD would allow them to hire more investigators, enforce our labor laws, and ultimately recover more back wages for workers. The WHD should continue to be rewarded with further funding so long as they can demonstrate a positive and consistent return on investment for American workers.

When paired with an expanded legal toolbox, more enforcement funding will allow the WHD to pursue a higher caseload and help deter violations. Many states, such as California, have strengthened their enforcement by following this combination of policies. During her tenure as attorney general, Kamala Harris increased coordination with federal authorities to prosecute wage theft and better protect workers in industries that routinely violated the state's wage laws.[33] The state legislature subsequently passed several laws to further tackle the problem by increasing penalties for employers while making it easier for authorities to pursue bad actors.[34,]

[35] But while California and other like-minded states might be diligent in addressing wage theft, other more conservative states are ignoring the problem altogether.[36] It is long past time that the federal government stepped up to protect vulnerable workers.

CONCLUSION

Our government should not stand idly by as dishonest employers steal billions of dollars each year from working Americans who have rightfully earned their wages. While Republicans have nominated one of these dishonest employers for president for three consecutive elections, Democrats have nominated a former attorney general who spent years winning those wages back for working Americans. Congressional Democrats have also introduced legislation to change the status quo by toughening penalties and strengthening enforcement.[37] Yet while the bill has drawn many Democratic sponsors eager to help protect working Americans from wage theft, it has predictably failed to attract any Republican support, who are more concerned about the burdens that businesses might face when our nation's labor laws are actually enforced.[38]

In a populist era when many working-class Americans feel left out of our nation's prosperity, allowing this exploitation to continue unchecked only further damages trust in the system. Instead of pandering tax policies that claim to help working people at the expense of our Treasury, policymakers should chart a different path forward by making sure workers are actually paid what they rightfully earned. An agenda that places working-class Americans first should prioritize stricter and smarter enforcement against wage theft.

ABOUT THE CENTER FOR FUNDING AMERICA'S FUTURE

Launched in 2018, the Progressive Policy Institute's Center for Funding America's Future works to promote a fiscally responsible public investment agenda that fosters robust and inclusive economic growth. To that end, the Center develops fiscally responsible policy proposals to strengthen public investments in the foundation of our economy, modernize health and retirement programs to reflect an aging society, transform our tax code to reward work over wealth, and put the national debt on a downward trajectory.

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References

1 Meg Kinnard, "Tips, Overtime, Social Security: A Look at Donald Trump's No-Tax Pledges and What They Might Cost," *Associated Press,* October 7, 2024, https://apnews.com/article/trump-taxes-social-security-overtime-tariffs-989016ef41dc1533b05d1871d69c03ff.

2 Ben Ritz, "There's a Better Way to Cut Taxes for Workers Than Exempting Tips," *Forbes,* August 15, 2024, https://www.forbes.com/sites/benritz/2024/08/15/theres-a-better-way-to-cut-taxes-for-workers-than-exempting-tips/.

3 Alexia Fernández Campbell and Joe Yerardi, "Ripping Off Workers with No Consequences," Center for Public Integrity, May 4, 2021, https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/cheated-at-work/ripping-off-workers-with-no-consequences/.

4 Chris Hacker et al., "Wage Theft Often Goes Unpunished Despite State Systems Meant to Combat It," *CBS News*, last modified June 30, 2023, https://www.cbsnews.com/news/owed-employers-face-little-accountability-for-wage-theft/.

5 Lily Filippatos, "Which Industries Experience Wage Theft the Most?" Filippatos Law, August 19, 2024, https://www.filippatoslaw.com/blog/which-industries-experience-wage-theft-the-most/.

6 Jay Barmann, "SF Burger King Franchisee Owes $1.9M in Wage-Theft Case," *SFist*, December 3, 2021, https://sfist.com/2021/12/13/burger-king-franchisee-owes-1-9-million-wage-theft/.

7 Max Nesterak, "A Dairy Farm Is Accused of Stealing $3 Million in Wages. But Was There a Crime?," *Minnesota Reformer*, January 23, 2024, https://minnesotareformer.com/2024/01/23/a-dairy-farm-is-accused-of-stealing-3-million-in-wages-but-was-there-a-crime/.

8 Steve Reilly, "Hundreds Allege Donald Trump Doesn't Pay His Bills," *USA Today*, June 9, 2016, https://www.usatoday.com/story/news/politics/elections/2016/06/09/donald-trump-unpaid-bills-republican-president-laswuits/85297274/.

9 Annette Bernhardt et al., "Broken Laws, Unprotected Workers," National Employment Law Project, 2009, https://www.nelp.org/app/uploads/2015/03/BrokenLawsReport2009.pdf.

10 "2022 Southern California Garment Worker Survey," U.S. Department of Labor (Wage and Hour Division), 2022, https://www.dol.gov/sites/dolgov/files/WHD/garment-workers/2022-so-cal-garment-survey.pdf.

11 Michael Sainato, "'I Have Not Seen One Cent': Billions Stolen in Wage Theft from US Workers," *The Guardian*, June 15, 2023, https://www.theguardian.com/us-news/2023/jun/15/wage-theft-us-workers-employees.

12 "The Temporary Assistance for Needy Families (TANF) Block Grant," Congressional Research Service, April 3, 2024, https://crsreports.congress.gov/product/pdf/IF/IF10036.

13 "Tax Expenditures FY2024," U.S. Department of the Treasury, 2024, https://home.treasury.gov/system/files/131/Tax-Expenditures-FY2024-update.pdf.

14 "The Social and Economic Effects of Wage Violations: Estimates for California and New York," U.S. Department of Labor, December 2014, https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/WageViolationsReportDecember2014.pdf.

15 "Supplemental Nutrition Assistance Program (SNAP) Eligibility," U.S. Department of Agriculture (Food and Nutrition Service), October 1, 2024, https://www.fns.usda.gov/snap/recipient/eligibility.

16 "Fact Sheet #44: Visits to Employers under the Fair Labor Standards Act (FLSA)," U.S. Department of Labor, 2015, https://www.dol.gov/agencies/whd/fact-sheets/44-flsa-visits-to-employers.

17 "Handy Reference Guide to the Fair Labor Standards Act (FLSA)," U.S. Department of Labor, 2023, https://www.dol.gov/agencies/whd/compliance-assistance/handy-reference-guide-flsa.

18 "Civil Money Penalty Inflation Adjustments," U.S. Department of Labor, 2024, https://www.dol.gov/agencies/whd/resources/penalties.

19 U.S. Code, Title 29, Sec. 206: Minimum Wage, Office of the Law Revision Counsel, https://uscode.house.gov/view.xhtml?req=(title:29%20section:206%20edition:prelim).

20 "FY 2013 Department of Labor Budget in Brief," U.S. Department of Labor, 2012, https://www.dol.gov/sites/dolgov/files/general/budget/2013/FY2013BIB.pdf.

21 "FY 2024 Congressional Budget Justification Wage and Hour Division", U.S. Department of Labor, 2023, https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V2-09.pdf.

22 Daniel Costa and Philip Martin, "Record-low Number of Federal Wage And Hour Investigations of Farms in 2022", Economic Policy Institute, August 2023, https://www.epi.org/publication/record-low-farm-investigations/.

23 Jessica Looman, "Big Results for Workers in 2023," U.S. Department of Labor, December 2023, https://blog.dol.gov/2023/12/07/big-results-for-workers-in-2023.

24 "Civilian Labor Force Level [CLF16OV]," U.S. Bureau of Labor Statistics, retrieved from FRED, Federal Reserve Bank of St. Louis, last updated October 4, 2024, https://fred.stlouisfed.org/series/CLF16OV/.

25 "Tracking Additional Complaint Data Could Improve DOL's Enforcement," Government Accountability Office, December 2020, https://www.gao.gov/assets/gao-21-13.pdf.

26 Chris Hacker et al. "Wage Theft Often Goes Unpunished Despite State Systems Meant to Combat it," *CBS News*, June 2023, https://www.cbsnews.com/news/owed-employers-face-little-accountability-for-wage-theft/.

27 Rebecca Rainey, "Inadequate Labor Department Resources Stymie Enforcement Efforts," *Bloomberg Law*, November 2023, https://news.bloomberglaw.com/daily-labor-report/inadequate-labor-department-resources-stymie-enforcement-efforts.

28 Anna Stansbury, "Do US Firms Have an Incentive to Comply With the FLSA and the NLRA?," Peterson Institute for International Economics, June 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3874221.

29 Alexia Fernández Campbell and Joe Yerardi, "Ripping Off Workers Without Consequences," The Center for Public Integrity, May 2021, https://publicintegrity.org/inequality-poverty-opportunity/workers-rights/cheated-at-work/ripping-off-workers-with-no-consequences/.

30 "Wage and Hour Division by the Numbers 2023", U.S Department of Labor, 2023, https://www.dol.gov/agencies/whd/data/.

31 "WHD Obtained $250 Million in Back Pay in 2013," *Bloomberg Law,* December 2013, https://news.bloomberglaw.com/daily-labor-report/whd-obtained-250-million-in-back-pay-in-2013.

32 "Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA)", U.S Department of Labor, https://www.dol.gov/agencies/whd/fact-sheets/21-flsa-recordkeeping.

33 "Attorney General Kamala D. Harris Partners with U.S. Department of Labor to Combat Wage Theft," State of California Department of Justice, July 2015, https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-partners-us-department-labor-combat-wage-theft.

34 "Assembly Bill No. 1003", California Legislative Information, September 2021 https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB1003.

35 Tony Vranjes, "California Strengthens Wage-Theft Laws," SHRM, March 2018, https://www.shrm.org/topics-tools/employment-law-compliance/california-strengthens-wage-theft-laws.

36 Marianne Levine, "Behind the Minimum Wage Fight, a Sweeping Failure to Enforce the Law," Politico, February 2018, https://www.politico.com/story/2018/02/18/minimum-wage-not-enforced-investigation-409644.

37 U.S. Congress, Senate, *Wage Theft Prevention and Wage Recovery Act*, S. 2769,118th Congress, introduced in Senate September 12, 2023, https://www.congress.gov/bill/118th-congress/senate-bill/2769.

38 U.S. Congress, House, Committee on Education and Labor, Standing Up for Workers: Preventing *Wage Theft and Recovering Stolen Wages*, 117th Congress, May 11, 2022, https://www.congress.gov/event/117th-congress/house-event/114707/text.

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Founded in 1989, PPI started as the intellectual home of the New Democrats and earned a reputation as President Bill Clinton's "idea mill." Many of its mold-breaking ideas have been translated into public policy and law and have influenced international efforts to modernize progressive politics.

Today, PPI is developing fresh proposals for stimulating U.S. economic innovation and growth; equipping all Americans with the skills and assets that social mobility in the knowledge economy requires; modernizing an overly bureaucratic and centralized public sector; and defending liberal democracy in a dangerous world.

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