



**PASS
HB 1440**

Underground Economy & State Revenue Recovery

THE STOP WAGE THEFT COALITION AND WASHINGTON STATE LABOR COUNCIL, AFL-CIO

LEGISLATIVE POSITION PAPERS

BACKGROUND

The **UNDERGROUND ECONOMY** is when work is performed but not properly reported in order to shortchange workers and/or avoid paying taxes. This illegal activity happens every day in every sector of the economy. It costs Washington state billions of dollars in uncollected revenue and harms law-abiding employers that must struggle to compete with unscrupulous, illegal businesses. In terms of employment, it commonly occurs in two forms:

WAGE THEFT is when employers illegally withhold workers' pay by refusing to pay for hours worked, deducting unfair fees or fines, refusing to pay overtime or minimum wage, and/or withholding final paychecks when workers leave a job. Workers whose wages are stolen often keep silent for fear their hours will be cut or they'll be fired. But even when violations are reported, state laws give the victims little opportunity to seek justice and little protection from retaliation. Wage theft not only costs its victims thousands of dollars per year, it costs state and local governments—and the workers' compensation and unemployment insurance funds—millions of dollars every year.

EMPLOYEE MISCLASSIFICATION is when unscrupulous employers treat employees as "independent contractors." They do this to deny workers access to minimum wage, overtime pay, and family and medical leave, and also to avoid paying federal taxes, including Social Security and Medicare, and state taxes such as B&O, unemployment insurance and workers' compensation. This obviously harms the employees denied fair pay and the safety nets for laid-off and injured workers, *but it also harms other employers who play by the rules and are put at a competitive disadvantage.*

Rampant wage theft and employee misclassification are costing our state government millions of dollars every year. That money could be going to meet the state's obligations to fund schools, universities, public safety, and other critical social services.

LABOR'S POSITION

The Washington State Labor Council, AFL-CIO, has joined with other labor, community, religious and small business organizations to form the Stop Wage Theft Coalition. It is guided by two principles: 1) Hard work,

“ (Our employer) is always paying us incorrectly for the hours we work. Often we do not know until later because we don't immediately check the pay against the hours worked, it is really a problem. ”



Cabin Cleaner for a SeaTac Airport contractor

(SEE REVERSE)

honesty and integrity should be fairly rewarded, and 2) Unethical employers that rig the system to cheat vulnerable workers of their pay, cheat competitors of business, and state and local governments of revenue should face consequences.

The Stop Wage Theft Coalition supports legislation that would:

- Bolster enforcement so efforts match the scale of the problem;
- Create a clear and more consistent definition of employee as compared with an independent contractor;
- Still allow legitimate independent contractors to maintain their independence;
- Ensure that employees can collect after they win cases for unpaid wages against their employers;
- Ensure victims of retaliation are protected under the law and have recourse
- Bring in the revenue owed to the state by catching employers who are cheating the system and their workers.

FACTS & FIGURES

Wage theft affects tens of thousands of workers across Washington state and millions across the country. A comprehensive national study¹ by the National Employment Law Project and other organizations documented shocking levels of wage theft:

- 64% of low-wage workers experience wage theft each week;
- 26% are paid under the legal minimum wage;
- 76% of workers owed overtime go unpaid or underpaid; and
- On average, low-wage workers lose \$51 per week to wage theft, or \$2,634 per year. For low-wage workers, that amounts to 15% of their annual income, at average earnings of \$17,616 per year.

Studies have also found employee misclassification to be rampant. A study² by the U.S. Government Accountability Office estimates that employers illegally pass off 3.4 million regular workers as independent contractors, and the U.S. Labor Department estimates that up to 30% of companies misclassify employees.

RECENT LEGISLATIVE HISTORY

2006 — The Legislature passed the historic Wage Payment Act requiring the investigation of wage complaints.

2008 — Based on recommendations from the Joint Legislative Task Force on the Underground Economy in the Construction Industry, the Legislature passes HB 3122 clarifying who can be considered “independent contractors” and SB 6732 giving L&I more tools to identify and penalize contractors working underground.

2009 — HB 1559 clarifying “independent contractors” for prevailing wage purposes.

2011 — L&I signs a Memorandum of Understanding with the U.S. Department of Labor, to share data and coordinate enforcement efforts partnering in the battle against employee misclassification. These MOUs enable the DOL to share information and to coordinate enforcement efforts with participating states.

2012 — Led by then-Councilmember Bob Ferguson, King County prohibits employers who willfully and unlawfully withhold employee wages from getting business contracts with the county. In his successful campaign for State Attorney General, Ferguson vowed to aggressively pursue “wage theft” violations.

1. “Broken Laws, Unprotected Workers,” Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment, 2009. labor.ucla.edu/publications/reports/brokenlaws.pdf 2. GAO “Employee Misclassification” (8-09)



The Washington State Labor Council, AFL-CIO, is the largest union organization in the state, representing the interests of some 500 labor organizations and 400,000 rank-and-file members. For more information or additional WSLC Legislative Position Papers, visit www.wslc.org.