

Wage Theft in Hillsborough County, Florida

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**Research Institute on Social and Economic Policy
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The Research Institute on Social and Economic Policy

The Research Institute on Social and Economic Policy (RISEP) was established in 2004 to study pressing social and economic issues in the state of Florida, particularly those relating to labor. It is housed within the Center for Labor Research and Studies at Florida International University (FIU) in Miami. It has produced many research reports over the past decade, and has been widely referred to in Florida media stories. Many of its reports are available on its website located at www.risep-fiu.org.

Since 2006, RISEP has been working to create a database of wage violations, which are collected either by community organizations or by the U.S. Department of Labor throughout the state. The purpose is to document the extent of wages lost, to quantify how much lost wages have been recovered, and to see which industries and counties in Florida are most affected by the problem.

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I. Introduction: What is Wage Theft?

Wage theft is defined as an employee not receiving the wages or benefits to which he or she is legally entitled. There are many ways that wage theft occurs. A few of the most common are listed here.

- Minimum Wage. Paying an employee less than the minimum wage constitutes wage theft. (In Florida the current minimum wage is \$7.93 per hour; going up to \$8.05 in 2015.)¹
- Overtime. Failing to pay an employee 1½ times the regular pay rate after 40 hours of work within a week is also wage theft.
- Requiring an employee to work “off the books.” There are a variety of ways this is done. Here are some examples:
 - Being required to work through lunch breaks or other required breaks;
 - Being forced to work after having “clocked out” or after work hours are done;
 - Being compelled to attend meetings or events as part of the job, but not being paid to do so.
- Not giving the final paycheck. This type of wage theft often happens with employers who go out of business or who move.
- Taking an employee’s tips. The employer is not entitled to any of an employee’s tips, which are part of his or her wages. Taking these tips or “sharing” them with the employee constitutes wage theft.
- Falsifying the records of hours worked. Shortening the official record of hours worked to be less than the actual hours is another form of wage theft.
- Misclassifying an employee as an “independent contractor” when he or she is actually an employee. Pretending that an employee is an ‘independent business’ steals from that employee by requiring him or her to lose social

¹ There are a few exceptions, such as a lower minimum wage for tipped workers and special categories of employment that are considered exceptional: workers with disabilities, student learners, full time students, workers under age 20 in their first 90 days of consecutive employment, etc.

security benefits, unemployment compensation benefits, workers compensation benefits, etc., and also transfers extra taxes to him or her.

- Violating legal compensation requirements that may exist for certain categories of work beyond simple minimum wage and overtime regulations for all work. Certain laws concerning federal contracts in the construction industry or federal service contracts require wage payment in accordance with local standards or regulations. Failing to pay wages up to these standards is yet another form of wage theft. Other laws concerning garnishment of wages, or treatment of migratory workers, also could be violated, resulting in wage theft.²
- Not paying the employee at all. The most blatant form of wage theft occurs most frequently in “day labor” situations where employees have a hard time locating or communicating with an employer on a temporary or short term job.

The above examples do not cover absolutely every type of wage theft, but they cover all the main categories where wage theft most often occurs.

² The vast majority of wage theft violations fall under the federal Fair Labor Standards Act (FLSA), which sets the national minimum wage and also mandates that overtime wages of 1½ times the normal rate be paid for hours of work over 40 per week. It also mandates payment for all work performed. Probably between 80% and 90% of all wage theft violations are due to failure to follow the FLSA. For federal contracts, the McNamara-O’Hara Service Contract Act (SCA) requires that federal service contract employees in the private sector be paid the “prevailing wage” in the area for all work performed. The prevailing wage rates are determined by the U.S. Department of Labor for each locality and are published and presented to those seeking to obtain service contracts with the federal government. In the construction industry, the Davis-Bacon and Related Act (DBRA) requires construction contractors on federal projects to pay the local prevailing wage in performing work for the government. The Copeland “Anti-Kickback” Act makes it illegal for an employer to force an employee to kick back part of his or her wages as a condition of employment. Doing so would be a form of wage theft. The Contract Work Hours and Safety Standards Act (CWHSSA) closes some construction industry loopholes in overtime payment for work performed in any federally funded construction project worth more than \$100,000. The Migrant and Seasonal Worker Agricultural Worker Protection Act (MSPA) requires labor contractors to pay migrant agricultural workers in a timely manner and to provide them with a written “pay stub” showing all deductions taken and the purpose of such deductions. Back wage claims may also arise in cases of garnishing wages illegally, although this is extremely rare.

Despite this long list of potential laws that could be broken through wage theft, as a practical matter, virtually all cases fall under the Fair Labor Standards Act or the federal contractor laws governing construction (Davis-Bacon) and general services (Service Contract Act).

II. Is Wage Theft a Significant Problem in the United States?

The issue of wage theft has been receiving increasing attention in the past decade. A simple “Google search” on the internet using the words “wage theft” turns up 2,860,000 citations. Beyond the popular interest in the issue, federal officials at the U.S. Department of Labor are also expressing alarm over how widespread the practice has become. In a September 1, 2014 article in the *New York Times*, David Weil, the director of the U.S. Department of Labor Wage and Hour Division is quoted as saying that his agency “has uncovered nearly one billion in illegally unpaid wages since 2010.”³

Documenting the prevalence of wage theft (or lack of it) is difficult because government statistics fail to capture most of it. Detailed surveys of large numbers of workers would be necessary to definitively determine how widespread the practice is. But such surveys are expensive to conduct.

By far the most comprehensive survey of wage theft incidence is a 2009 study published by the National Employment Law Project, the University of Illinois at Chicago Center for Urban and Economic Development, and the UCLA Institute for Research on Labor and Employment.⁴ The authors surveyed **4,387 low-wage workers in the three largest U.S. cities – Chicago, Los Angeles, and New York.** They found that **more than two thirds (68%) of their sample experienced at least one pay-related violation in the previous work week.** On average the **workers lost \$51 out of average weekly earnings of \$339.** That translates into approximately **\$2,634 lost annually to wage theft, or 15 percent of their total earnings of \$17,616.**

If these figures are at all representative of the rest of the country, it is evident that wage theft is a significant problem. Because similarly detailed studies have not been conducted, we do not know how representative these findings would be for other locations and smaller cities. But this study is the best evidence we have to date, and it points to a major problem.

On September 11, 2014, Brady Meixell and Ross Eisenbrey of the Economic Policy Institute utilized court case data to supplement U.S. Dept. of Labor

³ Steven Greenhouse, “More Workers are Claiming ‘Wage Theft’,” *New York Times*, September 1, 2014, p. A1.

⁴ See Annette Bernhardt, Ruth Milkman, Nik Theodore, Douglas Heckathorn, Mirabai Auer, James DeFilippis, Anna Gonzalez, Victor Narro, James Perelshteyn, Diana Polson, and Michael Spiller, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities*. 2009. Available on the web at this URL site: http://www.unprotectedworkers.org/index.php/broken_laws/index.

Statistics and found that approximately **one billion dollars was recovered in wage theft court cases in 2012.**⁵ This data is indeed supplemental to U.S. Department of Labor (US DOL) statistics because the US DOL data only reports cases where the employer voluntarily agreed to pay back wages, not court cases.

Those damaged by wage theft practices include, of course, the workers themselves and their families. However, employers who abide by the rules, but who are located within the same industries as those who do not, are also damaged by the practice because they are put at a competitive disadvantage in the marketplace compared to “thieving” employers whose theft lowers their cost.

Local communities are also damaged by wage theft. Money paid appropriately (on time, correct amount) to workers – especially lower wage workers – is immediately re-circulated in the local economy through purchases. If that same money is transferred to employers through wage theft, it is less clear where or how it will be spent. Much depends on the employer’s spending and investment patterns. That money could equally well end up in a vacation spot in Aruba or an investment in China as circulating in the local economy.

III. Wage Theft in Florida

In 2012, RISEP produced a report on wage theft in the state of Florida.⁶ This report supplemented U.S. Department of Labor data with reports from community organizations throughout the state that had documented wage theft in their own locales. The results show that wage theft appears to be widespread within the state, especially among low-wage workers. The community organizations reporting on wage theft cases were all in the state’s most populous counties.

Utilizing **U.S. Department of Labor data from September 2008 through January 2011**, the report found **9,109 cases of wage theft** investigated in the state that resulted in the employer agreeing to pay back wages to the affected employees. Wages recovered in this manner totaled **\$28,263,094** in that period.

⁵ See Brady Meixell and Ross Eisenbrey, *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year*. Washington, D.C.: Economic Policy Institute, Issue Brief #385 (September 11, 2014).

⁶ See Cynthia S. Hernandez and Carol Stepick, *Wage Theft: An Economic Drain on Florida – How Millions of Dollars are Stolen from Florida’s Workforce*. Available on the web at: <http://www.risep-fiu.org/2012/01/wage-theft-how-millions-of-dollars-are-stolen-from-floridas-workforce/>.

The report found that Florida's six most populous counties accounted for the vast majority of wage theft cases. **Hillsborough County was the second worst offender.** Table 1, reproduced from that report, shows the incidence by county:

Table 1
Wages Recovered and Number of Employees with Wage Theft Cases in Six Florida Counties, Sept. 2008 to Jan. 2011

County	Total Wages Recovered	Number of Employees with Wage Theft Cases	Average Wages Recovered Per Employee
Miami-Dade	\$5,920,338	7,641	\$775
Hillsborough	\$3,266,775	4,705	\$694
Broward	\$2,246,687	3,894	\$577
Pinellas	\$1,874,978	3,615	\$519
Palm Beach	\$1,578,701	2,181	\$724
Orange	\$1,028,290	2,402	\$428

Source: U.S. Department of Labor, Wage and Hour enforcement data analyzed by RISEP

The above data includes only cases where the employer agreed to pay back wages after an investigation. It does not include cases where the employer refused to pay, where the case was never brought to the attention of the U.S. Department of Labor, where the employer does not fall under the jurisdiction of the Fair Labor Standards Act, or where a lawsuit was initiated.

From the evidence given above, it appears that Florida does have a considerable incidence of wage theft. And Hillsborough County appears to have the second highest number of such cases in the state.

IV. Florida Responses to Wage Theft

The state of Florida does not have any mechanism or personnel to investigate or handle wage theft cases. In 2000, the Florida legislature voted to dismantle the state's Department of Labor and Employment Security (DOLES). DOLES was replaced by a not-for-profit corporation, Workforce Florida, as well as the Agency for Workforce Innovation (AWI). But neither of these organizations handles wage and hour complaints. The state does not enforce its own minimum wage, and the Florida Attorney General has never brought a civil action to enforce the state's minimum wage, which is embedded in Article X of the state's constitution.

The state legislature has not considered taking any action on the issue of wage theft, and there are no known pending legislative bills to deal with the issue. At the state level, there is no interest in dealing with wage theft. However, there have been responses at the county level.

Miami-Dade County ordinance

In 2010, Miami-Dade county commissioners unanimously passed the state's first wage theft ordinance. Importantly, the ordinance covers **all** employees working within the county, not simply those covered under the federal Fair Labor Standards Act, which has numerous full and partial exemptions to coverage.

A minimum threshold of \$60 in unpaid wages is required, and complainants are required to fill out a complaint form documenting the alleged violation. There is no charge for filing a complaint. Withholding wages for more than 14 days is considered unreasonable, and such cases are included within the ordinance.

The county notifies the employer of the complaint, and attempts first to conciliate the matter. Conciliation is the initial approach, and it is the preferred method if the two sides can come to agreement. If that fails, a hearing before a county hearing officer is held, and a determination is made. If the employer is found to be guilty, he/she must pay the complainant full back wages plus "liquidated damages" equal to two times the back wages owed. He/she must also pay the county for the costs incurred in the hearing. Thus, the cost to the county from the ordinance is minimized. The ordinance "sunssets" in five years if not renewed.

The "treble damages" awards of back pay apply only to cases that go to a hearing. Employers that believe they will be found guilty thus have an incentive to voluntarily pay back wages due in the conciliation process. In that case the only monies due are the amount of back wages illegally withheld.

There are additional details on the Miami-Dade ordinance, but those are the main features. The ordinance itself is available on the website:
https://library.municode.com/HTML/10620/level2/PTIICOOR_CH22WATH.html#TOPTITLE.

Enforcement of the ordinance appears to work quite well, according to Miami-Dade personnel. The county has handled almost 2000 cases and recovered almost three million dollars in unpaid back wages through the conciliation process and through wage awards after a hearing. **County personnel estimate that between**

60% and 80% of cases handled by the county have been referred by the federal inspectors, because those cases fall outside the confines of the national laws. Table 2 gives a breakdown of cases.

Table 2
Miami-Dade Wage Theft Cases, 2010 through September 30, 2014

Year **	# of claims *	Value of claims	# of successful conciliations	Value of claims conciliated	# of claims going to hearing	Wages & penalties awarded	Back wages paid out
2010	257	\$477,029	73	\$37,742	60	\$149,586	\$187,328
2011	628	\$1,652,802	279	\$311,126	119	\$423,309	\$734,435
2012	394	\$1,044,582	144	\$124,676	172	\$396,644	\$521,320
2013	408	\$1,526,485	166	\$340,551	212	\$543,108	\$883,659
2014	301	\$1,106,935	74	\$177,623	88	\$324,879	\$502,502
Total	1998	\$5,807,833	736	\$991,718	651	\$1,837,526	\$2,829,244

* # of claims does not include 869 cases that were referred out, had no merit, or were logged but never formally filed by claimant.

** 2014 period only includes numbers from January through September of 2014, for which 41 cases remain open, representing \$194,537 in Value of Claim.

Source: Email dated December 8, 2014, to the author from Holly Beth Billington, Consumer Advocate, Miami-Dade Office of Consumer Protection, Department of Regulatory and Economic Resources, Business Affairs Division

The bottom row of Table 2 provides totals for the approximately 4½ years the Miami-Dade ordinance has been in effect. It reveals that almost three million dollars (\$2,829,244) has been recovered for victims of wage theft during that period, about two-thirds of it through hearings and one-third through voluntary conciliation. **The average recovered was \$2,039.83, well above the average recovered by federal enforcement** (see Table 1).

Broward County Wage Recovery Ordinance

In January of 2013, Broward County’s wage theft ordinance (titled “Wage Recovery Ordinance”) went into effect. Its main features largely mirror those of the Miami-Dade ordinance. There are two main differences. First, this ordinance requires employees to go through an elaborate set of procedures before filing a complaint with the county – procedures that may discourage especially low-wage workers from pursuing remedies. Second, if a hearing process finds an employer to be guilty, liquidated damages are only equal to the back pay due, not twice the back pay due.

A copy of the Broward County ordinance can be found at the following website: <https://www.broward.org/Intergovernmental/Documents/BCOrdinance201232Wage.pdf>.

As of February 12, 2014, Broward County recovered \$37,621 dollars in unpaid wages under this ordinance (approximately one year after it went into effect).⁷ Due to time constraints in getting this report out, we were unable to get an update on this figure to a more recent time.

Alachua County Wage Theft Ordinance

In January 2014, Alachua County implemented the state's third wage theft county ordinance. This ordinance is closely modelled on the Broward ordinance: it contains the lengthy procedure that employees must follow before filing a charge with the county and double (rather than treble) payment of back wages in the event a hearing and ruling is required. Again, the county's administrative costs for the hearing are also recovered if a hearing is required and implemented.

A copy of the Alachua County ordinance can be found at the following website: <http://www.alachuacounty.us/Depts/BOCC/Ordinances/2013/13-004.pdf>.

In the first nine months of the program (January through September 2014), 34 claims were filed, 23 were settled (settlement rate of 68%), and \$13,654.46 in stolen wages was recovered.⁸

As this report was being written, several amendments to the Alachua county ordinance are being contemplated to streamline it and make it more effective.

V. Wage Theft in Hillsborough County

This section of the report provides the available data that we have on Hillsborough County. We use the only data source we have at this time, the U.S. Department of Labor's database on the number and size of cases handled by its officers in recent years.

It is important to understand how incomplete this data is. This data does **not** contain any cases where:

⁷ Information obtained from the Broward County Office of Intergovernmental Affairs.

⁸ Information obtained from the Alachua County Wage Theft Program.

- Wage theft occurred, but was never reported to the agency;
- Wage theft occurred and was reported to the agency, but it was unable to proceed because the employer fell outside the jurisdiction of the agency;
- Wage theft occurred and was investigated and verified by the agency, but the employer refused to pay the back wages (in this case and in virtually all cases, the aggrieved employee must either seek a private attorney to file a court case or else simply drop the issue – on rare occasions with very large sums at stake the U.S. Secretary of Labor will pursue a case).

Only instances of wage theft where the employer voluntarily agreed to pay the back wages due after a Department of Labor investigation are included in the following figures. We do not know what percentage of all wage theft instances are covered by these figures, but it is only a fraction of all such cases.

Nevertheless, the data are useful because they give an indication of where the problem is most widespread. Also, if we can assume that the cases reported roughly mirror the actual cases, they help us understand which industries experience the problem the most.

The following tables are compiled from data of the U.S. Department of Labor's Wage and Hour Division for Hillsborough County in the years 2010 through the first three months of 2014 (the closest we can get to the present).

Table 3 gives an overview of the cases during these years.

Table 3
Hillsborough County Wage Theft Agreements to Pay Back Wages after Federal Investigation, 2010 through March 2014

Number of Employers	435
Number of Violations	12,465
Number of Employees Reimbursed	9,539
Amount of Money Reimbursed	\$5,716,218.89

Source: US Dept. of Labor Wage and Hour Division statistics, analyzed by author

With 9,539 employees receiving slightly over \$5.7 million in back wages, the average reimbursement was \$599.25, similar to statewide figures presented earlier. With amounts this small, it is easy to understand why, reportedly, many workers find it impractical to hire a private attorney to recover their money: the amount is not large enough to make it worth the lawyer's fees.

Table 4 shows number of violations, numbers of employees reimbursed, and amount of restitution according to industrial sector within the county.

Table 4
Hillsborough County Number of Violations, Number of Workers Reimbursed, and Amount of Restitution by Industrial Sector, 2010 through March 2014

Industrial Sector	# of Violations	# of Workers Reimbursed	Amount of Restitution
ACCOMMODATION AND FOOD SERVICES (Hotels, motels, restaurants)	2358	1718	\$1,153,521.26
CONSTRUCTION	856	568	\$905,334.76
ADMINISTRATIVE AND SUPPORT SERVICES (JANITORS, LANDSCAPING, TEMP HELP, SECURITY GUARDS, ETC.)	4421	4059	\$892,401.66
PROFESSIONAL, SCIENTIFIC AND TECHNICAL SERVICES (COMPUTER PROGRAMMING, LANDSCAPE ARCH.)	463	229	\$769,893.32
TRANSPORTATION AND WAREHOUSING	490	291	\$379,347.35
FINANCE AND INSURANCE	371	252	\$265,078.70
RETAIL TRADE	293	224	\$225,543.50
AGRICULTURE	1470	1085	\$220,431.87
HEALTHCARE (INCLUDING NURSING HOMES, DAY CARE CENTERS)	679	457	\$216,001.21
MANUFACTURING	259	162	\$210,593.29
WHOLESALE TRADE	69	63	\$165,813.93
INFORMATION SERVICES (TELECOMMUNICATION CARRIERS)	398	167	\$143,442.71
OTHER SERVICES (INCLUDING AUTO REPAIR, DRYCLEANING, BEAUTY SALONS, CAR WASHES, POOL MAINTENANCE, ETC.)	166	113	\$63,239.67
REAL ESTATE AND RENTAL SERVICES	78	68	\$45,818.86
UTILITIES	47	44	\$31,601.48
MINING AND QUARRYING	23	23	\$11,777.75
PUBLIC ADMINISTRATION	20	13	\$11,395.81
EDUCATIONAL SERVICES	2	1	\$4,023.75
ARTS AND ENTERTAINMENT	2	2	\$958.01
TOTALS	12,465	9,539	\$5,716,218.89

Source: US Dept. of Labor Wage and Hour Division statistics, analyzed by author

Table 2 shows that three categories of employers that are prevalent in Hillsborough County account for more than half of all wage theft cases in the county.

Accommodations and food service (lodging and restaurants) is by far the largest category, accounting for 19% of all cases and 20% of the wages illegally withheld. **Construction** is second on the money scale, accounting for seven percent of all cases and 16% of the money amounts reimbursed. And the **Administrative and Support Services sector (including temp help, landscaping, security guards, and janitors)** comes in third, with 35% of all cases and 16% of all wages reimbursed. **These three categories alone constitute 61% of all cases and 52% of all wages reimbursed to the victimized employees.**

At the opposite extreme, some industry sectors exhibit very little wage theft. Arts and entertainment, education, public administration, and mining and quarrying all showed less than \$12,000 in restitution to their employees over that 4+ years.

While it is apparent that wage theft is most widespread in the lower-wage sectors of the economy, it is also clear that wage theft occurs at many other levels, also. **It occurs almost everywhere except at the very highest levels of compensation.** One example of relatively highly paid employment that still exhibits considerable wage theft in these figures is Professional, Scientific and Technical Services. This sector had the fourth largest dollar volume of back wages paid to victimized employees (almost seven hundred seventy thousand), although this sum was shared among a relatively modest number of workers (229). On average each worker received \$3,361.98, well above the average of slightly under \$600 for all workers compensated.

An extreme at the opposite end of the spectrum (large numbers of workers, but relatively low payouts to each worker) is the agricultural sector. Here 1085 workers shared slightly over two hundred twenty thousand dollars in back pay, averaging \$149.95 apiece. The very low wages in the agricultural sector probably account for the relatively small payout in back wages to each worker compared to many other sectors. The same is true for Administrative and Support Services (janitors, security guards, temp help, landscaping, etc.), where the average back pay given to each worker was only \$219.86.

In general, despite these extremes, the data shows that **wage theft is relatively widespread across a spectrum of industries; it is not localized to one or two sectors.** It is most prevalent in the “big three” (Accommodation and Food Service, Construction, and Administrative and Support Services). It can best be

characterized as a widespread problem which is especially rampant in a few sectors.

Summary and Conclusion

This report has defined the term “wage theft” and shown that available evidence shows that the failure to properly pay employees is widespread and serious. Data from the U.S. Department of Labor and from community groups indicate that the same is true within the state of Florida. At the state level there are no government agencies or departments to deal with the issue, and there is no interest in the state legislature in dealing with it.

The Wage and Hour Division of the U.S. Department of Labor attempts to enforce wage payment standards, but many wage theft victims fall outside the parameters of federal laws, and thus they cannot be helped from this source. Furthermore, **there are only 72 federal inspectors throughout the entire state, meaning there is one inspector for every 126,129 employees.**⁹ While the federal enforcement efforts do return millions to victimized employees every year, it is also clear that they fail to correct a great many genuine cases of wage theft in the state.

At the county level, three counties to date have passed ordinances to set up local government mechanisms to help victimized workers recover the money due to them: Miami-Dade County, Broward County, and Alachua County. All three have successfully returned money to victims of wage theft, but the most successful one has been the one from Miami-Dade County. If Hillsborough County wishes to enact a similar ordinance, evidence indicates it should pattern its legislation after the Miami-Dade one, if it wishes to most effectively address the problem.

This report also presents and analyzes available evidence on the extent and scope of wage theft within Hillsborough County. U.S. Department of Labor Wage and Hour data shows that wage theft is widespread and especially rampant in several relatively low-paid industry sectors. Lodging and Food Services, Construction, and various types of low-wage service industries have a very large wage theft problem, but it also appears in sizeable quantities in many other industrial sectors.

⁹ According to the U.S. Department of Labor Bureau of Labor Statistics, in November 2014 there were 9,081,300 employed in the Florida civilian labor force. Divided by 72 inspectors, this yields a ratio of one inspector for every 126,129 employees.

Wage theft is a problem in Hillsborough County. It is partially addressed through federal enforcement mechanisms, but many victims are not helped by federal enforcement. Judged especially on the evidence from Miami-Dade, a properly crafted county wage theft ordinance could extend both the scope and effectiveness of efforts to curtail the problem in the county.