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Wage Theft in the United States: A Critical Review

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Abstract

Wage theft - the stealing of employees' wages and benefits by employers - is prevalent in the United States, with stolen wages and benefits are estimated to total billions of dollars per year. Building upon the recent increase in attention to the issue via advocacy, policy, and research efforts– and in light of the few comprehensive analyses of them – this paper critically reviews existing literature on the wage theft problem and policy interventions within the context of the deregulated labor market of the United States. It assesses the research and policy considerations that will be critical in bringing about national reform, given the persistent opposition from business groups and the efforts of the current federal administration. Lessons applicable to other countries are also drawn from this assessment.

Keywords: Wage Theft, Employee Misclassification, Employment Laws, Neoliberal Labor Markets, Hour and Wage Law

1. Problem: The Stealing of Wages and Benefits

Wage theft refers to employers' practices of not paying wages and benefits that their employees are legally entitled to. It occurs in countries around the world, including Australia (Clibborn and Wright, 2018), Brazil (Bingami and Barbosa, 2015), the United States (Bobo, 2008; Bernhardt et al., 2009), and the European Union countries (Franić, 2019). In the United States, it often results from violations of labour standards designed to ensure employees' rights and benefits. Wage theft takes many forms, but the most prevalent forms include paying less than the prevailing minimum wage (which in the United States is currently $7.25, or higher in states with higher state minimum wage rates), not paying for overtime hours (for hours exceeding 40 hours per week for hourly-paid employees), and not paying for employment-based insurance programs such as Social Security and Medicare, unemployment insurance, and workers' compensation by misclassifying employees as independent contractors (Bobo, 2008). It is important to point out that wage theft is not only the stealing of employees' wages but also the stealing of employees' benefits by employers.

Although the prevalence of wage theft in the United States is difficult to estimate (Bernhardt et al., 2009), it is widespread particularly in certain low-wage industries such as construction, food services, retail, health care, accommodation, and online gig industries (U.S. Department of Labor [DOL], n.d.). The scales of lost wages and benefits are substantial. Employment tax violations represented more than $91 billion of the gross tax gap (U.S. Department of Justice, 2018; U.S. Government Accountability Office [GAO], 2017). Studies that used a nationally representative household survey (i.e., the Current Population Surveys) reported that as much as 17% of low-wage workers experienced minimum wage violations, resulting in a loss of $8 billion a year for workers (Cooper and Kroeger, 2017; Galvin, 2016). Cooper and

Kroeger (2017) estimated that the amount of stolen wages in the United States was more than all the money stolen due to robbery, theft, larceny, and vehicle theft. A study that collected data from low-wage workers in New York City, Los Angeles, and Chicago revealed that nearly 76% of the workers who worked more than 40 hours in the previous week experienced overtime pay violations and that 26% had a minimum wage violation (Bernhardt et al., 2009).

Wage theft can have severe economic consequences for workers and their families, as victims are typically vulnerable immigrants or racial minorities in low-wage sectors. Workers can lose income and fall into poverty due to being paid less than the prevailing minimum wage and not receiving appropriate compensation for overtime work. In addition, they can lose out on benefits such as workers' compensation and unemployment insurance if misclassified as independent contractors (Eastern Research Group, 2014). Studies have also found that lack of enforcement of paid sick leave—a form of wage theft—is positively related to under-treatment of occupational injuries and the increased spread of illness among workers (Asfaw, Pana-Cryan, and Rosa, 2012; Peipins, Soman, Berkowitz, and White, 2012). Moreover, wage theft substantially reduces government tax revenues both for payroll tax and federal and state income taxes (Eastern Research Group, 2014). It has been argued that this practice accounts for stealing from taxpayers, as the victims and their families may eventually need to rely on publicly-funded welfare programs. It also allows unfair business advantages for companies that lower their labour costs illegally (Zwick, 2018).

In response to the growing awareness of the pervasiveness and magnitude of wage theft, there has been a recent increase in policy, advocacy, and research efforts to stop wage theft practices. Fueled by worker and community organizing and advocacy groups, many state and local governments across the country have enacted anti-wage theft policies, and researchers from

many disciplines including law, political science, labour studies, and sociology have produced theoretical and empirical knowledge on the issue. Now, the United States is at a critical juncture in its efforts to fight wage theft, in part due to the knowledge accumulated from over a decade of interventions, which have led to and shaped the U.S. Senate bills introduced last year to curtail wage theft by amending the *federal* employment and labour policies (Congressional Research Service [CRS], 2019a, b). There are, however, few comprehensive and critical analyses of the U.S. wage theft problem and policy interventions, which are much needed to guide the direction of future policy and research efforts. Against this backdrop, we aim to provide a critical review of the problem and policy interventions as well as an assessment of the remaining research and policy work that is needed to aid national reform. As part of this review, we also draw lessons applicable to other countries.

2. Context: The U.S. Neoliberal Labour Market

Wage theft in the United States needs to be contextualised in its neoliberal labour market, where labour standards and individual entitlements have been eroded via labour market deregulation. Although labour market deregulation has been observed around the countries in the global economy, the U.S. labour market, along with the UK and Canada, is more deregulated than labour markets in Western European countries (Peter, 2008). Rooted in the ideology that individuals should be responsible for their well-being and free from government intervention, neoliberalism endorses minimum government regulations and limited social duties for employers (Zwick, 2018). Distrust of government intervention in the United States has led to the devolution of regulatory responsibilities from the federal to local governments (McCarthy and Prudham, 2004). We discuss the broad labour market context within which wage theft practices are incentivised and perpetuated in the section below.

2-1. Deregulated Labour Standards

Of the many laws that govern labour standards in the United States, the following five are particularly relevant to wage theft, as they are designed to set the national minimum standards for wages and benefits for employees. First and foremost, the *National Labor Relations Act (NLRA)*, established in 1935, was intended to balance the power between the employers and employees by granting employees the right to organise unions and bargain collectively to improve wages, compensation, and working conditions. Second, the *Federal Insurance Contributions Act (FICA),* also established in 1935, created a federal insurance system to provide the basic income security for workers against loss of earnings related to retirement, disability, and illness. FICA established Social Security and Medicare taxes to fund the insurance system and mandate employers to withdraw the taxes from employees' wages and also to pay their shares of these taxes. Third, the *Fair Labor Standards Act (FLSA),* created in 1938, mandates national minimal standards for wages, overtime pay, and record-keeping for most private and public employers. According to the current version of the law, employees, unless exempt, should be paid at least $7.25 per hour (or higher in states with higher minimum wage rates) for all the hours they work and be paid 1.5 times of their regular pay for hours exceeding 40 per week. While most employees are covered by the FLSA, some workers are excluded for the minimum wage protection or overtime pay regulation or both (DOL, 2009). Fourth, with the *Federal Unemployment Tax Act (FUTA)*, the U.S. federal and state governments established unemployment insurance for all employees who lose their jobs. Employers are required to pay FUTA taxes so that their employees can receive temporary wage replacement if unemployed (The Internal Revenue Service [IRS], 2018). Last, *state Workers' Compensation (WC)*, established between the early 1900s through 1949, pays for medical bills and part of lost wages

when employees get injured or ill on the job in exchange for the right to file a lawsuit against their employees for damages.

During the post-war period, unions with the NLRA exercised their roles and power to increase workers' rights and benefits and helped to build the foundation of the middle class in the United States. Beginning in the 1980s and increasingly throughout the 1990s and onward, however, the emergence of economic globalization, advanced technology, and neoliberalism has profoundly altered the balance of power between capital and labour (Freeman, 2005; Peter, 2008). Companies have been given opportunities to outsource workers to lower-wage countries and open up new labour pools through immigration to increase labour market flexibility and lower labour costs (Appelbaum and Batt 2014). Government regulations that set minimum labour standards and workers' entitlement have been rolled back (Peck and Theodore, 2012). Workers' rights to unionise and collectively bargain have been consistently attacked; the federal minimum wage has been frozen for years; labour regulations have been modified with numerous exemptions and loopholes to favor businesses, and companies have been given more leeway to hire part-time and temporary workers and independent contractors, which allows them to avoid paying for employee benefits (Bosch, 2009; Kalleberg, 2008). At the same time, there have been increasing transfers of economic control and responsibilities from the federal government to states, and from governments to private markets (Campbell and Price, 2016). This decentralization and devolution of policy decision-making has set the stage for the proliferation of wage theft practices among businesses and employers.

2-2. Fissured Employment Relations

Workers' rights and benefits in the United States are protected in large part based on their employee status. In recent decades, however, the employment relationships that grant workers

employee status have become increasingly fissured-- that is, the extent to which employees are separated from their employers has grown (Kalleberg, 2008; Weil, 2011). Many companies, facing increased competition in the labour market, are incentivised to reduce labour costs, which is done by not paying or compensating workers according to the national minimum labour standards. Companies can also set up multi-tiered business arrangements, through subcontracting, franchising, third-party managing, that decentralise the employment relationship and make the relationship less transparent (Weil, 2011). The fissured employment relationship creates confusion and loopholes in identifying real employers. Companies are incentivised to find ways to misclassify their workers as independent contractors and avoid their legal responsibilities for the minimum labour standards due to the broad language of the five laws mentioned above (Bernhardt, Spiller and Theodore, 2013; Weil, 2011).

2-3. Increasingly Weakened Labour

While the NLRA was intended to balance the power between employers and employees, the law has not been amended for many decades and has left many workers vulnerable to wage theft (Kalleberg, 2008). The Supreme Court, since 1959, has written into the NRLA an expanding preemption doctrine that essentially prevents states and cities from passing labour laws that involve the interpretation of a collective bargaining agreement or any issue that the courts believe Congress intends to leave to the free market (Galvin, 2019). Unlike the FLSA, which allowed states to enact stronger protections and higher minimum standards than the federal ones, the preemption doctrine prohibited state efforts to do anything similar in the field of labour law (Galvin, 2019).

There has also been a consistent attack against the labour unions that has resulted in a gradual decline in the level of unionization in the United States. At its peak in the 1940s and

1950s, a third of all workers were represented by unions and benefited from the upward pressure unions put on wages, hours, and other employment terms and conditions. By 2019, however, the percentage of all unionised workers had fallen to 10.3%, with only 6.2% unionised in the private sector (DOL, 2020). Unions are often thought to be one of the most effective vehicles for deterring wage theft, by helping to set and enforce labour standards in the low wage labour market. Workers covered by a union are half as likely to be the victims of minimum wage violations (Cooper and Kroeger, 2017). Therefore, the decline in unionization weakened labour power and minimised its intervention against employers' violations of labour standards.

3. Explanations: The Costs of Violations and Compliances

Wage theft is, in essence, the violation of labour standards. Stealing wages from employees occurs through employers' violations of the hour and wage regulations of the FLSA. Stealing employees' benefits takes place by wrongfully classifying them as independent contractors and not paying taxes for Social Security and Medicare, unemployment insurance, workers' compensation on their behalf. Employers' motivations to violate the standards are largely determined by the costs of compliance as opposed to the costs of violations. A higher cost of violation and a lower cost of compliance are related to a lower prevalence of wage theft (Ashenfelter and Smith 1979; Sellekaerts and Welch, 1983). Below we explain these in more detail.

3-1. Low Costs of Violation

Because the U.S. labour standards are not enforced rigorously, the chance of wage theft being detected is slim, so are the economic consequences for employers (Fine and Bartley, 2009; GAO, 1981, 2002; Weil, 2011). The two enforcement agencies - the Wage and Hour Division (WHD) of the U.S. Department of Labor (DOL) for the FLSA and the Internal Revenue Service

(IRS) for employment tax laws - have limited funding and investigators to carry out their enforcement responsibilities and deter employers' wage theft (GAO, 1981, 2002, 2009). The combined budgets of all the labour agencies were around $2 billion in 2018, which was far smaller than the $24 billion budgets for two immigration enforcement agencies under the Department of Health and Services (Costa, 2019). As a result, the labour enforcement agencies are staffed at only a fraction of the levels required to adequately fulfill their missions (Fine and Golden, 2010). The WHD has only about 1,100 inspectors for over 135 million workers in more than 7.3 million establishments throughout the country (Costa, 2019). Of 50 states in the U.S., six states do not even have a single investigator in their state WHD offices, and 26 states have less than 10 investigators (Levine, Year; Lee and Smith, 2019). This limited number of investigators lowers the chance of employers engaged in wage theft to be caught and investigated. Likewise, IRS funding for enforcement of employment tax laws remains low. Specifically, while the number of IRA revenue officers fell between 2011 and 2015, the number of penalties for unpaid employment taxes went down by 38% and the number of violation cases referred for criminal investigation also fell by a third (Horton, 2015).

Even if an employer is caught, the penalties are generally not severe enough to change their future behavior. The two primary penalties that DOL uses are civil money penalties and liquidated damages. Employers who repeatedly or willfully violate the minimum wage and overtime requirements may be subjected to civil monetary penalties of up to $1,100 for each violation, but DOL seldom uses these penalties (Bobo, 2009). In addition, state laws for penalties and statutes of limitations vary widely, and they are very low in some states. In Mississippi, for example, employers who commit wage theft are subject to pay back only the amount of wages owed, and in Illinois, the statute of limitations relieves the violators from the penalty only after a

year (National Conference of State Legislatures, 2019). Criminal penalties are rarely used, even though the FLSA makes willful violations a misdemeanor punishable by up to 6 months in jail (Wial, 1999). The actual penalty for wage theft, as a result, can be nearly zero for employers who commit wage theft, and the expected costs of wage theft that should theoretically work as deterrents does not make little difference in practice (Galvin, 2016).

3-2. High Costs of Compliance

In addition to the low cost of violating labour laws, the prevalence of wage theft is also explained by the high cost of compliance. This is because labour standards between the federal and state levels are confusing and difficult to comply with. First, wage theft related to employee misclassification can take place in part because the classification rules vary significantly and remain confusing for some employers, and particularly small businesses that may not have legal assistance. The five laws that involve employee classification in the United States - the Fair Labor Standards Act, the National Labor Relations Act, the Fair Labor Standards Act, the Employee Retirement Income Security Act, and Internal Revenue Code - use different definitions of an employee and various tests to distinguish independent contractors from employees. In addition to federal laws, states have laws on misclassification for workers' compensation and unemployment systems (Bobo, 2009). Different federal agencies and different states rely on multi-factor tests to determine the degree of worker's autonomy versus employer control. The IRS established its own 20-factor 'economic realities' test, for example, to distinguish employees from independent contractors but it allows significant leeway and interpretation on the part of employers (Zwick, 2018). A worker can be deemed an employee under one law and an independent contractor under another. As some employers must comply with IRS, DOL, and state regulations altogether, the challenge sometimes can lead to violations.

Second, compliance with employee classification rules can be costly because misclassification, largely condoned as part of a tax loophole, is so pervasive that law-abiding employers can be outbid by their unlawful competitors. Under the 'Safe Harbor' rule of the Revenue Act of 1978 (a decades-old loophole in federal law), a company can identify its workers as independent contractors if it has a "reasonable basis" to do so and can show that it has been doing it continually and that others in its industry does it the same way (GAO, 2009). The rule can exempt employers from treating workers as employees. This means that the companies that operate with the Safe Harbor rule do not need to pay into Social Security, Medicare, unemployment insurance, and workers' compensation insurance, which can result in the stealing of billions of dollars from workers, governments, and the public (Zwick, 2018). The U.S. Treasury estimates that closing the loophole of Safe Harbor could generate $9 billion in tax revenue over 10 years, between 2012 and 2021 (CRS, 2011; Ordonez and Locke, 2014).

Lastly, beyond distinguishing employees from independent contractors, employers are also required to classify employees into exempt or non-exempt categories for minimum wage and overtime pay rules. However, the rules governing overtime protections through "the duty and salary tests" have become increasingly outdated and difficult to be enforced. Under the FLSA, executive, administrative, professional, and outside sales employees and salaried employees are exempt from overtime provisions (DOL, 2019). With the introduction of new technologies and economic changes, however, many employees with professional or administrative duties could be low-wage workers that earn below the salary test threshold (Boushey and Angel, 2016). Because employees need to meet both the tests to be covered by overtime rules, employers can give low-paid workers managerial titles to avoid paying overtime. While the salary test is relatively simple to implement (e.g., employees with at least $35,568 in

annual salary are exempt from overtime pay in 2020), the duty test presents enormously complex problems with interpretation about the executive, administrative, or professional functions within different contexts and cultures of each industry and job. As Bobo (2009) once put, it is not surprising that some employers don't understand how to properly compensate their employees (p.68).

4. Interventions: Federal, State, and Local Efforts

In response to the growing awareness of wage theft in the United States, there have been efforts to curb wage theft at the national, state, and local and community level. Much of these efforts have been mobilised by worker advocacy groups. The so-called 'alt-labour' - worker centers, workers' alliances, employee associations, and immigrants and human rights groups – have often sought out alliances with other progressive movements and worked to mobilise state and local governments' regulatory power to enact and enforce labour standards at the state and local levels (Galvin, 2019; Milkman 2013). Where federal government agencies have initiated measures to combat wage theft, collaboration with state agencies and alt-labour have been critical for success, reflecting the unique culture of decentralization and state devolution in the U.S. labour market (Peck and Theodore, 2012).

4-1. Strategic Enforcement Efforts at the Federal Level

As the limited enforcement of labour standards has long been a major contributor to wage theft, there have been federal initiatives made to increase enforcement efforts, particularly in the early years of the Obama administration (DOL, 2011, 2017). However, the enforcement resources allocated to the WHD remained low, at below $100 million in the 2010s. Given insufficient resources, the WHD, under the leadership of David Weil, strategised its enforcement efforts in a variety of ways. First of all, the WHD changed its enforcement strategies from a

complaint-based approach to a more proactive approach, targeting low-wage industries with the most severe FLSA violations (e.g., eating and drinking, hotel and motels, janitorial, agricultural products, and home health care industries). It increased the share of proactive investigations of total WHD investigations from 24% to 50% between 2008 and 2017 (Weil, 2018).

Second, the WHD began using all enforcement tools granted by the FLSA, including liquidated damages (payment to workers equal to double the amount of back wages), through close interagency collaboration to deter violations. It also extensively used the powerful 'hot goods' authority—in other words, the prohibition of shipment of goods produced in violation of the law in the absence of an employers' voluntarily correction of violations-- for certain industries (e.g., garment and agriculture) to expedite employers' payment (Cohen, 2018).

Third, the WHD conducted extensive outreach efforts to provide employers with industry-relevant information, including information on FLSA compliance, the definition of an employee, and on joint employment. It also built collaborative relationships with worker centers, community organizations, and immigrant rights groups to provide information and education to immigrant communities (Weil, 2018). The WHD also established compliance agreements with multi-layer companies in a joint employer system so that lead companies with large supply chains could train and monitor compliance activities of their contractors (Weil, 2018).

4-2. Reducing Employee Misclassification through Multi-Agency Collaborations

In 2010, the U.S. DOL launched the "Misclassification Initiative" as part of the Middle-Class Task Force, which aimed to combat misclassification and FLSA violations through federal and state collaboration (White House Task Force on the Middle Class, 2010). The DOL signed an agreement with the IRS as well as state agencies from 29 states to share their respective enforcement actions with the other and to conduct joint enforcement efforts with state agencies.

These agreements were set up to help the agencies exchange information on employee misclassification, in that one agency investigation can easily trigger another (AFL-CIO Department for Professional Employee, 2016).

In 2014, the DOL also awarded more than $10 million in grants to 19 states to help them with their efforts to reduce employee misclassification (DOL, 2014). Some of the state governments, including New York, Massachusetts, Michigan, and New Jersey, created inter-agency task forces to develop a variety of data and enforcement initiatives and further enact state laws. Some of these task forces in New York and Massachusetts began recovering millions of dollars in unreported wages and employment taxes (AFL-CIO Department for Professional Employees, 2016). Since that time, more than half of the states including California, Florida, Illinois, Wisconsin, and New Jersey established a "presumptive employee status" law to presume that workers are employees, not independent contractors until proven otherwise. Under the laws, employers are required to overcome the presumptions to prove that their workers are indeed independent contractors (Leberstein and Ruckelshaus, 2016). The presumption typically uses the so-called "ABC" test for state unemployment insurance and wage payment, which to classify the worker as an independent contractor entails meeting the following three factors: (1) a worker is free from control or direction over the performance of the work by hiring company; (2) the service a worker provides is outside the usual course of the business of hiring company; and (3) a worker is in an independently established trade, occupation, or business. This three-factor test represents a stricter test of determining an independent contractor, compared to what is required under the federal labour laws (Cagney, Hamid, Katz, and Lewis, 2019; Leberstein and Ruckelshaus, 2016).

4-3. Enacting State and Local Employment Laws

While the federal policies have been not adapted to keep up with the changing labour market, many states have made efforts to address the gaps by enacting their own employment laws. Worker centers and community-based organizations, along with legal service agencies, have built organizing movements to advocate workers' rights in low-wage industries. Many states, particularly politically left-leaning states with a large number of worker centers and a higher union density, have successfully enacted anti-wage theft legislation and workers' Bills of Rights (Doussard and Gamal, 2016). Between 1960 and 2014, the number of state employment laws more than quadrupled (Galvin, 2019), and from 2005 and 2018 alone, 24 states and 57 localities enacted a total of 141 laws to regulate wage theft practices (Lee and Smith, 2019).

Many state-level wage theft laws facilitate or authorise workers to sue in court to initiate an administrative enforcement process and/or increase or toll the statute of limitations for filing a worker complaint (Lee and Smith, 2019). They may also prohibit employers' retaliation against workers who file complaints. Some laws allow workers to seek monetary penalties for retaliation through an administrative agency or a court. In some states, laws permit confidential complaints (Lee and Smith, 2019). A small minority of the laws expand the number of employers liable for unpaid wages by using broader definitions of employers (e.g., joint employers). Half of state-level wage theft laws aim to increase awareness about wage and hour laws and to enhance transparency regarding employer's payment of wages. They mandate worker education on employment contracts by requiring employers to disclose to employees their specific pay rates, hours worked per each pay period, employers' name and address, and some even require employers to offer instructions on how to file an administrative wage complaint at the time of hire. (Latham and Watkins, 2012; Lee and Smith, 2019). Importantly, many wage theft laws authorise penalties for wage theft including civil (monetary) penalties, license revocation,

negative publicity, criminal charges, lien, and bond. In some jurisdictions, willful violations by repeat offenders are penalised by high civil penalties. Civil penalties include workers' attorney's fees, costs, or cost of administrative enforcement. The negative publicity penalty requires reporting to the public about employers who committed wage theft including posting at the employer's place of business. Only about 10% of states' wage theft laws, however, involve criminal charges and define wage theft as a misdemeanor or felony that results in fines or jail time (Lee and Smith, 2019).

Of the many strategies adopted by state anti-wage theft efforts, posting a bond and mechanic's lien has emerged as an effective strategy for high-risk industries such as construction and food industries. A mechanic's lien is a hold against the violator's property, in case of wages owed, to force the sale of the property. Only a handful of the current state wage theft laws, however, authorise a lien against employer's property for wages or penalties owed. Another effective strategy is the use of treble damage, that is, paying wages owed plus 200% of liquidated damages, as penalty for wage theft. It is considered the most expensive consequence of wage theft, and five states - Arizona, Ohio, Massachusetts, New Mexico, and Rhode Island - included it in their state anti-wage theft laws established between 2006 and 2013 (Galvin, 2016). It has been found to be associated with a reduction in the probability of minimum wage violations nearly by half (Galvin, 2016).

Besides anti-wage theft laws, workers' Bill of Rights and similar legislation have also been developed across many states for domestic workers, farmworkers, and day laborers, who often become the victims of wage theft. As many as nine states (New York, California, Connecticut, Hawaii, Illinois, Massachusetts, Nevada, New Mexico, and Oregon) and one municipality (Seattle) have passed Domestic Workers' Bill of Rights (National Domestic

Workers Alliance, 2019) to grant domestic workers the rights to written contracts, overtime payment, paid time-off, and protection from workplace harassment (National Domestic Workers Alliance, 2019). While farmworkers were excluded from minimum wage and overtime pay protections of the FLSA (Palmer, 1995), those in California, Hawaii, Minnesota, and Maryland have gained the right to collect overtime pay, and New York state recently joined the four states (Christman, 2019). Although these state-level enactment of employment policies represent great strides toward addressing wage theft issues, they also require vigorous enforcement, which remains a major challenge in many places (Lee and Smith, 2019).

5. Assessment of Prior Efforts and Potential for Reform

5-1. Assessment of Prior Efforts: Limitations and Contributions of Regional Interventions

Despite the enormous strides being made at the federal, state, and local level, enforcement remains challenging (Galvin, 2019; Lee and Smith, 2019). Many states' wage theft laws rely on workers' awareness and actions to excise their rights, limiting their effectiveness for marginalised workers who are less likely to pursue legal actions. States' efforts to prevent employers' retaliation may also be challenging because employers may engage in anticipatory retaliation even before workers file a complaint to discourage complaints (by firing, cutting hours, and threatening, for example). In addition, although increasing penalties require strong enforcement, states face many challenges, which can include: insufficient resources for state enforcement agencies or courts, limited expertise on the issue of wage theft, and in some places, a lack of political will (Galvin, 2016). Criminal prosecution of unlawful businesses remains difficult because it may put state prosecutors in the position of potentially harming their relationships with local businesses, or it could bear negative political consequences (Lee and Smith, 2019).

Nevertheless, it is crucial to recognise that the state and local efforts have made important contributions to policy development on wage theft issues in the United States. State devolution and state-level discretion, a unique feature of the U.S. neoliberal labour market, has allowed states and localities to serve as the laboratories of progressive policy reforms and presented lessons in terms of "what works" that could be adopted by the federal government (Bernhardt, 2012). In addition, state and local efforts have created considerable geographic variations in labour standards across the country, potentially creating geographic inequalities in workers' rights and benefits in the country. These inequalities suggest that there is a need for nationwide reform to stop wage theft because, as Bernhardt (2012) argued, "we need the scale of federal resources, the breadth of federal standards, and the coordination and dissemination that only a national good jobs policy agenda can deliver".

5-2. Assessment of Environment: Opposition from Business Groups

While nationwide policy reform and enforcement would require political mobilization, thus far the efforts that have been made to address wage theft have confronted strong opposition from conservative business groups (Milkman, 2013). At the same time that many progressive movements took place in the 2010s, some state legislatures undertook numerous efforts to undercut wages, erode labour standards, and undermine unions. These legislations were frequently authored or supported by major corporate lobbies in republican controlled states such as Michigan, Wisconsin, Ohio, and Pennsylvania that traditionally upheld high labour standards (Lafer, 2013). States passed laws stripping workers of overtime rights, repealing or restricting rights to sick leave, making it harder for employees to recover unpaid wages, and banning local cities and counties from establishing minimum wages or rights to sick leave. Nineteen states introduced "right-to-work" bills to allow workers to choose whether or not to pay union fees, in

order to undermine union membership. Furthermore, sixteen states passed laws restricting public employees' collective bargaining rights or the ability to collect "fair share" dues through payroll deductions (Lafer, 2013).

The current federal administration also presents a challenge for national reform, as it has already begun chipping away the progressive efforts made in the 2010s. The Trump administration has rolled back the Obama administration's overtime pay expansion designed to cover more workers, which is expected to reduce the salaries of more than 8 million workers (Berger and Wall, 2019; Shierholz, 2019). It has also withdrawn joint employer liabilities for wage theft and made it easier for employers to get away with the violations of labour standards against contract and franchise workers (Opfer, 2019). Furthermore, the current DOL policy allows employers who committed wage theft to avoid penalties when they participate in its self-audit pilot program, called the Payroll Audit Independent Determination pilot program (DOL, 2019). The current administration has also restricted workers' power and unionization and has limited workers' access to the court and collective action lawsuits by allowing employers to force workers to a mandatory arbitration agreement (Griffin and Wall, 2019). All of these present setbacks and considerable political challenges to achieving more progress towards curbing wage theft practices.

5-3. Assessment of Remaining Work: A Potential for National Reform

Even with continued opposition, two federal bills designed to target wage theft problems have recently emerged, which provide a sense of optimism regarding the potential for national reform. Both bills identify vital gaps in the current laws and actively adopt deterrent methods shown to be effective by states and localities. One of the bills introduced to the U.S. Congress is intended to amend the FLSA and the other is designed to prevent employee misclassification.

The “Wage Theft Prevention and Wage Recovery Act (S.2101)” was written to amend the FLSA with increased worker education, stronger deterrent, and more interagency collaboration for enforcement. The bill proposes to create a civil penalty of $2,000 for an employer’s first violation of overtime or minimum wage laws and $10,000 for each subsequent violation. It would increase the wages that workers must be paid to triple the amount owed, up from double under the existing law, among other provisions. It makes class-action suits against employers for lost wages easier by automatically including all employees in the lawsuits unless they opt out. It directs DOL to refer to the Department of Justice for criminal prosecution the employers who comprehensively engage in wage theft by willfully stealing employees’ wages; falsifying records to hide the truth; and retaliating against employees. It strengthens the FLSA’s recordkeeping provision by creating a civil penalty of $1,000 for an employer’s first violation of the provision and $5,000 for each subsequent violation. Under this bill, employees will have a right to inspect their employer’s records by requesting a copy. If enacted, it will represent a major shift in federal wage-hour requirements and enforcement (CRS, 2019a).

The other bill, called “Protecting Workers' Freedom to Organize Act (S.664),” aims to amend the NLRA by modifying the definitions of ‘employee’ and supervisor, to prevent employee misclassification meant to deny them collective bargaining rights. The bill proposes an urgent overhaul in the existing labour law and provides the aforementioned simpler ABC test to distinguish employees from independent contractors (CRS, 2019b). If passed, it would mark one of the biggest changes in the labour law in the U.S. since 1935. Although the prospects of both bills are difficult to predict given the current political environment, the bills offer a glimpse of hope for national reform in the future. As more workers and employees join in the precarious workforce and are likely to experience wage theft, national reform of employment laws is ever

more imperative.

6. Lessons for Other Countries and Future Directions

Our review of wage theft in the United States demonstrates how a neoliberal labour market can drive—and present opportunities for addressing-- labour standards violations. We have discussed the ways in which workers' rights have eroded over time, and the inability of current federal laws to keep up with changes in the labour market. In the absence of federal policy changes, state and local coalitions have emerged and helped to bring about the enactment of numerous employment policies that intend to penalise labour standard violations and protect specific groups of vulnerable workers. Many deterrent methods that appear to be effective at the states and local levels are now adopted by two recent federal bills. In reviewing the context, explanations, and interventions regarding wage theft in the United States, we believe that we have identified lessons that may be helpful for other countries with neoliberal labour markets.

Recent research shows that the intervention efforts of other parts of the world share some strategies parallel to those shown in the United States. For example, Australia has implemented special protection for workers most vulnerable to wage theft (Clibborn and Wright, 2018; Macdonald, Bentham, and Malone, 2018). Australia has also passed the Fair Work Amendment, which substantially increases the maximum penalties for non-compliance with minimum wage laws, enhances current enforcement efforts, and extends potential liability beyond direct employers to franchisors, holding companies, and officers (Clibborn and Wright, 2018). Research suggests that some countries within the European Union could benefit from similar efforts, such as simplifying the reporting of minimum wage violations, exploring ways to more efficiently levy fines against employers who repeatedly commit wage theft, and ensuring clear and effective communication of information about minimum wage laws and penalties for

violations to all employers and workers (Goraus-Tanska and Lewandowski, 2019). While this is far from a comprehensive list of effective strategies, the Australian and European Union cases suggest that there may be ways for similar strategies to be utilised elsewhere, in alignment with those recently adopted by the United States.

Moving forward, regardless of whether or not the recent national bills targeting wage theft are adopted into law, the United States will need more evidence regarding the effectiveness of various advocacy efforts meant to bring changes to the labour market experiences of vulnerable workers. In addition, research is urgently needed to monitor and document the enforcement efforts of state and local anti-wage theft laws**.** Empirical research should be undertaken to demonstrate which anti-wage theft measures or combinations of multiple measures help reduce wage theft incidences in a particular industry. Evidence will also be necessary to examine how regional variations in workers' rights and benefits affect the labour market outcomes and socioeconomic well-being of vulnerable workers and their families. Scholars who have examined the regional and national policy efforts to combat labour standard violations have greatly expanded the relevant knowledge base for the U.S. labour market, however, there remains a need for additional empirical studies on employee misclassification and the stealing of employment benefits. Much remains to be done to problematise the social and economic consequences of wage theft associated with employee misclassifications. Empirical studies in this area have been stymied in the United States because national surveys do not fully measure fissured employment relationships and the full range of employment benefits (beyond health insurance and retirement saving plans) for the active workforce (Bernhardt, 2014). Although an effort has recently begun to create such measures and collect data by the national experts with the U.S. Department of Labor, it is uncertain what the changes that come out of these efforts will

be (The National Academies of Sciences, Engineering, and Medicine, 2019). As successful advocacy and effective policy development should be guided by evidence, more empirical research is called for to accurately assess and disclose the social and economic impacts of stealing employees' wages and benefits, both in the United States and in other countries, so that we may learn from each other.

Lastly, it remains to be seen how the COVID-19 pandemic will affect both the prevalence of wage theft and the potential for policy change. Scholars such as David Weil (2020) have pointed out that, in the United States, policy responses to the pandemic have included the extension of protections to temporary and gig workers—and yet these protections are temporary. It remains unclear whether some of these temporary protections will be able to be made permanent, or whether the inequalities that have been laid bare and in some cases further amplified by the pandemic will continue on after the pandemic ends.

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