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Florida Policymakers Need to Reassess How the Minimum Wage is Enforced

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Executive Summary

In November 2020, Floridians made the historic decision to move an estimated 2.5 million Floridians closer to a living wage with the passage of Amendment 2.[1] The state minimum wage increase goes into effect in September 2021, increasing from $8.65[2] to $10 per hour, then rising by $1 per hour each year until it reaches $15 in 2026.

In anticipation of this increase, Florida Policy Institute (FPI) and Rutgers University's Center for Innovation in Worker Organization (CIWO) assessed the extent to which the current state minimum wage is enforced. FPI and CIWO analyzed over 15 years of U.S. Census data and recent records obtained from the Florida Attorney General's Office to do so.

Failing to pay workers the minimum wage is but one of many forms of wage theft.[3] However, given the timeliness of Amendment 2, *wage theft* in this report refers solely to minimum wage violations among low-wage workers (those with incomes in the bottom 20 percent) unless otherwise indicated.

FPI and CIWO's analysis finds:

- The minimum wage has been largely unenforced for at least a decade.
- After Florida's 2005 minimum wage increase, its minimum wage violation rate more than doubled to 17 percent by the end of 2007.
- Victims of wage theft lose 18 percent of the minimum wage to which they are entitled, on average, or $1.32 per hour.
- Floridians in the state's top industries (agriculture, service, and real estate) suffer the highest wage theft rates.
- Black, Latina, and immigrant women are more likely to face wage theft than their peers.

- If these violation rates persist, Florida could expect to lose an average of $25.3 million in sales tax revenue *each year* over the next six years.

Before Amendment 2 goes into effect, Florida policymakers should mitigate these unsettling trends by reintroducing a State Department of Labor equipped with the authority and resources necessary to ensure working Floridians are paid the wages they are entitled to.

Background on Florida's Minimum Wage

Florida's minimum wage has only marginally increased since 2005, after voters approved a 2004 ballot measure to raise it from $5.15 to $6.15 per hour.[4] It currently stands at $8.65 per hour. FPI's prior analysis shows that voters' November 2020 decision to increase the minimum wage a second time under Amendment 2 would significantly increase pay for more than 1 in 4 Florida workers and bring over 1 million households out of poverty. These benefits will be especially pronounced for women, Black and Latino workers, and immigrants, reducing longstanding pay inequities. Amendment 2 will also bring many essential and service workers who bolster Florida's economy closer to a living wage while boosting their spending power throughout local communities.[5]

This shift toward a living wage is important now more than ever, amid the social and economic devastation brought on by the ongoing COVID-19 pandemic. However, unchecked wage theft — in the form of employers failing to pay employees the minimum wage — threatens to keep countless Floridians from sharing in the anticipated benefits of the state's future $15 wage.

The Sole Office Authorized to Enforce the Minimum Wage Has Failed to Do So

Early in his first term, Governor Jeb Bush announced his intention to dismantle the Florida Department of Labor and Employment Security (DOLES), and the Legislature ultimately abolished DOLES in 2002.[6] Departments of Labor are administrative agencies that serve as the primary mechanism for enforcing wage and hour laws. Administrative enforcement is a means of investigating and remedying statutory violations for all aggrieved workers, but without the complexity, cost, and time of a lawsuit. Without a Department of Labor, Florida was left without a single person in state government to implement the state's wage and hour laws through administrative enforcement, and it has remained so to this day. By comparison, Florida has over 10.1 million people in its workforce and no dedicated labor investigators, while New York has 1 million fewer people in its workforce but 115 full-time labor investigators. Yet, advocates contend even that many investigators do not adequately address the need.[7]

In 2004, voters passed a ballot measure that amended Florida's Constitution to raise the state minimum wage to $6.15, which took effect the following year.[8] Included in this amendment was a provision that the Attorney General (AG) "or other official designated by the state legislature" may enforce the minimum wage by bringing a lawsuit.[9] In subsequent legislation, Florida policymakers undermined the measure by removing the clause that allowed for additional officers to enforce the new minimum wage. This meant the AG's Office would be the sole avenue for enforcement authority in a state with a workforce of over 10 million.[10]

Documents recently produced by the AG in response to a public records request by FPI demonstrate that from 2016 to 2019, the office received 29 complaints, an average of just over seven per year. Recent examples from cities and states help put these figures into perspective. In New York, 6,000 complaints were filed in 2017 alone, and in Washington — which has a population that is roughly one-third of Florida's 22 million — 6,600 wage complaints were filed with its state Department of Labor in 2019.[11] The city of Seattle received 143 minimum wage inquiries in one year (2019), despite having a population of under 725,000 people.[12]

That so few Floridians filed complaints is a dramatic indication of the system's failure. If working Floridians do not know what their rights are or how to seek redress if their rights are violated, Florida's Constitution and the will of the people can never fully be realized.

Even more troubling is that, over the past decade, the state's Attorneys General have failed to properly address the wage violations brought to their attention. A *Politico* investigation found that from 2011 to 2016, the state of Florida failed to take a single action to enforce Florida workers' constitutional right to a minimum wage.[13] That trend has persisted. FPI's public records request demonstrated that the current AG took no formal enforcement actions and recovered no money for the Floridians who filed wage complaints from 2016 to 2019. This effectively sends a message to employers that paying their staff the minimum wage is a choice rather than a mandate.[14]

The Impact of Wage Theft in Florida

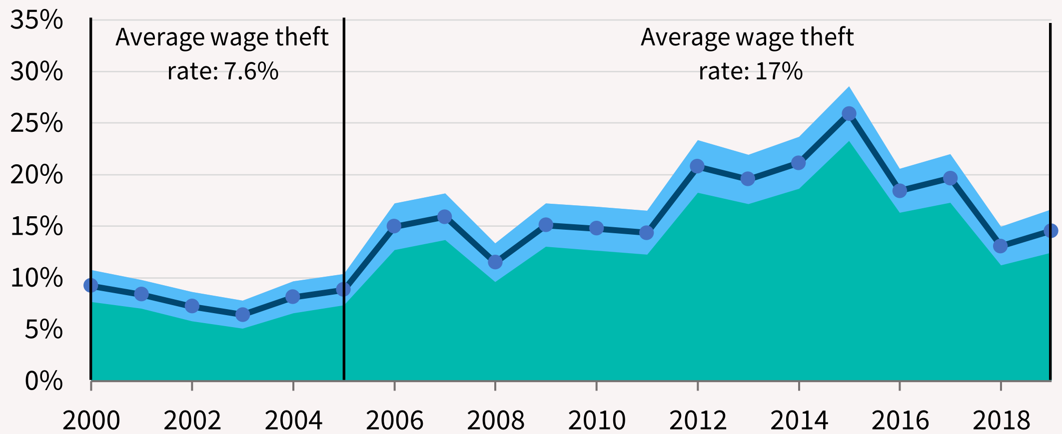
Between 2000 and the end of April 2005, the minimum wage violation (i.e., wage theft) rate among Floridians earning low wages — those with income in the bottom 20 percent of earners — averaged 7.6 percent. As of the latest (2019) data, that rate stands at 14.6 percent. As previously mentioned, Florida voters raised the minimum wage to $6.15 via a 2004 ballot initiative. The new wage floor became effective on May 2, 2005.

After the increase, the minimum wage violation rate shot up, and by the fourth quarter of 2006, it had nearly doubled to 13.9 percent. By the same time the following year, violations reached 17 percent. Wage theft hovered around 15 percent for several years after, before climbing back up again to peak at an astonishing 26 percent in 2015 (more than three times the violation rate in the early 2000s). Though the wage theft violation rate has settled back down to 14.6 percent, this remains almost double the violation rate 15 years ago. (See *Fig. 1.*)

All told, after the minimum wage increase in May 2005, approximately 17 percent of low-wage workers in Florida — or about 250,000 Floridians per year on average — were paid less than the minimum wage they were entitled to by law. As a result, working Floridians lost an average of $1.32 per hour between 2005-2019, almost a 20 percent cut in the minimum wage they were entitled to. Notably, this does not account for any lost income above the minimum wage that workers may have been promised or otherwise owed, so the wage theft these workers experienced could be even higher.

Figure 1. FLORIDA'S WAGE THEFT RATE MORE THAN DOUBLED AFTER MINIMUM WAGE BOOST IN 2005

Minimum wage violations among low-wage Floridians, average marginal effects by year with 95% confidence intervals, 2000-2019



Source: CIWO analysis of U.S. Census Bureau Current Population Survey's Outgoing Rotation Groups (CPS-ORG) data, https://bit.ly/3uu6cUo.

Florida's Top Industries Are Most Likely to Deny Workers the Minimum Wage

Given that Florida first increased its state minimum wage in 2005, FPI and CIWO assessed potential trends in wage theft rates over the 15-year period from 2005 to 2019. Florida is set to increase its state minimum wage again and the state still lacks a Department of Labor, so this analysis lends insight into what Florida's future holds if current enforcement policies do not improve.

Figure 2 displays the top 10 industries with the highest wage theft violation rates from 2005 to 2019. Notably, five of the top six are pivotal to Florida's economy, with the service industries in particular (i.e., personal and laundry services, food services and drinking places) being significant drivers of Florida's $75 billion-dollar tourism economy.[15] (See *Fig. 2.*) All Floridians deserve to earn at least a minimum wage, but the fact that those who contribute such a substantial share to the state's economy are so prone to wage theft is especially disquieting.

Moreover, Floridians in these fields are more likely to work part-time (often involuntarily), and research shows that part-time workers are five times more likely to live in poverty than full-time workers.[16] Ensuring that all working people — no matter the industry — receive the wages they have earned is essential to protecting wage standards and economic stability for all Floridians.

Figure 2. TOP 10 HIGHEST VIOLATION INDUSTRIES IN FLORIDA, 2005-2019 WITH NOTABLE OCCUPATIONS INCLUDED*

Industry *Occupation with Highest Wage Theft*	Minimum Wage Violation Rate	Number of Workers Underpaid Per Year	Average Hourly Wage Theft
Personal and laundry services *31% were hairdressers, hairstylists, and cosmetologists*	28%	12,999	$1.36
Membership association and organizations *21% were secretaries and administrative assistants*	24%	4,184	$1.51
Agriculture *75% were miscellaneous agricultural workers (e.g., farmworkers)*	24%	3,900	$1.22
Real estate *50% were real estate brokers and sales agents*	23%	6,334	$1.63
Private households *76% were maids and housekeepers*	23%	5,206	$1.39
Food services and drinking places *36% were waiters and waitresses*	22%	59,583	$1.36
Repair and maintenance *22% were automotive service technicians and mechanics*	20%	3,869	$1.66
Transportation and warehousing *26% were driver/sales workers and truck drivers*	20%	10,529	$1.42
Social assistance *41% are child care workers*	19%	4,785	$1.07
Wholesale trade *31% were sales representatives, wholesale and manufacturing*	19%	5,604	$1.06

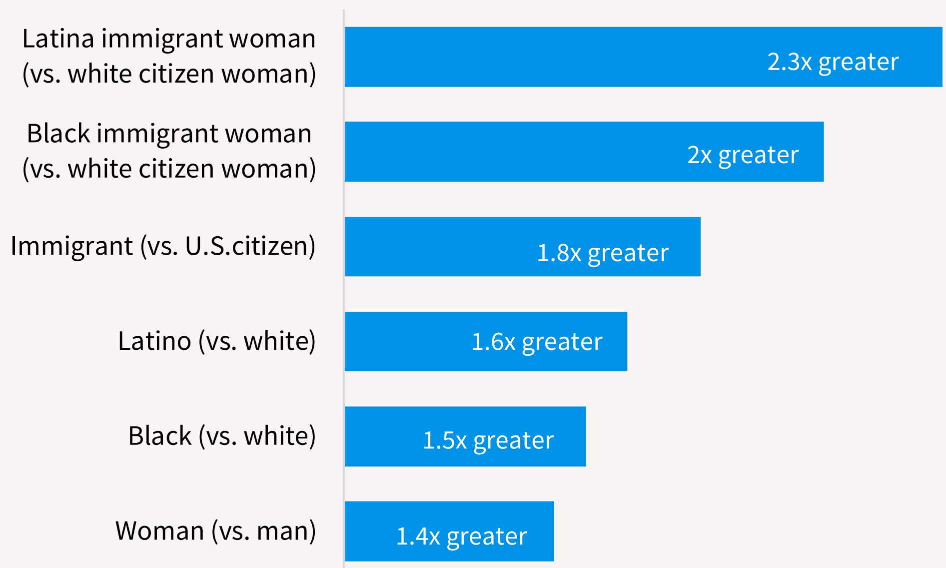
*The occupational percentages within each industry represent the share that occupation contributes to the industry's total rate of wage theft. (Ex. Among those who experienced wage theft in personal and laundry services, 31 percent are hairdressers, hairstylists, and cosmetologists.)

Black, Latina, and Immigrant Women Are Most Likely to Experience Wage Theft

References to *immigrant* throughout this report refer to any Floridian born outside the U.S. who is not a naturalized American citizen; this includes, but is not limited to refugees, asylees, those with legal permanent status, and those who are undocumented. This is notable, as those without citizenship status are uniquely vulnerable to wage theft and face additional barriers to recovering lost pay. From 2005 to 2019, the probability of experiencing a minimum wage violation was 1.4 times greater for a woman than a man, 1.5 times greater for Black workers than white workers, 1.6 times greater for Latino workers than white workers, and 1.8 times greater for immigrants than U.S. citizens. Black and Latina immigrant women were 2 and 2.3 times more likely than U.S.-born white women to experience a minimum wage violation, respectively. (See *Fig. 3.)*

Figure 3. IMMIGRANTS, PEOPLE OF COLOR, AND WOMEN ARE MORE LIKELY TO EXPERIENCE WAGE THEFT IN FLORIDA

Probability of minimum wage violation by demographic group in Florida (relative to reference group), 2005-2019



Source: CIWO analysis of U.S. Census Bureau Current Population Survey's Outgoing Rotation Groups (CPS-ORG) data, https://bit.ly/3uu6cUo. Note that "immigrant" refers to any Floridian born outside the U.S. who is not a naturalized U.S. citizen (e.g. refugee, asylee, undocumented immigrant, legal permanent resident).

Unfortunately, it is no surprise that people of color, women, and many immigrants are more likely than their peers to experience wage theft, as these are the same groups who are overrepresented among low-wage work. For instance, it has long been documented that substantial pay inequities persist that position white workers at the top of the pay scale while relegating workers of color to the bottom. This remains true even when education, experience, and occupation are accounted for.[17]

FPI's prior analysis determined Florida's new $15 wage would substantially reduce these pay inequities, especially among women of color.[18] If wage theft among these groups persists, however, the potential impact of Amendment 2 cannot be fully realized.

Wage Theft Hurts Businesses and the State

While working people are indeed those who suffer the most from wage theft, it is also important to note the damage it does to the economy. This point is especially relevant as Florida faces a $2.75 billion budget deficit while the nation reels from the fallout of COVID-19.[19]

Without robust enforcement, unscrupulous employers remain free to undercut employers who honor the law, creating unfair competition by suppressing working people's wages. That Florida's AG failed to take a single minimum wage enforcement action since 2011 demonstrates the urgent need for an agency whose mission is to ensure a fair day's pay for Floridians and limit non-compliant firms' ability to undercut law-abiding employers.

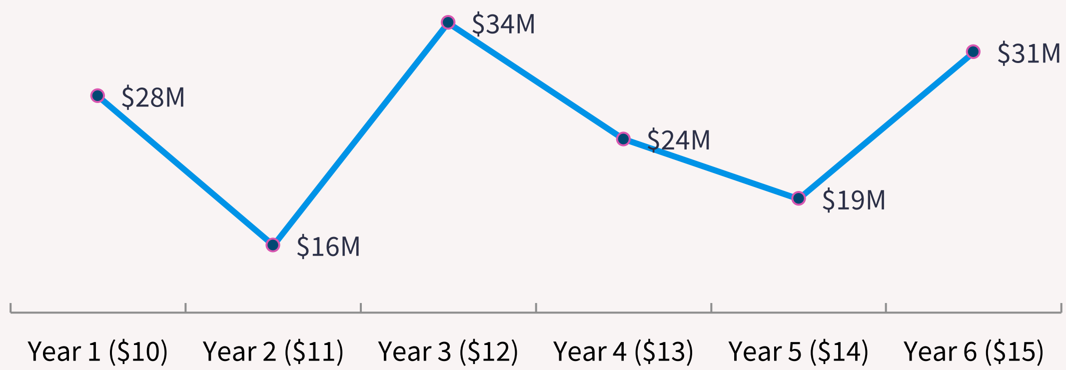
Furthermore, as this report demonstrates, minimum wage policies disproportionately benefit people with low income. Economic studies show that low-wage workers are much more likely to spend their increased pay at the local level than their higher-earning peers, especially on dining out and auto loans.[20] This remains true even as businesses moderately increase prices to account for the increased minimum wage.[21] A national analysis from January 2021 corroborates this pattern. Harvard economists explored the impact of the federal government's $600 stimulus checks that were distributed to most Americans and found that in the month following receipt of the stimulus check, households with annual income under $46,000 dramatically increased spending. By contrast, households with annual income above $78,000 only minimally upped their spending.[22]

Finally, the state budget could take a hit if wage theft persists. Sales tax revenue as an effect of higher minimum wages is particularly relevant to highlight in Florida. The state lacks a personal income tax and over 75 percent of its general revenue fund is comprised of sales tax revenue. General revenue supports critical public areas like education and health and human services.[23] The increased spending Florida can expect from its increased minimum wage will pump revenue back into local businesses and the state overall as sales tax is collected.

If current wage theft trends persist, Florida can expect to lose $152 million in sales tax revenue over the 2021-2026 phase-in period of the $15 minimum wage. That works out to an average of $25.3 million in lost sales tax revenue per year. (See *Fig. 4.)*

Figure 4. FLORIDA COULD LOSE MILLIONS IN SALES TAX REVENUE EACH YEAR DURING MINIMUM WAGE PHASE-IN IF WAGE THEFT PERSISTS

Sales/excise tax revenue lost annually to wage theft, 2021-2026



Source: Institute on Taxation and Economic Policy Microsimulation Tax Model (see *Methodology notes*).

Policy Recommendation: Reestablish a Florida Department of Labor

More than 1 in 4 Florida workers stand to see a direct pay increase under Amendment 2 by the time it is fully implemented.[24] All working Floridians, including those slated for a pay boost under the new law, deserve effective minimum wage enforcement. This begins with reestablishing a state Department of Labor, providing it with adequate funding and staffing,[25] and arming it with the basic powers necessary for effective enforcement of the state minimum wage.

These core powers include:

- **Developing and overseeing mechanisms through which workers can make complaints**. People and organizations must have a well-publicized, accessible avenue to report suspected violations, and the department must make every effort to keep the identity of the complainant confidential. Florida currently has a hotline to report general complaints to the Attorney General's Office (866-9NO-SCAM), but very few people know about it and it is not featured prominently on any AG communications. Multiple avenues for reporting are vital, including via the internet, phone, email, and mail.

- **Protecting workers against retaliation/adverse action.** The department must prohibit employers from interfering with, restraining, or taking adverse action against employees exercising their right to complain. It also must provide appropriate relief, including reinstatement, front pay in lieu of reinstatement with full payment of unpaid wages plus interest, liquidated damages in an amount of up to twice the unpaid wages, and other appropriate compensatory damages.

- **Requiring record-keeping.** The department must require employers to create and retain adequate records documenting compliance with wage and hour laws, including minimum wages paid to each employee.

- **Conducting investigations and obtaining evidence and injunctions.** This includes the authority to enter and inspect all places of business or employment; review and make copies of papers, books, accounts, records, payrolls and documents; question witnesses in private; administer oaths; and petition for an injunction from the circuit court for appropriate temporary or preliminary or injunctive relief.

- **Assessing damages, fines, and penalties.** This includes full payment of unpaid wages plus interest, liquidated damages payable to each aggrieved person, and other equitable relief. The department must also be authorized to collect wages, damages, and other monetary remedies due. The department shall also order the imposition of a penalty payable to the aggrieved party of up to $5,000.

This is not the first time there have been calls for more vigorous minimum wage enforcement.[26] Yet with Florida making the historic decision to increase its minimum wage to $15 per hour by 2026, there has never been a more imperative time to act than now — for the well-being of working people, businesses, and the state economy alike.

Methodology notes

The methodological approach employed here is fully consistent with previous research.[27] A few key methodological points to keep in mind:

The actual number of minimum wage violations is unknown. Employer-provided data is not reliable, and state agency data on complaint- and agency-initiated investigations are unrepresentative of the actual violation rate. Minimum wage violations must therefore be estimated using survey data.

Current Population Survey's Outgoing Rotation Groups (CPS-ORG) data

The most useful survey data for this analysis is the CPS-ORG data, which the U.S. Department of Labor's Wage and Hour Division uses to identify "priority industries" for investigations and which remains the top choice of every social scientist who has sought to develop national or industry-specific estimates of Fair Labor Standards Act (FLSA) non-compliance since the 1970s.[28]

The CPS-ORG data has many advantages: It is gathered via extensive interviews with around 60,000 households per month; it is representative at the state and national levels (unlike other survey data, like the Survey of Income and Program Participation [SIPP]); and its individual-level response format permits relatively straightforward earning and minimum wage violation estimates. The biggest downside is measurement error, as with any survey (see *Measurement error in CPS data* below).

The minimum wage violation estimates in this report are dichotomous measures of whether an individual's reported hourly wage was lower than the applicable legal minimum. As such, the statutory minimum wage (by month) is used to calculate violations for each respondent, 2000-2019. Before the establishment of Florida's minimum wage in 2005, the federal minimum wage was used.

For hourly wages, the authors used the Center for Economic Policy Research (CEPR)'s "wage4" variable, which includes overtime, tips, and commissions (OTC) for both hourly and non-hourly workers.[29] Wage estimates are therefore conservative over-estimates that effectively downward-bias the estimated minimum wage violation rates. This is preferable to the alternative, which excludes OTC for hourly workers while including it for non-hourly workers (for whom different sources of wages are not distinguished). Attempting to estimate and subtract OTC from non-hourly workers adds unknown quantities of additional measurement error to this key variable and is not recommended.[30] The authors also generated estimates using the National Bureau of Economic Research (NBER)'s favored "wage3" variable, but the estimated violation rates are virtually identical to those produced by CEPR's "wage4" variable.

Fair Labor Standards Act (FLSA) Exemptions

Although Florida's minimum wage was higher than the federal minimum wage starting in 2005, Florida's wage law explicitly defers to federal exempt and non-exempt employee definitions in the federal FLSA. This reliance on federal law means that FLSA exemptions apply without additional restrictions set by the state. Exempt employees include executive, administrative, professional, outside salespeople, and computer workers receiving salaries within minimums dictated by the FLSA. Under the FLSA, employees are not exempt just because they are paid on a salary basis. Additional requirements may outline duties performed, compensation style (fee, salary, commission, etc.), and an alternative minimum compensation amount instead of the minimum wage. We apply FLSA exemptions to CPS-ORG data as in Galvin (2016).[31]

Measurement error

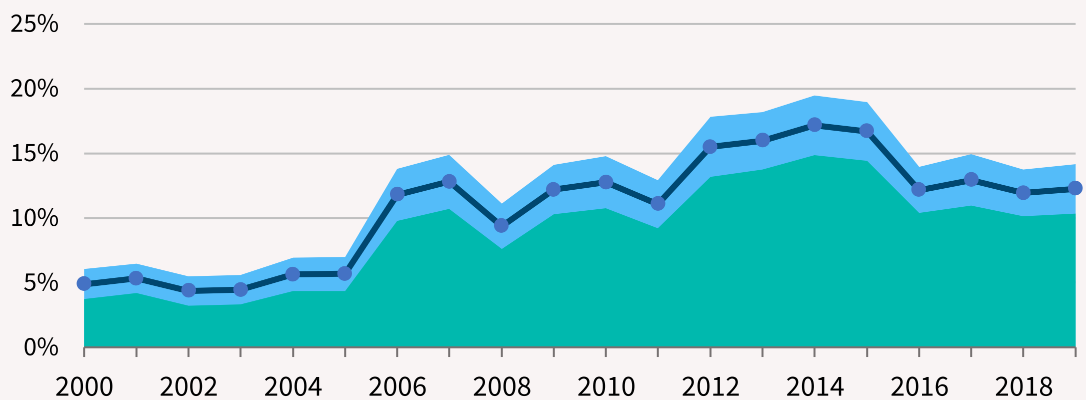
There is reason to believe that measurement error in the CPS may downward-bias the estimates of minimum wage violations.[32] First, despite going to great lengths to reach them, both Hispanics (Latinos) and undocumented immigrants are underrepresented in the CPS.[33] Because workers in these groups are at higher risk of experiencing minimum wage violations, the estimates of violations reported here should be considered conservative estimates.[34] Second, in Bollinger's study of measurement error in the CPS, he finds a "high overreporting of income for low-income men" driven by "about 10% of the reporters who grossly overreport their income," thus potentially biasing estimates downward even further.[35]

Third, CPS data have a shortage of low-wage workers and excessive high-wage workers relative to comparable survey data like SIPP; one effect of this imbalance could be to underestimate minimum wage violations.[36] Roemer does find that the CPS reaches more "underground" workers than other large-scale surveys and is less biased than alternatives.[37] But given the high rates of violation discovered in the Bernhardt et al. 2009 innovative survey of hard-to-reach workers in the "informal" labor market—much higher than the estimates presented here—there is reason to suspect that these findings underestimate the prevalence of minimum wage violations across the board.[38]

Because the CPS is not a random sample but a "multistage stratified sample," the survey design and sampling weights are taken into account to produce more accurate standard errors, as in Galvin (2016).[39] To correct for measurement error, we also follow ERG (2014),[40] Galvin (2016),[41] and Cooper and Kroeger (2017)[42] and exclude all observations of workers not specifying hourly/non-hourly status, non-hourly workers with weekly earnings less than $10, and workers with hourly wages less than $1. For the top-10 high-violation industries, we exclude industries with observations fewer than the median (82).

As a sensitivity test, the authors estimated the minimum wage violation rate from 2000-2019, providing a $0.25 leeway for violations (violation only if estimated wages were less than or equal to 25 cents less than the state minimum wage). The trend over time is as follows:

MINIMUM WAGE VIOLATIONS AMONG LOW-WAGE FLORIDIANS, 2000-2019
with $0.25 leeway



Source: CIWO analysis of U.S. Census Bureau Current Population Survey's Outgoing Rotation Groups (CPS-ORG) data, https://bit.ly/3uu6cUo

These considerations notwithstanding, the fact that measurement error surely exists recommends using caution when working with the point estimates reported.

Estimates of Lost Sales Tax Revenue from Wage Theft

Data on minimum wage violations' estimated impacts on sales tax revenue stem from the same model in FPI's September 2020 report on Florida's Amendment 2. This Minimum Wage Simulation Model from Economic Policy Institute (EPI) incorporates data from the U.S. Census Bureau, Bureau of Labor Statistics, and Congressional Budget Office (CBO), adjusting dollar values by projections for Consumer Price Index for all Urban Consumers (CPI-U) in CBO's 2020 projections. That model evaluated the cumulative effects of Florida's gradual minimum wage increase by the time it fully reaches $15 per hour in 2026.

The Institute on Taxation and Economic Policy (ITEP) built its sales tax revenue estimates on EPI's data to produce a counterfactual estimate of the additional sales tax revenue the state stands to lose annually from 2021-2026 if the average minimum wage violations within this report were to persist.

ITEP incorporated wage theft rates by industry to determine how much income workers, making minimum wage in those industries, would lose due to wage theft through 2026. The report used EPI data to determine the number of workers earning minimum wage in each industry and their average annual income. Then, the number of workers making minimum wage was multiplied by the average wage theft rate per industry to approximate the number of workers affected by wage theft. Additionally, their average annual income was multiplied by the average wage theft rate to produce an estimate of predicted lost wages by 2026.

ITEP matched average effective sales and excise tax rates from its *Who Pays* research project to the average incomes identified in the EPI data. ITEP then multiplied the total wage increases for directly impacted workers from the EPI data by an assumed marginal propensity to consume (informed by ITEP's sales tax model based on Bureau of Labor Statistics Consumer Expenditure Survey data) and by the average effective tax rates identified above. The sales tax figures are in nominal dollars.

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[29] Center for Economic and Policy Research, "U.S. Census Bureau Current Population Survey's Outgoing Rotation Group data," 2020, https://bit.ly/3uu6cUo; See also Cooper and Kroeger's 2017 preference for this method of estimating wages.
[30] ERG, 2014.
[31] Galvin, 2016.
[32] For an excellent discussion of the advantages and limitations of using the CPS data to estimate minimum wage violations given the existence of measurement error and other issues, see ERG, 2014, Appendix B.
[33] Ruth B. McKay, "Cultural Factors Affecting within Household Coverage and Proxy Reporting in Hispanic

(Salvadoran) Households. A Pilot Study," In *Proceedings of the Section on Survey Research Methods, American Statistical Association*, 1992; As Bernhardt et al. (2009) write: "standard surveying techniques—phone interviews or census-style door-to-door interviews—rarely are able to fully capture the population that we are most interested in: low- wage workers who may be hard to identify from official databases, who may be vulnerable because of their immigration status, or who are reluctant to take part in a survey because they fear retaliation from their employers. Trust is also an issue when asking for the details about a worker's job, the wages they receive, whether they are paid off the books or not, and their personal background" (56). Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, National Employment Law Project, 2009.

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