



Wage Theft Prevention and Wage Recovery Act

A Comprehensive Approach to Combatting Wage Theft

May 2022

Section 1. Short title. Wage Theft Prevention and Wage Recovery Act.

Section 2. Findings. Describes what wage theft is and details its prevalence, its negative impact on workers, and its detrimental effect on businesses and the economy, explaining the need for the amendments that the Act would make to the Fair Labor Standards Act (FLSA) and the Portal-to-Portal Act as well as the grants program that would support training and enforcement.

Section 3. Purposes. The purposes of this Act are to prevent wage theft and facilitate the recovery of stolen wages by: strengthening the penalties for engaging in wage theft; giving workers the right to receive, in a timely manner, full compensation for the work they perform, certain disclosures, regular paystubs, and final payments; providing workers with improved tools to recover their stolen wages in court; and making assistance available to enhance enforcement of and compliance with Federal wage and hour laws through a grants program supporting community partnerships.

Title I – Amendments to the Fair Labor Standards Act of 1938

Section 101. Requirements to Provide Disclosures, Regular Pay Stubs, and Final Payments. Amends the FLSA to provide employees with the right to receive certain disclosures, regular paystubs, and final payments in a timely manner.

- Provides Employees with the Right to Receive Certain Disclosures
 - Requires employers to provide employees a disclosure of certain information within 15 days of hiring the employee, including the rate of pay and whether the employee is paid by the hour, salary, or piece rate, an indication of the employee’s status as being subject to minimum wage requirements or eligible for overtime pay, and the employer’s name, address, and phone number.
 - Requires employers to provide employees a modification disclosure of any change to the information disclosed within 5 days or by the next payday, whichever is earlier.
- Provides Employees with the Right to Receive Regular Paystubs
 - Requires employers to provide employees with regular pay stubs when employees are paid for a pay period, as a detachable part of a paycheck, a separate document, or an electronic document if the employee consents. The information required to be included in the paystub includes the name of the employee, the dates of the pay period, the name and contact information of the employer, the total hours worked, the gross and net wages paid, the rate of pay and an explanation of that rate, the number of overtime hours worked, any additional compensation including allowances or reimbursements, and itemized deductions.
- Provides Employees with the Right to Receive Final Payments
 - Requires employers to pay employees whose employment with the employer has ended for any reason to pay the employee either within 14 days of separation or by the date that the employer pays its employees for the pay period, whichever is sooner. For each day beyond the grace period that an employer does not pay an employee their final payments, the employer shall be required to compensate the employee at their daily wage rate for up

to 30 days. If the employee intentionally avoids being paid for a certain amount of time, then the employer will not be required to pay the employee the additional compensation for that amount of time.

Section 102. Right to Full Compensation. Amends the FLSA to provide employees with the right to receive full compensation.

- Provides employees with a right to receive the full amount of compensation owed to them, including at wage rates higher than the minimum wage. Currently, if employees experience wage theft, they can recover the minimum wage for each hour worked—including the state minimum wage if it is higher than the federal minimum wage—and, if the employee is entitled to overtime, 1.5 times their regular rate of compensation for each overtime hour worked. However, apart from overtime hours, employees do not have a federal right to receive amounts that are greater than the applicable minimum wage even if they have undisputedly earned those wages. This means that with a minimum wage of \$7.25/hour, an employee hired at \$12.00/hour would only be able to recover \$7.25 for each hour of pay that the employee was cheated out of, instead of the full \$12.00.

Section 103. Civil and Criminal Enforcement. Amends the FLSA to increase the type and amount of civil violations, allows employees to receive the wages that they were cheated out, increases damages for employees who were retaliated against for filing complaint with the DOL, makes it easier for employees to join together to pursue a lawsuit to reclaim stolen wages, prohibits employers from requiring forced arbitration of FLSA claims, strengthens criminal enforcement for egregious violators.

- Increases the amount that employers must pay to employees when employers engage in wage theft by requiring employers to pay unpaid wages, an additional amount equal to double the unpaid wages amount, and interest on the unpaid wages. Currently, employers only pay the unpaid wages and an additional amount in damages that is equal to the unpaid wages.
- Increases the amount that employers must pay to employees when they retaliate against employees by firing them or otherwise discriminating against them for filing a complaint regarding wage theft or cooperating with a Department of Labor investigation into wage theft. Employers would have to pay employees the unpaid wages, an additional amount in damages that is three times the unpaid wages amount, and interest on the unpaid wages. Currently, employers only pay the unpaid wages and an additional amount in damages that is equal to the unpaid wages.
- Removes the “opt-in” requirement from collective actions—private lawsuits brought by groups of employees—to recover wages. Currently, employees are required to affirmatively “opt-in” to a collective action against an employer, which makes it difficult to build a sufficiently large group to pursue stolen wages collectively.
- Clarifies that the right to bring a private lawsuit in court against an employer to recover stolen wages, including a collective action, cannot be waived as a condition of employment, notwithstanding the Federal Arbitration Act or any other law.
- Enables DOL to bring a cause of action in court to recover the stolen wages and damages when an employer fires or otherwise discriminates against an employee in retaliation for filing a complaint about wage theft or cooperating with a DOL investigation.
- Creates civil penalties for violations of the minimum wage, overtime, or full compensation provisions: \$22,030 per employee for an initial violation and \$110,150 per employee for repeat or willful violations.

- Creates civil penalties for violations of the disclosures or pay stubs provisions: \$50 per employee for an initial violation and \$100 per employee for repeat or willful violations.
- Creates civil penalties of \$1,000 for initial violations of the recordkeeping provision and \$5,000 for repeat or willful violations of the recordkeeping provision.
- Directs DOL to refer egregious violators—employers who falsify records, steal wages, and retaliate against employees who file a complaint or cooperate with a DOL investigation—to the Department of Justice for criminal prosecution under the FLSA, and clarifies that the \$10,000 criminal penalty shall be assessed per employee affected.

Section 104. Recordkeeping. Amends the FLSA to provide employees with the right to request a copy of their employer’s payroll records and align with Supreme Court precedent the evidentiary standards that employees must satisfy in court to prove wage theft when employers violate the recordkeeping provision.

- Provides employees with the right to request a copy of an employer’s payroll records, which employers must comply with within 21 days of the request.
- Codifies the evidentiary standards that employees must satisfy in court in order to prove wage theft when their employer has violated the recordkeeping provision by not keeping adequate records with the Supreme Court’s decision in *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946). In *Anderson*, the Court held that when employers keep inadequate records, employees’ evidence regarding the specific amount of hours worked merely has to satisfy a “just and reasonable inference” evidentiary standard in order to prove what employees are owed.

Title II – Amendments to the Portal-to-Portal Act of 1947

Section 201. Increasing and Tolling Statute of Limitations. Amends the Portal-to-Portal Act to increase the statute of limitations, which limits the number of years employees have to bring forward a claim of wage theft, and “toll” or suspend the statute of limitations while DOL conducts a wage theft investigation.

- Increases the statute of limitations from 2 years to 4 years for initial violations and from 3 years to 5 years for willful violations. This provides employees with more time to file a wage theft claim, allowing them to recover wages that were stolen further back in time.
- “Tolls” or suspends the statute of limitations for any period during which DOL conducts a wage theft investigation, beginning on the date that DOL notifies an employer of the initiation of an investigation and ending on the date that DOL notifies the employer that the matter has been resolved by DOL.

Title III – Wage Theft Prevention and Wage Recovery Grant Program

Section 301. Definitions. Defines key terms.

Section 302. Wage Theft Prevention and Wage Recovery Grant Program. Creates a grants program at the Wage and Hour Division of DOL, enabling DOL to provide grants to eligible entities to assist in enhancing enforcement of and compliance with wage and hour laws.

- Creates a program for grants that are designed to support the development of community partnerships between DOL and community groups in order to improve cooperative efforts to prevent and reduce wage theft and assist employees in recovering stolen wages, and to support

individual entities in conducting outreach and trainings to employees and employers on their rights and obligations, providing assistance to employees filing wage theft claims, assisting enforcement agencies in conducting investigations, monitoring compliance with wage and hour laws, performing joint visitations with investigators, establishing networks for communication and participation, evaluating the effectiveness of programs designed to prevent wage theft, hiring of staff and volunteers, and producing and disseminating outreach and training materials.

- Limits each grant to being made for no more than 3 years.
- Requires the grants to be provided on a competitive basis, with a priority given to entities that serve employees in high-risk industries or regions and that demonstrate previous and ongoing work on wage theft. Also requires DOL to consider the prevalence of ongoing financial support for the entity and the entities partnerships with other organizations.
- Requires the grant recipients and DOL to sign a Memorandum of Understanding setting out the terms of the grant, in order for the entities to obtain a grant.
- Requires grant recipients to monitor and report on the use of grant funds.
- Provides DOL with the authority to revoke or suspend funding if an entity is found to not be in compliance with the Memorandum of Understanding.

Section 303. GAO Study. Directs the Comptroller General to conduct a study to identify successful programs resulting from the grants program and submit a final report to Congress.

- Directs the Comptroller General to conduct a study to identify successful programs resulting from the grants provided in this section and identify the elements, policies, or procedures that could be replicated in other programs.
- Directs the Comptroller General to submit a report with the results of its study to Congress within 3 years of the date of enactment of the Act.

Section 304. Authorization of Appropriations. Authorizes \$50,000,000 for the grants program for fiscal years 2023, 2024, 2025, and 2026.

Title IV – Regulations and Effective Date

Section 401. Regulations. Directs DOL to promulgate regulations necessary to carry out the Act within 18 months of its date of enactment.

Section 401. Effective Date. Postpones the effective date of the amendments of this Act to being the earlier of 6 months after final regulations are promulgated or 18 months after enactment of the Act.