

Wage theft occurs when employees do not receive the full wage that they are legally entitled. Some forms of wage theft include minimum wage violations, overtime violations, illegal deductions, and employee misclassification (McNicholas, et. al., 2017).

One study reports that 17% of the low wage workforce report being paid less than the state minimum wage in the ten most populous American states (Cooper and Kroeger, 2017). Due to its prevalence and severity, wage theft is one of the highest costing and most common types of theft in the country, yet it receives much less attention than other types of theft (Hallett, 2018).

Using a study that looked at the commonality of wage theft in three major U.S cities, The Colorado Fiscal Institute estimated that wage theft cost Colorado residents \$750 million a year in lost pay and benefits. This negatively impacts not only employees, but all residents in the State, with an estimated \$25 to \$47 million lost in tax revenue per year (Stiffler, 2014).

Many employees do not report wage theft due to fear of retaliation or a lack of knowledge about their rights as workers. Dramatically, only one in 130 workers who experienced overtime pay violations reported these violations (Weil, 2010). Only one in five workers who experienced any type of wage theft filed a complaint with their employer due to a fear of how employers will respond. From the small population of employees who did report wage theft, 43% of the workers experienced retaliation from their employers (Bernhardt et al, 2009).

There are many ways to discourage wage theft from occurring. One of them is to make the cost of engaging in wage theft higher. HB 19-1267 aims to do this by

reclassifying the crime. The bill strengthens the classification of withholding wages from a misdemeanor to theft, defining it as a felony when the wages withheld amount more than \$2,000. By creating more protections for workers, the law creates a higher cost for employers who fail to pay their employees properly.

The government should intervene to regulate and encourage efficient use of a public good, to remediate an externality, to alleviate a market failure, or to redistribute resources to those in need. This bill aims to address a market failure.

HB19-1267 addresses a market failure. There is an unequal power balance between firms and employees due to a decreasingly competitive labor market. The Council of Economic Advisors points to increasing market share held by large employers and a decreased number of new firms entering industries to show that there are increasingly fewer employers. Further, they found that workers are less likely to move jobs than they were 20 years ago. There is also a downward trend in laborers moving geographically for work (CEA, 2016). This means that employers only have to compete with geographically close firms for employees. Due to these factors, firms have more control over wages than they would in a competitive market. One way firms can use this market advantage to increase profit is by committing wage theft.

Right now, the cost for a firm committing wage theft is low. A firm is more likely to commit wage theft the more that benefits from it outweigh costs. If the cost of getting caught for wage violations is low and the likelihood for getting caught is low, then firms are incentivized not to follow the law.

When employers are caught violating labor standards, current punishments include 30 days to one year of prison and/or a \$100 to \$500 fine. Upon passage of HB19-1267, wage theft would be reclassified as a Class 2 felony. Under this classification, people who violate labor laws could receive punishments that include between eight to 24 years of prison and/or a \$5,000 to \$1,000,000 fine when found guilty.

HB19-1267 would increase protections for workers. This is a justified realm for the government to intervene because there is a market failure in the labor market.

HB19-1267 would also benefit employers who consistently treat their employees fairly. Having employers that withhold wages gives these employers an advantage over the firms who do not violate the law, as the violating firms are able to pay less for their labor and incur fewer costs. This creates a “race to the bottom” for employers and an unfair competitive field for employers who pay their employees appropriately. Ensuring that all employers are following the same rules by enforcing labor laws is important increasing efficiency.

Lastly, stricter standards for employers would make Colorado a better state for all residents. As mentioned above, a large amount of tax money is lost to unpaid wages. This missing tax revenue means that the government provides fewer services or that taxes on the rest of residents must be higher (CFI, 2014).

Immigrant workers are particularly vulnerable to wage theft. Gleeson (2010) found that migrant workers avoid reporting labor violations because they fear their employer will report them to Immigration and Customs Enforcement (ICE). For

example, many studies have found that Latin American immigrants disproportionately work in low-wage industries and are more than twice as likely to experience workplace violations (Bernhardt, 2009; Passel and Cohn, 2009). In order to have an efficient market, all employees should be paid the value of their work, regardless of their legal status. The bill should be amended to allow illegal workers who report wage theft immunity from ICE or further legal retaliation.

Making the cost of wage theft higher for employers is just one way to protect workers. In order to ensure that this bill fulfills its purpose, it is important that workers know their rights and are aware of this bill. It is impossible for the government to regulate every employer in Colorado, so in most cases it is up to the employees to act as enforcers. HB19-1267 should be amended to mandate that firms are required to make their new hires aware of their rights as workers upon employment.

With the suggested amendments, I support the passage of the Penalties for Failure to Pay Wages Act so that the labor market in Colorado is able to reach a more efficient equilibrium, making the state better off for all residents.

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