

# Wage Theft in



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Since 2006, the Research Institute on Social and Economic Policy (RISEP)<sup>1</sup> at Florida International University has been working with the Florida Wage Theft Task Force (WTTF)<sup>2</sup> to create a database of wage violations collected by community organizations throughout Florida and, wage and hour violations reported by the U.S. Department of Labor throughout the state. The purpose of the database is to document the extent of wage theft, to quantify how much lost wages have been recovered, and to see which industries in Florida are most affected by the problem.

The data in this report highlights wage theft cases reported to the Wage and Hour Division of the Florida office of the U.S. Department of Labor (DOL) in Alachua County and wage theft stories collected by the Alachua County Wage Theft Task Force<sup>3</sup> and shared with RISEP. The data in this report is limited to only the cases reported to the DOL agency and to the Alachua County Wage Theft Task Force, and does not account for the full magnitude of wage theft cases in Alachua County, as an unknown number of cases are unreported.<sup>4</sup>

## **What is Wage Theft**

Wage theft is defined as workers not receiving wages that they are legally owed. It occurs in many different forms including unpaid overtime, not being paid at least the minimum wage, working during meal breaks, misclassification of workers as independent contractors, forcing employees to work off the clock, altering time cards or pay stubs, illegally deducting money from workers' pay checks, paying workers late, or simply not paying workers at all.

Unfortunately many employers know they can get away with wage theft and have little fear of sanction. Enforcement mechanisms are weak, due to lack of dedicated enforcement capacity at the state level, limited capacity of local branches of the federal Department of Labor, and the gaps in U.S. labor laws that leave some workers unprotected.

The problem of wage theft has gained attention around the nation, and evidence suggests it occurs in all industries and to workers of all wage levels. A study by the National Employment Law Project in 2008 surveyed 4,387 workers in the three largest U.S. cities- Chicago, Los Angeles, and New York, and found that 68% of those surveyed had experienced at least one pay-related violation in the previous work week. The average worker lost an average of \$2,634

annually, which translated into wage theft of 15% of their earnings, or an estimated combined loss of more than \$56.4 million dollars per week due to wage theft.<sup>5</sup> Wage theft is not a phenomenon isolated to remote sectors of either the United States' economy or geography. The issue can be found in large and mid-sized American cities as well as in suburban and rural areas.<sup>6</sup>

The lack of data on wage theft in Florida has kept wage theft in the shadows until recently. This report presents data from both the federal Department of Labor Wage and Hour Division regarding Alachua County, Florida, and the Alachua County Wage Theft Task Force that has documented incidents of wage theft among workers in the county. Throughout the state, we see growing evidence that the number of unreported cases may be very large. Many cases are never reported to any agency because workers are unaware of their rights or afraid to come forward for fear of retribution. In addition, large numbers of cases are not recorded by any government agency because the employee's occupation or the employer's business falls outside the jurisdiction of federal laws designed to protect workers. This means that the true impact of wage theft in Florida is unknowable and is likely very large.

The data from this report reveal that with the assistance of the U.S. DOL and the Alachua County Wage Theft Task Force over \$1 million dollars in unpaid wages has been recovered in just two and a half years. If this is the amount that was recovered from cases that were reported to the U.S. DOL and the Alachua County Wage Theft Task Force, we hypothesize that the number of actual unpaid wages is significantly more because most people are unlikely to report their claims or know where to go to make a report. This means that workers, families, and their communities are losing millions of dollars that are vital to their economic health.

Wage Theft affects seemingly all industries in Florida, but especially those that are commonly thought of as the core of Florida's economy—tourism, construction, and retail trade. Moreover, wage theft is more likely to affect workers who live pay check to pay check and, thus, are the ones who can least afford to have their wages stolen.

## **Florida Responds to Wage Theft**

In 2000, the Florida legislature voted on an initiative of then governor Jeb Bush to dismantle the state's Department of Labor and Employment Security (DOLES). The state reorganized DOLES' functions and established the not-for profit corporation Workforce Florida and the Agency for Workforce Innovation (AWI). AWI handles several of the former DOLES' responsibilities, but not wage and hour complaints. Currently, Florida has no state equivalent to a Department of Labor to investigate wage and hour complaints and does not have staff to enforce its minimum wage law (currently set at the rate of \$7.67 per hour).<sup>7</sup> As of November 2011, the Florida Attorney General had not brought one single civil action to enforce the state's minimum wage law enacted in 2004.<sup>8</sup>

State wage and hour enforcement is an important protection for Florida's workforce. Employers also benefit from enforcement, since it levels the playing field and keeps those employers who do not follow the law and pay the full wages due to their employees from gaining an advantage over those who do.<sup>9</sup> Federal and state minimum wage laws have numerous exemptions that exclude millions of workers in Florida from protections against employers who withhold their earnings.<sup>10</sup> For those employees who are not covered under federal and state labor laws there are very few avenues for redress.<sup>11</sup> The combination of exemptions and inadequate enforcement for those who are covered leaves Florida's workforce vulnerable to wage theft and to other forms of labor violations.

### *Miami-Dade Wage Theft Ordinance*

In 2010, Miami-Dade county commissioners voted 10 to 0 for the passage of the first county wide Wage Theft Ordinance in Florida. This law established a policy of intolerance for wage theft and seeks to recover lost wages and punish employers who choose to break the law. To accomplish these goals, the ordinance provided for the creation of a readily accessible mechanism that allows residents to report employers who have not paid all of the wages legally earned by their employees.

The Small Business Development Agency (SBD) was designated to administer and oversee the Wage Theft Ordinance. The SBD is also charged with overseeing and enforcing the county's

Living Wage Ordinance. Under the Wage Theft Ordinance, the SBD established a review and implementation process that first attempts to conciliate any claims by notifying the employer of the filed claim and asking both parties to provide supporting documents. The employer must provide payroll records. If the employer fails to maintain payroll records, it is a violation of existing federal labor laws. Should SBD staff be unable to reconcile a claim, the case is sent to a hearing examiner.<sup>12</sup> If a hearing examiner finds an employer guilty of violating the Wage Theft Ordinance, the employer becomes liable for the original wages owed, plus an additional amount equal to two times the wages owed as compensation to the worker.<sup>13</sup> Additionally, the employer will be liable to the county for the cost of the hearing examiner and administrative fees. The threshold for filing a claim is \$60 of unpaid wages and there is no cost for filing. The Miami-Dade Wage Theft Ordinance covers all workers in the county, including those who are not covered under the federal or state laws.

The large majority of the employees who have filed wage complaints with the SBD were not covered by existing federal and state minimum wage laws, meaning that the WHD of the DOL could not take their cases. In fact, the SBD estimates that 60 to 80 percent of its incoming cases have been referred from the Wage and Hour Division in Miami. The Miami- Dade Wage Theft Ordinance is an accessible and effective enforcement mechanism for workers to recuperate wages owed, but not paid.<sup>14</sup>

#### *Broward County Wage Theft Ordinance*

In October of 2012, Broward County Commissioners voted 7-2 to pass the second Wage Theft Ordinance in Florida. Titled Wage Recovery Ordinance, it creates a resource for thousands of workers in Broward County who previously did not have anywhere to turn when they did not receive their earned wages. During the final vote, Broward's County Attorney confirmed that state and federal laws do not cover all workers, and when they do, they are not covered equally.

The law's sponsor, Commissioner and Vice-Mayor Kristin Jacobs, proposed the law after receiving numerous complaints about workers not receiving their wages. In fact, her own son was a victim to underpayment when he worked for a business that did not pay workers at all; they earned only tips.<sup>15</sup> Florida's Wage Theft Task Force including other labor groups, community- based organizations, and faith based groups supported the ordinance.

Under the law, employees who believe they are owed \$60 or more for work done in Broward County will be able to turn to the county for help, as long as the employer is not the state, federal government or an Indian tribe. The case will go to a county hearing officer for a decision after first attempting to conciliate the matter.

A victorious employee would get back wages, plus the possibility of damages up to the amount of the unpaid wages. The employer would also have to pay the county its administrative costs, and pay the employee's attorney fees, if there were any. The Wage Recovery Ordinance went into effect on January 2, 2013.

### **Wage Theft in Alachua County**

In 2011 members of the immigrant rights, worker rights and student community in Alachua County formed the Alachua County Wage Theft Task Force (ACWTTF)<sup>16</sup> after they became more aware of the problems of wage theft after several high profile cases came to light. The ACWTTF members currently meet weekly to discuss solutions to wage theft in their communities.

This section of the report highlights data from wage theft cases reported to the Wage and Hour Division of the U.S. Department of Labor (DOL) with jurisdiction over Alachua County and wage theft stories collected by the Alachua County Wage Theft Task Force.<sup>17</sup> The data in this report is limited to only the cases reported to the DOL agency and to the Alachua County Wage Theft Task Force, but does not account for the full magnitude of wage theft cases in Alachua County, as an unknown number of cases are unreported.<sup>18</sup>

The data reported from the Wage and Hour Division (WHD) of the U.S. Department of Labor in Alachua County consists of wage and hour violations from September 2008 to January 2012. The WHD publicly reports the raw data on their website which includes: names and addresses of businesses that have violated the Fair Labor Standards Act, number of employees affected by the violation, the number of case violations, the wages employers agreed to pay, the number of employees paid, and the North American Industry Classification (NAICS) industry code for each offending business. The WHD does not record data on cases for which employers refuse to pay

wages that are owed, does not report amounts claimed to be owed by employees, nor cases that fall outside of Department’s jurisdiction. In this report, we analyzed the WHD data using SPSS<sup>19</sup> to quantify the number of wage violations, the number of employees who were employed in the violations, the industries in which the wage violations occurred, and the money that was agreed to be paid by the violating employers to the affected employees.

Table 1 lists the total number of wage theft cases (1,805) as reported by the Wage and Hour Division of the Department of Labor in Alachua County, from September 2008 to January 2012.

**Table 1. Total Number of Wage Theft Cases by Industry in Alachua County, FL**

Industry	Number of Cases
Healthcare/Homecare	534
Construction	446
Restaurant	326
Retail	108
Childcare	82
Other <sup>20</sup>	309
<b>Total</b>	<b>1,805</b>

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

The largest numbers of wage theft cases are reported in the Healthcare and Homecare industry with 534 cases, followed by the Construction industry with 446 cases. The Restaurant industry followed third with 326 reported wage theft cases. Other industries, which accounted for 309 of the cases, included: Agriculture, Education, Accommodations, Cleaning Services, Telecommunications, and Taxi Services, among others.

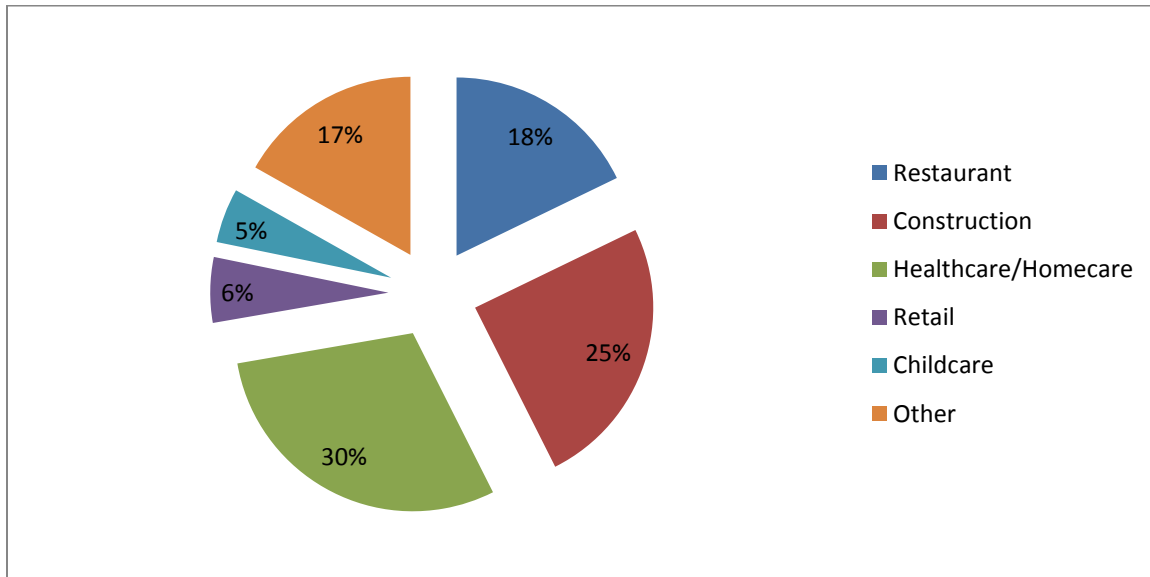
Patty<sup>21</sup> who works as a certified nurse assistant in the Healthcare Industry in Alachua County, Florida was laid off in 2012, and her employer withheld her last paycheck. She went to the Federal Department of Labor offices to seek help. Certified nurse assistants do not qualify as exempt learned professionals, and are not entitled to overtime pay. Thus, they are not covered by the Federal Standards Act<sup>22</sup> and therefore the Federal Department of Labor was unable to assist her.

“My employer withheld approximately \$1,360 of my last paycheck and wouldn’t return my calls, so I went to the Department of Labor and they told me that I was not covered by federal labor laws, so they [DOL] could not do anything to help me!”



Graph 1 shows the total percentages of wage theft cases by industry as reported by the Wage and Hour Division of the Department of Labor in Alachua County, from September 2008 to January 2012.

**Graph 1. Total Percentage of Wage Theft Cases by Industry in Alachua County, FL**



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

The Construction Industry had the second largest percentage of wage theft cases with 33%. Below is a quote from a construction worker who worked in the Construction Industry in Alachua County, Florida where his employer refused to pay his workers the mandated minimum wages.

Charlie,<sup>23</sup> a painter in the Construction Industry was a victim of wage theft in 2012. Charlie worked a total of 120 hours and only received \$200 for his work. That averages out to \$1.67 per hour, far less than the federal minimum wage of \$7.25 and even lower than Florida's minimum wage of \$7.67 per hour in 2012.

"There were at least seven of us who were on my crew and weren't getting paid what we were owed. None of us knew who to contact after the job ended. We thought about hiring a lawyer and even met with a lawyer to discuss if we had a case but the lawyer didn't want to take our case. We also thought about taking it to Small Claims Court, but we don't have the money for filing fees or the time to get our employer to pay us for the work we did. "

Table 2 shows the total number of employees involved in wage and hour violations and the total number of employees who were paid by the offending employers, as reported to the Wage and Hour Division of the U.S. Federal Department of Labor in Alachua County, Florida from September 2008 to January 2012. There were a total of 1,725 employees who were involved in the violation, but only 1,642 employees were paid by the offending employer. This leaves 83 employees who were not compensated.

**Table 2. Employees agreed to be Paid and Number of Employees in Violation**

Employees involved in Violation	Paid Employees
1,725	1,642

The largest violation in one workplace occurred in the Construction Industry and involved a total of 257 employees, while the largest amount of wages agreed to be paid was in the Restaurant Industry, and totaled \$92,667. Table 3 lists the total amount of wages agreed to be paid to employees by offending employers, as reported to the Wage and Hour Division of the U.S. Federal Department of Labor in Alachua County, Florida from September 2008 to January 2012.

**Table. 3. Total Amount of Wages Agreed to be Paid by Offending Employers**

<b>\$1,034,661.06</b>
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Table 3 shows that over \$1 million dollars have been recovered by efforts to secure proper payment of wage theft cases in Alachua County in just two and a half years. If this is the amount that was recovered from cases that were reported to the U.S. DOL and the Alachua County Wage Theft Task Force, we hypothesize that the number of actual unpaid wages is significantly more because most people are unlikely to report their claims or know where to go to make a report, or are not covered by the Fair Labor Standards Act of the U.S. DOL. This means that workers, families, and their communities are losing millions of dollars that are vital to their economic health.

Elena,<sup>24</sup> a server at a local restaurant in Gainesville, Florida had been experiencing wage theft for several years under the same employer.

“We [the employees] would often have to go in to work without getting paid. These were called ‘cleaning days’ and we would basically work off the clock. If we didn’t come in for those days, they [employer and managers] would cut our hours. Finally, I decided to quit and as punishment for quitting, my employer withheld my tips.”

## **Conclusion**

This report reveals that over a million dollars of unpaid wages have been recovered and because we know that a large percentage of Florida’s workforce is not covered by federal or state laws, the number of cases that go unreported and the amount of unpaid wages is likely to be two to three times what we have reported. This implies that over \$2 to \$3 million dollars are lost and never recovered in the two years of data that we analyzed.

Policy makers in Alachua County and Florida need to consider the ramifications of our counties and state becoming a glaring example of one that tolerates and even encourages wage violations. Unscrupulous employers are with impunity breaking laws that not only protect employees, but also are critical to maintaining a fair and competitive business environment, which is so critical to Florida’s economy.

## Endnotes

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<sup>1</sup> RISEP studies issues of concern to working families and low-income communities in Florida. At Florida International University we are a resource and a model for the University community by conducting problem solving research together with local communities that provides the tools for those directly affected to participate more fully in the public debate. Found at [www.risep-fiu.org](http://www.risep-fiu.org)

<sup>2</sup> The Florida Wage Theft Task Force members include: Florida Immigrant Coalition, We Count!, South Florida Inter-Faith Worker Justice, Florida Legal Services, Inc, Americans for Immigrant Justice, Unite-Here, Restaurant Opportunity Center-Miami, Women's Fund of Miami-Dade, South Florida AFL-CIO, Florida Farm Worker Association, South Florida Jobs with Justice, Service Employees International Union, American Friends Service Committee, Florida Institute for Community Studies, El Sol- Worker Resource Center, and the Research Institute on Social and Economic Policy.

<sup>3</sup> The Alachua County Wage Theft Task Force (ACWTTF) was formed by members of the Alachua County community in September of 2012. Throughout 2011 members of the immigrant rights, worker rights, and student community became more aware of the problem of wage theft after several high profile cases came to light. The founding organizations were the Alachua County Labor Party, Gainesville area Industrial Workers of the World, Fight Back Florida – Gainesville Labor Coalition, and the Interfaith Alliance for Immigrant Justice.

<sup>4</sup> RISEP estimates that the majority of wage theft cases throughout Florida's counties go unreported because workers simply do not know where to seek help; workers are often afraid to report violations out of fear of retaliation by employers, which frequently leads to unemployment and; many workers are unfamiliar with federal and state wage and hour laws and, thus many workers are unaware that their full wages are being withheld from them.

<sup>5</sup> Bernhardt, Milkman et al., 2010. Broken Laws, Unprotected Workers. Read report at: <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>

<sup>6</sup> Angee A. and Hernandez, C. *Planting Seeds of Justice: Combating Wage Theft among South Florida's Plant Nursery Workers* (2007). Read report at: <http://www.risep-fiu.org/2007/10/planting-seeds-of-justice/>

<sup>7</sup> The Florida Department of Business and Professional Regulation has six investigators who enforce the state's child labor law. The department has 16 investigators who enforce Florida's farm labor registration act, the requirements of which include that workers be paid on a timely basis, that wage statements are provided and that payroll records be maintained. Found at: [www.myfloridalicense.com/dbpr/reg/farmLabor.html](http://www.myfloridalicense.com/dbpr/reg/farmLabor.html). Two of these 16 also enforce the child labor law.

<sup>8</sup> Analysis of Florida House Bill 241 Fact Sheet. National Employment Law Project (March 2011). See also Enforcement of State Wage and Hour Laws: A Survey of State Regulators (April 2011), a report issued by Columbia Law School's National State Attorneys General Program, and available at [http://www.law.columbia.edu/center\\_program/ag/policy/Labor/wagehour](http://www.law.columbia.edu/center_program/ag/policy/Labor/wagehour). Florida self-reported not doing anything to enforce wage and hour violations.

<sup>9</sup> Schiller and DeCarlo. Investigating Wage Theft: A Survey of the States. Policy Matters Ohio (20 10). Read report at: <http://www.policymattersohio.org/pdf/InvestigatingWageTheft2010.pdf>

<sup>10</sup> Analysis of Florida House Bill 241 Fact Sheet. National Employment Law Project (March 2011).

<sup>11</sup> For a more detailed summary of Florida's lack of enforcement or remedies for wage theft, please read the Amicus Curiae Brief. Florida Retail Federation, Inc vs. Miami-Dade County, Florida, No.104-42326 CA 30, 2010 (11th Cir. Florida. Dec. 3, 2010). Found at: [http://www.floridalegal.org/cjp/documents/101203\\_19\\_ACB.pdf](http://www.floridalegal.org/cjp/documents/101203_19_ACB.pdf)

<sup>12</sup> The SBD has a pool of retired judges who have been designated as hearing officers.

<sup>13</sup> Miami-Dade Wage Theft Ordinance. Chapter 22 of the Code of Miami-Dade County, Florida; Prohibiting Wage Theft. Found at <http://www.miamidade.gov/govaction/matter.asp?matter=093228&file=true&yearFolder=Y2009>

<sup>14</sup> Smith, Jeanette. Victory in Miami-Dade County (2010). Wage Theft Toolkit found at: <http://wagetheft.org/>

<sup>15</sup> Wallman, Brittany. (2012) 'Wage theft' law passes Broward commission. Sun Sentinel.

<sup>16</sup> The founding organizations of the Alachua County Wage Theft Task Force (ACWTTF) are: the Alachua County Labor Party, Gainesville area Industrial Workers of the World, Fight Back Florida – Gainesville Labor Coalition, and the Interfaith Alliance for Immigrant Justice.

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<sup>17</sup> The Alachua County Wage Theft Task Force (ACWTTF) was formed by members of the Alachua County community in September of 2012. Throughout 2011 members of the immigrant rights, worker rights, and student community became more aware of the problems of wage theft after several high profile cases came to light. The founding organizations were the Alachua County Labor Party, Gainesville area Industrial Workers of the World, Fight Back Florida – Gainesville Labor Coalition, and the Interfaith Alliance for Immigrant Justice.

<sup>18</sup> RISEP estimates that the majority of wage theft cases throughout Florida's counties go unreported because workers simply do not know where to seek help; are afraid to report violations out of fear of retaliation by employers, which often leads to unemployment and; are unfamiliar with federal and state wage and hour laws.

<sup>19</sup> Statistical Package for the Social Sciences is a computer program used for statistical analysis.

<sup>20</sup> For the full list of industries visit: <http://ogesdw.dol.gov/search>

<sup>21</sup> The respondent's name has been changed to provide confidentiality.

<sup>22</sup> For more information regarding Certified Nurse Assistants read: Compliance of the Federal Labor Standards Act at: [www.dol.gov/whd/flsa/](http://www.dol.gov/whd/flsa/)

<sup>23</sup> The respondent's name has been changed to provide confidentiality.

<sup>24</sup> Ibid.