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Wage theft in the United States: Towards new research agendas

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Abstract
Wage theft – the nonpayment of employees' wages and benefits by employers – is a violation of national, state, and local labour standards, yet it is prevalent in the low-wage labour market of the United States. Building upon the recent increase in attention to the wage theft problem through advocacy, policy, and research efforts, we contextualise the problem within the country's deregulated neoliberal labour market. We then propose a conceptual framework to demonstrate how the problem occurs when the price of labour standards violation is low due to lax enforcement, and there is a high price of compliance due to ambiguous and increasingly outdated labour standards. We further evaluate extant federal, state, and local policy initiatives designed to curb wage theft by modernising outdated labour standards and strengthening their enforcement. Finally, we propose future research agendas, such as examining the effects of fissured employment relationships and the enforcement efforts of state and local anti-wage theft laws, to guide the development of effective policy interventions.

JEL Codes: J5, J8

Keywords
Employee misclassification, employment laws, hour and wage law, neoliberal labour market, wage theft

Problem: The nonpayment 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

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Australia (Clibborn and Wright, 2018), Brazil (Bignami and Barbosa, 2015), the United States (Bernhardt et al., 2013; Bobo, 2008), and the European Union countries (Franić, 2019). In the United States, it results from the violation of labour standards designed to ensure employees' rights and benefits. Wage theft takes many forms, but the most common forms include paying less than the prevailing minimum wage, not paying for overtime hours (hours exceeding 40 hours per week for hourly employees), and not paying for programmes such as Social Security and Medicare, unemployment insurance, and workers' compensation (Bobo, 2008).

Although the prevalence of wage theft in the United States is difficult to estimate (Bernhardt et al., 2013), it is widespread particularly in certain low-wage industries such as construction, food services, retail, health care, accommodation, and online gig industries (United States Department of Labour (DOL), n.d.a). The scale of lost wages and benefits is substantial. Employment tax violations represent more than US$91 billion of the annual gross tax gap (The United States Department of Justice (DOJ), 2021; United States Government Accountability Office (GAO), 2017). Based on nationally representative household survey data, previous studies have reported that as much as 17% of low-wage workers experienced minimum wage violations, resulting in a loss of US$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, and larceny. 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 overtime experienced overtime pay violations and that 26% had experienced a minimum wage violation (Bernhardt et al., 2013).

Wage theft can have severe economic consequences for workers and their families, as victims are typically vulnerable immigrants or minoritised workers in low-wage industries. Workers can lose income and fall into poverty, and they can lose out on benefits such as workers' compensation and unemployment insurance (Eastern Research Group, 2014). Studies have also found that lack of enforcement of paid sick leave – a form of wage theft – is related to the under-treatment of occupational injuries and the increased spread of illness among workers (Asfaw et al., 2012; Peipins et al., 2012). Moreover, wage theft substantially reduces government tax revenues both for payroll tax and federal and state income taxes (Eastern Research Group, 2014). It is regarded as stealing from taxpayers, as the victims and their families may eventually need to rely on publicly funded welfare programmes. 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 advocacy groups, many state and local governments across the country have enacted anti-wage theft policies, and researchers from disciplines including law, political science, labour studies, and sociology have produced knowledge on the issue. To the best of our knowledge, however, a recent, comprehensive, and critical review of the US wage theft problem and policy interventions is missing in the literature. Therefore, we aim to provide a critical review of wage theft in the United States, beginning with the labour market context and contributing factors to the problem. We propose a conceptual framework for understanding the phenomenon and

for assessing existing federal, state, and local policy interventions. We then use this framework to identify directions for future research to inform the development of additional interventions to curb wage theft.

Context: The US neoliberal labour market

Wage theft in the United States needs to be contextualised within the neoliberal labour market, in which labour standards and individual entitlements have been eroded through labour market deregulation. Although labour market deregulation has been observed around the world, the US labour market is more deregulated than those in Western European countries (Peters, 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 of 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). In the section below, we first provide a brief overview of the US labour standards to explain the employees' rights guaranteed in the country's legislation. We then discuss two critical contextual factors that influence the evolution and enforcement of the labour standards: (1) the strength of labour power and (2) the level of labour market regulation.

US 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 set the national minimum standards for wages and benefits for employees. First and foremost, the *National Labour Relations Act* (*NLRA*), established in 1935, was intended to balance the power between 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 basic income security for workers against loss of earnings related to retirement, disability, and illness. FICA established the means to collect payroll 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 Labour Standards Act* (*FLSA*), created in 1938, mandated national minimum 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 US$7.25 per hour (or higher in states with higher minimum wage rates) for the hours they work and 1.5 times their regular pay for hours exceeding 40 per week. While most employees are covered by the FLSA, some workers (as discussed later) are excluded from the minimum wage or overtime pay protections or both (DOL, 2019). Fourth, with the *Federal Unemployment Tax Act* (*FUTA*) of 1939, the US 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 (IRS, 2021). Finally, state Workers' Compensation (WC), established between

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the early 1900s through 1949, pays for medical bills and part of lost wages when employees get injured or ill on the job, but generally precludes workers from filing a lawsuit against their employees for damages.

Increasingly weakened labour power

Thanks to the labour standards established throughout the late 1930s, unions with the protection of the NLRA exercised their roles and power and increased workers' rights and benefits during the post-war period. This was possible in part due to the rapid growth in union membership in the United States in the decades following the Second World War. At its peak in the 1940s and 1950s, a third of all workers were represented by unions and benefitted from the upwards pressure unions created to improve employment terms and conditions (Weil, 2014: 41). Since the 1970s, however, the emergence of economic globalisation and the consolidation of neoliberalism have supported labour market flexibility and pushed back labour unions in much of western Europe and North America (Peck and Theodore, 2012; Peters, 2008; Weil, 2014). This trend has contributed to significant declines in the level of unionisation in most sectors of the US labour market (Weil, 2014: 254).

The NLRA, which was designed to balance the power between employers and employees, has not been amended for many decades and led to gradual erosion of workers' collective bargaining power (Kalleberg, 2009). In 1959, the Supreme Court wrote a pre-emption 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 pre-emption doctrine of the NLRA prohibited states from doing anything similar for labour law (Galvin, 2019).

By 2019, as a result, 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 said 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 unionisation has weakened labour power and minimised its ability to intervene against employers' violations of labour standards.

Deregulated labour market

Since the 1980s, the declining power of labour unions in the United States has been accelerated by the emergence of economic globalisation, advanced technology, and neoliberalism (Peters, 2008). Globalised labour markets have enabled companies to outsource work to lower wage countries and open up new labour pools for increased labour market flexibility and lower labour costs (Weil, 2014). Government regulations that set minimum labour standards and workers' entitlements have been rolled back (Peck and Theodore, 2012). At the same time, labour regulations have been modified with numerous exemptions and loopholes to favour businesses. 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 (Kalleberg, 2009; Weil, 2014).

Along with this labour market deregulation, 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 (Weil, 2014). Many companies, facing increased competition, have been incentivised to reduce labour costs by not paying or compensating workers according to the national minimum labour standards. Companies have also set up multi-tiered business arrangements, through subcontracting, franchising, and third-party managing, to decentralise the employment relationship and make the relationship less transparent (Weil, 2011, 2014). The fissured employment relationship has created confusion and loopholes in identifying companies that should be considered to be employers, responsible for abiding by federal, state, and local regulations. Through fissured employment relationships, companies have been allowed to shift out employment to their subordinate businesses to lower the de facto cost of hiring additional workers (Weil, 2014: 78). They have also found ways to misclassify their workers as independent contractors and avoid their legal responsibilities for the minimum labour standards (Bernhardt et al., 2013; Weil, 2011). Furthermore, 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 decentralisation and devolution of policy decision-making has set the stage for the proliferation of wage theft among businesses and employers.

Theoretical explanation: The costs of compliance and violation

Wage theft is, in essence, a violation of labour standards. Employers' motivations to violate the standards are largely determined by the *costs of compliance as opposed to the costs of a violation*. As discussed in the sections above and as depicted in Figure 1, the strength of labour power and the level of labour market regulation provide a broad context, within which those costs are determined by labour standards and their enforcement. Stronger labour power and a more tightly regulated labour market are likely to generate labour standards that are clear and relevant to the changing economy. They are also likely to enable rigorous enforcement of those standards. The clarity and relevance of labour standards and rigour in their enforcement further determine the costs of compliance with and violation of the standards. A high cost of compliance and a low cost of violation are related to a high prevalence of wage theft (Ashenfelter and Smith, 1979; Sellekaerts and Welch, 1983). Further elaborations of these costs are provided in the sections below.

Clarity and relevance of labour standards

The costs of compliance with labour standards are affected by how easy it is to comply with them. Scholars have argued that US labour standards are difficult to comply with because some of the rules are very complex and outdated. Wage theft related to employee misclassification can take place in part because the classification rules vary significantly across the four laws that involve employee classification – *FLSA, NLRA*, the *Employee*

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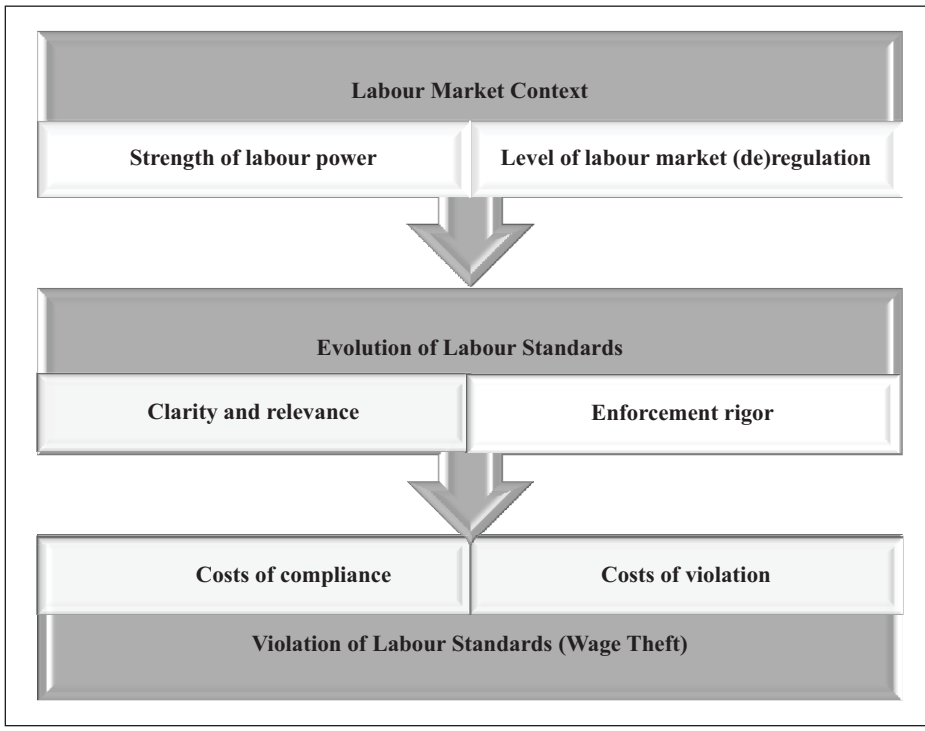

Figure 1. Conceptual framework for wage theft.

Retirement Income Security Act, and the *Internal Revenue Code*. These laws use different definitions of an employee and various tests to distinguish independent contractors from employees. In addition, states have laws on misclassification for workers' compensation and unemployment systems (Bobo, 2008). Federal agencies and states rely on multi-factor tests to determine the degree of a worker's autonomy versus employer control. Therefore, a worker can be deemed an employee under one law and an independent contractor under another. As some employers must comply with the US Internal Revenue Service, US Department of Labor, and state regulations altogether, the challenge can sometimes lead to violations.

Also, the costs of compliance with employee classification can be substantial because some loopholes within existing legislation have normalised misclassification and allowed law-abiding employers to be outbid by their unlawful competitors. For example, the FLSA normalised and maintained the antiquated companionship services exemption of domestic workers for nearly 40 years, which contributed to rampant wage theft in the industry. The FLSA had exempted domestic workers employed directly by households from minimum wage and overtime pay rules by considering them as so-called 'elder companions' (DOL, n.d.a). To date, home care workers, especially those hired by private households, remain the group that experiences one of the highest rates of workplace violations in the United States (DOL, n.d.c). Likewise, under the 'Safe Harbor' rule of

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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. The rule can exempt employers from treating workers as employees, and companies that operate with the rule do not need to pay employment taxes, which results in wage theft (Zwick, 2018). The US Treasury estimated that closing the loophole could have generated US$9 billion in tax revenue between 2012 and 2021 (Congressional Research Service, 2011; Ordonez and Locke, 2014).

Another example of the high cost of compliance with the outdated rules of the FLSA has to do with 'the duty and salary tests' for overtime pay. Under the FLSA, executive, administrative, professional, and outside sales employees and salaried employees are exempt from overtime provisions (the so-called 'white-collar exemption'; 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 Ansel, 2016). Because employees need to meet both the duty and salary tests to be covered by overtime rules, employers can give low-paid workers managerial titles and avoid paying overtime. While the salary test is relatively simple to implement, the duty test presents enormously complex problems with the interpretation of the executive, administrative, or professional functions within different contexts and cultures of each industry and job. In sum, the complex rules of the FLSA that fail to respond to the rapidly changing labour market have made compliance challenging. Employers use these challenges to their advantage to avoid their legal and social responsibilities and to commit wage theft.

The rigour of labour standards enforcement

Many scholars consider wage theft to also be a failure of labour standards enforcement. With lax enforcement, the chance of wage theft being detected is slim, as are the economic consequences of violations for employers. All of these, lower the costs of labour standards violation (Fine and Bartley, 2019; Weil, 2011). The two enforcement agencies – the Wage and Hour Division (WHD) of the US 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, 2017). The combined budgets of all the labour agencies were around US$2 billion in 2018, which was far smaller than the US$24 billion budgets for two immigration enforcement agencies under the Department of Health and Human Services (Costa, 2019). As a result, the labour enforcement agencies are staffed at only a fraction of the levels required to adequately fulfil their missions (Fine and Gordon, 2010). The WHD had only about 1100 inspectors for over 135 million workers in more than 7.3 million establishments throughout the country (Costa, 2019). Of 50 states in the US, six states did not even have a single investigator in their state WHD offices, and 26 states had less than 10 investigators (Lee and Smith, 2019; Levine, 2018). This limited number of investigators lowers the chance of employers engaged in wage theft being caught and investigated. Likewise, IRS funding for enforcement of employment tax laws remains low. When the number of IRS 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 (The Treasury Inspector General for Tax Administration, 2017).

Even if an employer is caught, the penalties are generally not severe enough to change their future behaviour. 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 US$1100 for each violation, but DOL seldom uses these penalties (Bobo, 2008). 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 wages owed, and in Illinois, the statute of limitations relieves the violators from the penalty after only a year (National Conference of State Legislatures, 2019). Criminal penalties are rarely used, even though the FLSA makes willful violations a misdemeanour punishable by jail time (Lee and Smith, 2019). The actual penalty for wage theft, as a result, can be nearly zero for perpetrators, and the expected costs of wage theft that should theoretically work as deterrents do not make much difference in practice (Galvin, 2016).

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 it at the national, state, and local level. Many of these efforts have been mobilised by worker advocacy groups. The so-called 'alt-labour' – worker centres, 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 (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 federal system of governance and state devolution in the US labour market (Peck and Theodore, 2012).

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 to increase enforcement efforts, particularly in the early years of the Obama administration (Weil, 2011). However, the enforcement resources allocated to the WHD have remained low, at below US$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. food and beverage, 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).

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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 – 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 joint employment. It also built collaborative relationships with worker centres, community organisations, 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 the compliance activities of their contractors (Weil, 2018).

Reducing employee misclassification through multi-agency collaborations

In 2010, the US 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 others 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 (Department for Professional Employees (DPE), American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), 2016).

In 2014, the DOL also awarded more than US$10 million in grants to 19 states to help their efforts to reduce employee misclassification (DOL, 2014). Some of the state governments, including New York, Massachusetts, Michigan, and New Jersey, created interagency task forces to develop a variety of data and enforcement initiatives and enact additional state laws. Some of these task forces in New York and Massachusetts began recovering millions of dollars in unreported wages and employment taxes (DPE, AFL-CIO, 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 (Leberstein and Ruckelshaus, 2016). The presumption typically uses the so-called 'ABC' test for state unemployment insurance and wage payment, so that classifying a 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 the hiring company; (2) the service a worker provides is outside the usual course of the business of the 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 who is considered an independent contractor, compared to what is required under the federal labour laws (Leberstein and Ruckelshaus, 2016).

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Modernising the outdated rules of the FLSA

Efforts have been made by the US federal government to modernise some of the most outdated rules of the FLSA. In 2013, the DOL closed the loophole of companion exemption for home care workers hired by third-party employers, and the FLSA began protecting agency-employed home care workers working for individual households from wage theft. Although opposition and litigation delayed the implementation of the revised rules until October 2015, the DOL published the final rules regarding this change and began stakeholder education and enforcement of the rules (DOL, n.d.a).

Another effort initiated by the Obama administration was to revise the overtime pay threshold for white-collar employees, which had been so eroded by inflation that people earning as little as US$455 per week (the equivalent of US$23,660 per year) could be forced to forgo overtime payment for hours worked more than 40 per week. In 2016, the DOL issued a rule to raise the threshold to US$47,476; however, a Texas district judge blocked nationwide implementation of the rule before it became effective. In late 2019, the DOL finally issued a rule to raise the threshold to US$684 per week (the equivalent of US$35,568 in annual salary), extending the overtime pay coverage to more than 1 million workers and potentially reducing wage theft practices against low-wage white-collar workers (DOL, n.d.b).

Enacting state and local employment laws

While revisions to the FLSA have been slow in keeping up with the changing labour market, many states have made efforts to address the gaps by enacting their own employment laws. Worker centres and community-based organisations, along with legal service agencies, have built organising movements to advocate workers' rights in low-wage industries. Many states, particularly politically left-leaning states with a large number of worker centres 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 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 or 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 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, the employer's name and address, and some even require employers to offer instructions on how to file an administrative wage complaint at the time of hire (Lee and Smith,

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2019). Importantly, many wage theft laws authorise penalties including civil (monetary) penalties, licence 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 the payment of workers' attorney's fees, costs, or the cost of administrative enforcement. The negative publicity penalty requires reporting to the public about employers who committed wage theft (e.g. 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 misdemeanour 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 the 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 an 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 a 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 was found to be associated with a reduction in the probability of minimum wage violations by nearly half (Galvin, 2016).

Besides anti-wage theft laws, workers' Bill of Rights and similar legislation has also been developed across many states for domestic workers, farmworkers, and day labourers. As many as nine states (New York, California, Connecticut, Hawaii, Illinois, Massachusetts, Nevada, New Mexico, and Oregon) and one municipality (Seattle) have passed the 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 overtime pay protections of the FLSA, 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 enactments of employment policies represent great strides towards addressing wage theft issues, they also require vigorous enforcement, which remains a major challenge in many places (Lee and Smith, 2019). Emerging research suggests that local coalitions, which utilise government-civil society collaborations, locally grounded monitoring, and severe penalties for violations, can be a promising model for the co-enforcement of local labour standards (Fine and Bartley, 2019). Yet, it is uncertain whether cities without progressive alt-labour and robust coalitions can successfully enforce their labour standards.

Evaluating existing efforts and challenges

Despite the enormous strides 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 action. States' efforts to prevent employers' retaliation may also be challenging because employers may engage in anticipatory retaliation even before workers file a complaint (e.g. by firing, cutting hours, and threatening). States can also face challenges with 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, state devolution and state-level discretion have allowed states and localities to serve as the laboratories of progressive policy reforms and presented lessons in terms of 'what works', which could be adopted by the federal government (Bernhardt, 2012). Furthermore, state and local efforts have created considerable geographic variation in labour standards and inequality in workers' rights across the country. These efforts also 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'. In light of the declining labour power, federal employment policy reform is the only plausible option to create large-scale change (Bernhardt and Osterman, 2017). Based on our analyses, we believe that a national reform should include amending the FLSA to increase worker education, strengthen deterrent methods, and encourage interagency collaboration for rigorous enforcement. Class-action suits against employers for lost wages should be also made easier by automatically including all employees in the lawsuits unless they opt-out. Criminal prosecution of employers should be available for pernicious wage theft practices. Above all, one of the most important national reform efforts should be amending the NLRA to modify the definition of employees, prevent employee misclassification, and protect workers' rights to collective bargaining. National reforms are imperative as more workers join the precarious workforce at risk of experiencing wage theft.

While nationwide policy reform and enforcement would require political mobilisation, these efforts are likely to confront strong opposition from conservative business groups (Milkman, 2013). Even when many progressive movements took place in the 2010s, some state legislatures undertook numerous efforts to undercut wages, erode labour standards, and undermine unions (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, which has undermined union membership. Furthermore, 16 states have passed laws restricting public employees' collective bargaining rights or the ability to collect 'fair share' dues through payroll deductions (Lafer, 2013).

The DOL under the Trump administration had tried to reduce joint employer liabilities, thereby increasing the incentive for employers to violate labour standards (Shierholz, 2020). It also allowed employers who had committed wage theft to avoid penalties when they participated in its self-audit pilot programme (Brecher and Barnes, 2021). Moreover,

the Trump administration further restricted workers' power and unionisation and limited their access to the court and class actions by allowing employers to force them to a mandatory arbitration agreement (Griffin and Wall, 2019). Although some of these anti-labour rules were recently struck down by a federal judge (Brecher and Barnes, 2021) and the Biden administration (Shierholz, 2020), they serve as a reminder that there will be considerable challenges that need to be overcome in order to achieve more progress towards curbing wage theft practices.

Identifying future research agendas

Based on our conceptual framework and assessment of the literature, we believe that additional research is needed to provide empirical evidence on the causes of wage theft as well as the effectiveness of the recent anti-wage theft efforts discussed earlier. As loopholes in existing federal legislation have contributed to wage theft, there is a need for additional research on the effects of outdated FLSA rules on wage theft prevalence in specific industries, to better understand how this legislation should be amended or replaced. For example, the FLSA still uses two-tiered minimum wage rules for tip workers, although the rules have long been outdated and considered to be the source of widespread wage theft practices in the restaurant industry. Seven states are known to have eliminated the two-tier rules (Wann, 2016), but no empirical studies, to the authors' best knowledge, have tested how such a measure has affected tipped workers' experiences of wage theft in those states. Similarly, the new Home Care Rules of the FLSA that became effective in October 2015 need to be analysed, in the near future, to gauge if they are related to changes in the prevalence of wage theft practices within the home care industry.

Second, although one of the most important factors contributing to wage theft is the fissuring of the employment relationship through subcontracting, franchising, and third-party managing, there is surprisingly scant empirical evidence on the extent to which it is associated with wage theft (Bernhardt, 2014; Weil, 2014). One exception is the evidence by Ji and Weil (2015) on the effect of restaurant franchising on labour standards violations. Unfortunately, empirical studies in this area have been stymied because national surveys in the United States do not fully measure fissured employment relationships and job qualities for the active workforce except for health insurance and retirement savings plans (Bernhardt, 2014). An effort is currently underway among national experts with the US Department of Labor to create such measures and collect data (The National Academies of Sciences, Engineering, and Medicine et al., 2019). Such an effort must lead to the creation of an ongoing data collection effort that enables the research community to investigate the effects of fissured employment relationships on wage theft practices.

Additional research is also needed to monitor the enforcement efforts of the state and local anti-wage theft laws discussed earlier and to examine their impacts on changes in the prevalence of wage theft. Scholars could consider utilising regional variations in state and local laws and, enforcement efforts to tease out the effects of particular enforcement strategies on curbing wage theft practices. While the general pattern of anti-wage theft policy and effective enforcement strategies has been examined (e.g. Fine and Bartley,

2019; Fine and Gordon, 2010; Lee and Smith, 2019), more evidence is needed to learn about successful strategies, specific to particular low-wage industries and strategies that can be scaled up for other industries or locations. Research is also 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.

Finally, as most empirical studies to date have focused on the violations of the hour and wage rules of the FLSA, relatively scarce are studies on the nonpayment of employment benefits associated with employee misclassification. Lack of empirical research has obscured the efforts to adequately problematise the social and economic consequences of wage theft in lost employment benefits among misclassified workers. Empirical studies in this area, however, are challenging in the United States because, as mentioned earlier, there is no national survey that collects data on employment classification and employment benefits other than health insurance and retirement saving plans for the active workforce (Bernhardt, 2014). Collecting necessary data and making them publicly available will be extremely important to facilitate empirical studies.

Conclusion

We believe that the US labour market serves as an exemplary case for those interested in understanding the problem of wage theft in a neoliberal political economy. Numerous legislative and labour organising efforts have been made to combat wage theft, but most of them have come relatively recently and in a piecemeal manner. As a result, nationwide progress has been slow. This may be in part because the prevailing neoliberal political economy of the country allows only a patchwork of regulations and policy interventions (Peck and Theodore, 2012). In reviewing the contexts, explanations, and interventions regarding wage theft in the United States, we have identified broad lessons that may be helpful for the United States as well as other countries. For any country that deals with wage theft, the costs of violations should be made more severe to deter unethical employers from violating labour standards. At the same time, the costs of compliance with the labour standards needs to be lowered, with unambiguous labour standards and timely updates of them in the backdrop of rapidly changing jobs and labour market conditions. The major updates would entail addressing the issue of worker exclusion from labour and employment laws and ensuring that workers are not exempt or can be misclassified. Research is needed to unveil the effectiveness of anti-wage theft measures on the labour market experiences of targeted workers. As low-wage labour markets around the world are being forced to adapt to abrupt changes brought by the COVID-19 pandemic, it remains to be seen how the pandemic will affect both the prevalence of wage theft and the potential for policy change in the future.

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