



ROBERT W. WIRCH

STATE SENATOR TWENTY-SECOND DISTRICT

I want to thank Chairman Nass and the committee members for holding a hearing on this bill.

Wage theft is a term used for a number of wage and hour infractions, including nonpayment of overtime pay; violations of minimum wage laws; forcing employees to work off the clock; withholding workers' final paychecks; management keeping tips meant for employees; and payroll fraud/worker misclassification. A number of factors have combined to make this an increasing problem that causes economic strain for workers, taxpayers, law-abiding businesses, and the economy. The Economic Policy Institute estimates that wage theft costs American workers as much as \$50 billion per year; local, state, and federal governments miss out on billions more in tax revenue; ethical businesses struggle to compete with wage cheats; and low-wage workers who have been victimized have less money to spend at local businesses. The Department of Workforce Development Labor Standards Bureau currently has between 450 and 500 open wage claim cases at any one time.

While Wisconsin's Wage Payment and Collection Act provides penalties for wage and hour offenses and damages for workers who have been taken advantage of, state law needs to be updated to strengthen worker protections and further deter potential violators. Senate Bill 40, the Wage Theft Protection Act will do this through several important changes.

- **It requires employer disclosure of rate of pay and other working conditions at the time of hire and annually thereafter.**
- **It increases penalties for employers found in violation of damages that can be collected by employees.**

Under current state law, employees have the option of filing wage claims with the Department of Workforce Development or going directly to court. When individuals chose to go through the DWD process, they can seek wages owed plus 100%, plus court costs and attorneys' fees; those who chose to go directly to court can pursue wages owed plus 50%, plus court costs and attorney's fees. The bill increases those to 200% and 100%, respectively.

Under current state law, employers found in violation can also be held criminally liable and subject to penalties of \$500, up to 90 days in jail, or both. This bill makes the fine \$500 for a first violation, \$750 for a second, and \$1000 for each offense thereafter.

- **It establishes a fund within DWD, using penalties paid by violators, to pay for future wage theft enforcement.**
- **It increases the statute of limitations for filing a wage claim from the current 2 years to 4 years.**
- **It requires businesses to disclose any delinquent wage judgments when applying for licensure or registration.**

These are reasonable solutions that will help the state and its workers better address this growing problem. A number of states have already taken steps to strengthen their wage theft laws, including New York, California, Illinois, Texas, New Mexico, Connecticut, Colorado, Delaware, Minnesota, Maryland, Massachusetts, Washington, and the District of Columbia.



Tod Ohnstad

STATE REPRESENTATIVE

September 26, 2019

Senate Committee on Labor and Regulatory Reform
Senate Bill 40
Representative Tod Ohnstad

Chairman Nass and members of the Committee on Labor and Regulatory Reform, thank you for holding a hearing and allowing me to provide testimony on Senate Bill 40, legislation to address the issue of wage theft by providing greater opportunities for employees to seek justice and increasing penalties on businesses engaged in this illegal activity.

Worker misclassification and payroll fraud are pressing concerns for all Wisconsin workers. Wage theft puts a strain on the middle class and the entire economy. While Wisconsin statutes provide for some avenues for recourse after the illegal action is caught, state law needs to be strengthened to adequately protect workers, law-abiding businesses, and taxpayers. I believe Senate Bill 40 contains common-sense reforms that give cheated workers a better opportunity to pursue legal action while also providing strong penalties that will deter future violations. In addition, requiring up to date terms of employment will help clarify wage and working requirements for both employees and businesses.

When companies misclassify employees as “independent contractors” it steals from the worker, but it also steals from taxpayers because these companies are able to dodge obligations like payroll taxes on those employees. It also creates an unfair competitive advantage when fraudulent businesses can under-bid companies who follow the law.

I have heard from constituents and workers across Wisconsin about their experiences with wage theft, and believe that we must act to fix this problem. Strengthening protections for both employees and law-abiding businesses is a reasonable step towards making Wisconsin a better place to live and work.

I am thankful that Governor Evers has taken action on this important issue by creating a Joint Task Force on Payroll Fraud and Worker Misclassification to focus on this issue. However, legislation is needed to fully address this problem in our state.

Our neighboring Minnesota recently passed a comprehensive wage theft law this spring with bipartisan support as legislation passed both the Republican-controlled State Senate and House of Representatives which has a Democratic-Farmer-Labor majority. Both sides of the aisle came together earlier this year to enact one of the strongest wage theft prevention laws in the nation by criminalizing the practice, increasing penalties for violations, and enhancing enforcement authority and efforts. Wisconsin should follow this lead and take action to ensure Wisconsin workers are paid the money they are owed for their work. Wage theft is simply theft.

Thank you for your time today. I would appreciate your support when Senate Bill 40 comes for a vote before this committee.

65th ASSEMBLY DISTRICT

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WMC

WISCONSIN MANUFACTURERS & COMMERCE

To: Members, Senate Committee on Labor and Regulatory Reform
From: Wisconsin Manufacturers & Commerce
Date: September 26, 2019
Re: Opposition to Senate Bill 40

Wisconsin Manufacturers and Commerce (WMC) opposes Senate Bill 40 (SB 40), which would expand liability for employers facing wage claims without providing increased protections for wronged workers. Implementing this legislation would make Wisconsin's business environment less competitive, harming employers, employees, and consumers alike.

WMC is the state chamber of commerce and largest general business association in Wisconsin. We were founded over 100 years ago and are proud to represent approximately 3,800 member companies of all sizes and from every sector of our economy. Our mission is to make Wisconsin the most competitive state in the nation in which to do business. One way WMC advances this mission is by advocating for reasonable employment laws and a fair and effective civil justice system.

WMC believes that all employers should pay their workers. However, Wisconsin law already has significant penalties for employers who unlawfully withhold wages from workers. We believe that current wage payment and collection laws adequately protect and restore mistreated workers while deterring most businesses from unlawfully withholding wages.

A number of provisions in SB 40 would greatly expand liability for employers. First, the bill would double the maximum damages that an employer could be assessed in addition to the unpaid wages. It would also allow the Department of Workforce Development (DWD) or a circuit court to add monthly interest on wages due. Current law already allows courts to order additional damages of up to 100 percent of unpaid wages, plus attorney fees, and to place a lien on the employer's property on behalf of DWD or the employee making the complaint. Wisconsin law even permits criminal penalties for illegal wage withholding, with fines up to \$500 and up to 90 days of jail time for each instance of unpaid wages.

In addition, SB 40 would lengthen the statute of limitations on wage claims from two to four years. This would make it more costly for employers to defend themselves against wage claims, but would not benefit employees with legitimate grievances, who are able to file a wage claim as early as six days after an established pay day on which the employee was not paid. The bill would also allow employees to file wage claims on behalf of other workers, circumventing the process for filing a class action lawsuit. Current law already allows DWD and circuit courts to combine related wage cases.

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Founded in 1911, WMC is Wisconsin's chamber of commerce and largest business trade association.

SB 40 seeks to impose another layer of administrative burdens on human resource managers by requiring employers to provide all employees with written statements of their employment terms at the time of hire, before any changes to the terms, and on January 1 of every year. This provision would create an unnecessary set of tasks and costs for all employers and would interfere with their established practices. For example, in its fiscal assessment on SB 40, the University of Wisconsin System noted that the requirement would be costly and redundant for the system to implement, as it already sends annual appointment letters in May to coordinate with its fiscal and academic year, rather than the calendar year. Further, the bill's penalties for noncompliance are onerous: \$50 per day per employee, plus attorney fees. A mere typo in the statement of employment terms, if it goes unnoticed for several weeks or months, could cost even a small employer tens of thousands of dollars.

Finally, SB 40 includes several needlessly punitive provisions that would not benefit wronged workers in any way. The bill would allow DWD or a circuit court to impose a surcharge of up to \$1,000 on employers, to be deposited into the general fund and appropriated back to DWD. This provision punishes employers, does nothing for workers who have been mistreated, and creates an inappropriate economic incentive that directly benefits DWD at the expense of employers. Employers with outstanding wage claims would also be automatically ineligible to renew their licenses, potentially denying struggling businesses the opportunity to turn things around.

It is important to note that on average, almost two-thirds of wage claims in Wisconsin are dismissed without merit. In other words, for every time that an employer is found to have unlawfully withheld wages, two other wage claims made against employers are found to be baseless. Employers incur significant monetary and reputational costs defending themselves against these claims. Furthermore, employers have no way to recover their legal fees when a complaint is dismissed without merit, and there is no penalty for workers who make false wage claims. SB 40 would move Wisconsin's civil justice system in the wrong direction, making the wage claim process grossly one-sided while discouraging employers from fighting baseless claims.

For all of these reasons, WMC respectfully opposes this legislation. WMC believes that all employers must pay workers what they are owed. Wisconsin law already adequately protects employees from illegal wage withholding and imposes serious penalties on employers to deter unlawful wage practices.



WISCONSIN CIVIL JUSTICE COUNCIL, INC.

Promoting Fairness and Equity in Wisconsin's Civil Justice System

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To: Members, Senate Committee on Labor & Regulatory Reform
From: Wisconsin Civil Justice Council
Date: September 26, 2019
Re: **Opposition to Senate Bill 40**

Wisconsin Civil Justice Council (WCJC) opposes SB 40, which would expand liability and lawsuits against employers in Wisconsin. WCJC does not defend employers who do not pay their workers. However, this legislation goes beyond current law protections for workers and instead increases liability for employers acting in good faith, with little benefit to wronged employees. SB 40's expansion of liability would harm Wisconsin's current positive legal climate, making it less attractive for businesses to expand and hire employees in Wisconsin.

WCJC has several concerns with the bill, including provisions that:

- Allow employees to file wage claims with the Department of Workforce Development (DWD) or in circuit court not only on their own behalf, but also on behalf of any similarly situated workers.
- Increase the statute of limitations for wage claims from two to four years.
- Significantly increase the punitive costs for employers who are found to owe employees wages. The bill would double the amount employers could be liable to pay in excess of the unpaid wages, up to 200 percent, plus attorney fees. DWD or a circuit court may also require the employer to pay 2 percent interest per month on the amount of wages due. DWD or a circuit court can also order the employer to pay a surcharge up to \$1,000. The surcharge fee would go not to the employee but to DWD.
- Employers with outstanding wage claims would not be eligible to renew their licenses.
- Require employers to provide a disclosure statement of terms of employment to all employees. If an employer fails to provide or comply with the written terms of employment, the employer would owe all damages, plus \$50 per day, and attorney fees.

WCJC does not defend employers who do not pay their workers. While provisions in SB 40 to protect employees from wage theft are well-intentioned, this legislation would increase liability for employers acting in good faith, with little benefit to wronged employees. Therefore, WCJC respectfully opposes this legislation.

The Wisconsin Civil Justice Council's mission is to promote fairness and equity in Wisconsin's civil justice system, with the ultimate goal to make Wisconsin a better place to work and live.



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TO: Senate Committee on Labor and Regulatory Reform
FROM: Deedee Peterson, Executive Director, Legal Action of Wisconsin
DATE: September 25, 2019
RE: Effects of Senate Bill 40

Thank you for the opportunity to comment on the ways in which Senate Bill 40 (“SB 40”), if passed, would impact Legal Action of Wisconsin’s clients.

Legal Action of Wisconsin (“LAW”) is the largest provider of free, high-quality, civil legal aid to low-income individuals in Wisconsin. LAW’s practice areas are varied and include: housing, family law, consumer rights, elder rights, public benefits, and representation of Wisconsin’s agricultural workers. Wage theft affects clients in each of these practice areas. For Wisconsin’s working low-income families, unpaid paychecks or missing overtime pay can make the difference between paying rent on time or becoming a client of LAW’s Eviction Defense Project. For a survivor of domestic violence, getting paid for every hour worked can mean the difference between a bus ticket to safety or another night spent in an unsafe home. For a working family trying to enter Wisconsin’s middle class, an unpaid paycheck may mean the difference between opening an emergency fund savings account or a 200%-400% interest loan from a predatory lender that the family struggles to pay back.

SB 40 would make changes to the law that would discourage employers from illegally withholding employees’ wages, encourage faster resolution of wage claims actions, and strengthen protections for workers.

Current law insufficiently protects victims of wage theft.

Our clients work very hard at their jobs, but they don’t always get paid on time, and even then, they may find that their pay does not reflect their hours worked. Current law does not sufficiently deter employers from illegally engaging in wage theft. Additionally, the Department of Workforce Development (“DWD”) investigations can be lengthy. Even if an employer pays at the end of investigation, the worker’s unpaid wages provided a 0% interest loan to a bad actor employer, while the wage theft experienced by our clients has lasting negative impacts. For example, even after workers receive their missing pay, this pay does not account for the time the worker waited to receive their missing pay, during which they weren’t able to pay their bills. Stretches of missed pay—including even one paycheck—can leave workers and their families in financial straits, vulnerable to serious consequences like eviction and homelessness.

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Our Farmworker Project attorneys have extensive experience representing clients in the DWD administrative complaint process. We are, quite frequently able to get DWD judgements in our clients' favor. These judgements have ranged from under \$300 to over \$3,000. It is a good day when a worker wins their wage theft case and we get a call from one of our clients to say, "the check cleared." As celebratory a moment as that is, it is often bittersweet because we are "celebrating" a paycheck for hard work that one of our clients performed months, or, in some cases, years ago.

SB 40 would create more incentives for employers to pay workers accurately and resolve pay disputes quickly.

By requiring employers to pay a 2% interest rate on back wages, as well as raising the percentage of wages due and unpaid that the employer must pay to an employee, and establishing surcharges for violations, SB 40 disincentivizes wage theft and promotes quick resolutions of wage theft cases.

SB 40 would amend the law to require employers to pay interest on the amount of wages due and unpaid at the rate of 2% per month for each month that the wages were due and unpaid. Forcing employers to pay interest on unpaid wages due would benefit our clients by incentivizing quick resolutions of wage theft claims. Knowing that they will be paying interest on wages due may also discourage employers from practicing wage theft in the first place. Requiring employers to pay interest would also acknowledge the real-life consequences faced by wage theft victims.

SB 40 also proposes to increase the percent of the amount of wages due and unpaid. Under current law, employers are required to pay the amount of wages unpaid, and additionally, must pay increased wages of not more than 50% when wage claim actions are brought in court *before* DWD has completed its investigation. SB 40 would change that additional amount in increased wages to 100% of the amount of wages unpaid. Under current law, when a claim is brought in court *after* DWD has completed its investigation, an employer is required to pay the amount of wages unpaid, and additionally, must pay increased wages of not more than 100%. SB 40 would change the additional amount in increased wages to 200%. These positive changes would, again, acknowledge the consequences of wage theft and more appropriately compensate wage theft victims for the violation of their rights, while discouraging wage theft in the first place.

Lastly, SB 40 would require employers to pay DWD or the circuit court a surcharge of \$500 for a first wage theft violation, \$750 for a second violation, and \$1,000 for a third or subsequent violation. These surcharges discourage the practice of widespread wage theft, as employers will be responsible not just for unpaid wages with interest, but would also be required to pay additional money each time they violate the law by unlawfully withholding employees' pay. The surcharges, which would be deposited into the general fund, also have the potential to increase state resources for preventing and combating wage theft in Wisconsin.

Together, these three alterations to the law would create stronger protections for our clients by instituting more serious financial consequences for wage theft. SB 40's proposed changes would

discourage wage theft in the first place, and encourage a faster resolution of wage claims so that our clients can get back on track with their lives.

SB 40's proposal to increase statute of limitations would protect working families who face barriers to enforcing their legal rights.

By increasing the statute of limitations for filing a wage theft claim from two years to four years after the date the wages were due, SB 40 more realistically reflects how long it may take for workers to acknowledge and address wage theft. Our Farmworker Project travels across Wisconsin to give presentations on workers' rights. At almost every presentation, our advocates hear, "I wish I would have known this information five years ago." Many workers may not have been aware of their rights at the time the wage theft occurred, workers may have felt intimidated to raise their concerns or confusion to the employer, or workers may still not even be aware that their employer unlawfully withheld wages or denied them overtime pay. Due to the very real fear of retaliatory discharge, many workers decide to wait to secure new employment before reporting wage theft. An increase in the statute of limitations for filing a wage theft claim, as SB 40 proposes, would provide additional protections and opportunities for workers to enforce their rights.

SB 40's proposal to increase disclosure requirements would prevent misunderstandings and discourage wage theft.

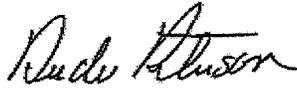
SB 40 would make an important change to the law by requiring that employers provide workers with a written statement disclosing the terms of employment when an employee is hired, as well as annually, and within a week of any change in the terms of employment. Such disclosures empower workers with the information they need to confirm that their pay reflects the terms of their employment. Contrarily, many low-wage workers—particularly agricultural workers not covered by Wisconsin's migrant worker laws—currently have no idea what to expect when they begin a new job because they never receive a disclosure statement outlining the terms and conditions of the position. Many of our clients do not know much they should expect to earn per hour, and, even though workers should receive this information on each check stub, do not know their rate of pay. Additionally, many agricultural worker clients live in employer-provided housing, but it is unclear if the housing is provided without a cost or if some sort of rent will be deducted from the paycheck. Requiring a disclosure statement would provide many workers, particularly our clients of limited English proficiency, with a clearer understanding of what to expect each pay period. This knowledge empowers workers and their families to raise misunderstandings or discrepancies to an employer's attention – protecting both workers and employers.

SB 40 would make wage theft less palatable to employers and would empower and protect workers and victims of wage theft.

Low-wage workers are critical participants in Wisconsin's workforce and are valued members of our communities. But wage theft is a serious issue that can upend the lives of Wisconsin workers and their families. SB 40's proposed changes would strengthen worker protections and offer improved remedies to discourage wage theft in the first place and encourage a faster resolution

of claims when wage theft occurs. LAW is committed to serving low-wage workers and we are encouraged by the positive impact that SB 40 would have on our clients. Thank you for your consideration of SB 40.

Sincerely,



Deedee Peterson
Executive Director
Legal Action of Wisconsin



Erica Sweitzer-Beckman
Farmworker Project Director and Attorney
Legal Action of Wisconsin



Wisconsin State AFL-CIO

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Phone: 414-771-0700, wisafcio.org

President: Stephanie Bloomingdale, Secretary-Treasurer: Dennis Delie

September 26, 2019

Dear Members of the Wisconsin State Senate Committee on Labor and Regulatory Reform,

On behalf of the hard-working men and women of the Wisconsin State AFL-CIO, I write to urge this Committee to support Senate Bill 40, a commonsense bill that is long past due.

Wage theft is the failure to pay workers the full wages to which they are legally entitled. Wage theft is truly a crime in America. In 2016, \$1.1 billion in stolen wages were recovered by the federal government and state departments of labor and attorneys general in just 39 states. This billion-dollar heist is only a fraction of the wages that were rightfully earned by workers but stolen from them.

Wage theft can affect *any worker*. No one who labors is immune from either a negligent mistake or an intentional theft of pay. However, wage theft disproportionately affects workers who work in jobs that pay the minimum wage, in jobs where overtime pay (time and a half) is required, or shift workers who are forced to work off the clock.

Wage theft affects *families* because when work is not paid, families become unstable. Wage theft means less food is put on the table, rent or mortgage payments become burdensome, necessary clothing and school supplies for children are not purchased, bills are not paid, and families have less money to spend in the local economy.

Wage theft affects other *employers*. When unscrupulous businesses have lower labor costs because they steal from their workers, it makes it difficult for law-abiding businesses who pay workers for their labor to compete in the market place. When the law can't enforce the law properly, there is no level playing field in the marketplace.

Wage theft affects *our communities and our State*. Lower wages due to wage theft means lower tax revenue, which means less money to support our schools, roads, infrastructure, and support services. Lower wages also mean that more workers qualify for State-assistance, like Badgercare and FoodShare. No worker goes to work to be further dependent on the State, and yet 32% of households that received FoodShare had at least one (if not more) household members employed in December 2018.

Currently, our system that is administered by the Department of Workforce Development all but gives unscrupulous employers a perverse incentive to steal wages. There is no policing as to whether employers are taking hard earned pay from Wisconsin's workers. Our law is based on workers filing a claim with the State Department of Workforce Development, but many workers do not know that their wages are being stolen – as many do not know that are owed overtime – or may be uncertain of their rights or do not know where to go to enforce their rights or may even fear retaliation for speaking out. Our system for enforcing proper payment of owed wages needs reform and so that is why the Wisconsin State AFL-CIO supports SB 40, a common sense bill that deserves unanimous, bipartisan support.

Senate Bill 40 includes a number of important reforms. First, it will require employers to issue employees the terms & conditions of employment in writing. This will inform workers of their pay, anticipated hours, and conditions of employment. It will give workers the information that they will need to determine whether to approach their employer to correct a negligent mistake on their paycheck or to file a complaint with the State.

Second, this bill will increase the statutes of limitation for wage theft complaints. This will allow workers more time to deal informally with their employers before making a complaint with the state.

Third, it will increase penalties for employers who steal from their workers – right now penalties are fairly non-existent so there is almost perverse incentive to steal from workers. Increased penalties will remove wage theft as a “cost of business” by giving employers a meaningful deterrent.

Fourth, this bill will require businesses to disclose delinquent wage theft judgements when applying for licenses or registrations with the State. This will remove the veil so that taxpayers will know which businesses not only steal from workers, but withhold pay when the State finds that the business has illegally withheld pay (or stolen pay) from its workers.

Last, it will use the penalties to increase enforcement, which is sorely needed in our state.

We urge each of you to support SB 40. We thank the bill's author Senator Wirch for his tireless work to advance this bill. We also thank Committee Chairman Nass for scheduling a public hearing, and urge you to schedule an executive session so that this bill can be voted on by the full Senate.

Sincerely,

Stephanie Bloomingdale, President