

National  
Employment  
Law Project

55 John St., 7th Floor  
New York, NY 10038  
(212) 285-3025  
(212) 285-3044 fax  
nelp@nelp.org  
www.nelp.org

October 2005

### STRATEGIES FOR ENFORCING THE RIGHT TO BE PAID IN ALABAMA, LOUISIANA AND MISSISSIPPI

There are several strategies to enforce the right to be paid. Each option is different and some can be used together to increase the chances of recovering unpaid wages.

**Demand Letters:** Demand letters are sent to employers and can be used to open negotiations to recover unpaid wages. A demand letter can be sent from an individual, an organizing group or an attorney. A typical demand letter includes:

- the law(s) violated (i.e., Fair Labor Standards Act)
- dates and times worked
- request for payment
- proposed payment plan or meeting to negotiate
- follow-up steps including an explanation of the consequences for the employer if they fail to respond

#### Follow-up Steps to a Demand Letter

Follow-up steps are very important. Carefully consider what resources are available to you or your organization when proposing follow-up. Steps can be as simple as saying someone will call on a given date. The follow-up to a demand letter can vary depending on who sends it. Below are examples of different steps:

Organizing groups can:

- Protest at the employer's place of business or home
- Publicize the employer's bad acts in the media
- File a complaint with the Federal or State Department of Labor
- Propose a time, date and place to meet and discuss the claim with the employer

Individuals can:

- Engage in the strategies listed above, and
- File a complaint in court.

Whatever steps you choose, it is very important to follow up. A demand letter without follow up is meaningless and can lead the employer to think you are not serious.

## **Negotiating a Settlement**

You may wish to negotiate a settlement in order to resolve the problem without having to take the time and pay the expense of going to court. If you discuss the problem with the employer, you may find that he is willing to pay all or part of the amount of money owed. You can also set up a payment plan, for example \$1000 per month for three months, that may make it easier for the employer to pay.

If you come to a settlement agreement with the employer you should both sign a “settlement agreement,” which is a binding contract. That means that if the employer does not pay the amount he promises to pay, you have a contract that can be enforced in court.

## **Administrative Complaints to the United States Department of Labor**

The Federal Department of Labor enforces the Fair Labor Standards Act (FLSA) which creates the Federal minimum wage of \$5.15 an hour and the overtime law requiring workers to be paid 1 ½ times their regular hourly wage for any hours over 40 a week. It can help you if you were not paid or if you were paid less than the law requires.

It does not cost anything to file a claim with the Federal Department of Labor or to have it investigate a claim. To contact the United States Department of Labor, call **1-866-4US-WAGE (1-866-487-9243)**.

## **Complaints to the State Department of Labor**

In Alabama, Louisiana and Mississippi, the state Departments of Labor will not be able to help as much as the U.S. Department of Labor.

The Alabama Department of Labor can help you collect unpaid wages but does not enforce minimum wage and overtime laws. They have a claim form on the web at: [http://www.alalabor.state.al.us/PDFs/WAGE\\_CLAIM.pdf](http://www.alalabor.state.al.us/PDFs/WAGE_CLAIM.pdf).

Though Louisiana has a law requiring workers who quit or are fired to be paid their final paycheck, [LA R.S. 23:631 - 632](#), workers have to file in court themselves to recover it. The Louisiana Department of Labor does not enforce that law.

## **Possible Campaign: Partnering With State Agencies To Combat Systemic Unpaid Wages Problems**

Some states already have laws on their books providing that it is a crime to not pay a worker. Groups organizing to combat severe employer violations of wage and hour laws may consider developing a relationship with their state Attorney General, their state Department of Labor, or possibly the police to ensure that bad employers are prosecuted if they are violating criminal laws.

For example:

- In Mississippi, certain employers who fail to pay workers their wages on time may be guilty of a misdemeanor under the labor law. [Miss. Code Ann. § 71-1-53](#).
- In Alabama, the penal code provides that it is a crime to obtain services or labor that would normally be compensated by means to avoid payment. [Ala. Code. §13A-8-10](#)

While criminal laws may not be a perfect solution to the widespread problem of employers' failure to pay workers the wages they are due, organizers and advocates may want to consider whether they might be useful in campaigns to highlight the problem and to demonstrate to employers the consequences of breaking the law. A toolkit for advocates on using these laws in campaigns is available at:

<http://www.nelp.org/docUploads/theft%20of%20services%20toolkit%2Epdf>

In deciding whether to engage in a campaign to enforce criminal laws for employers' failure to pay wages, it is important to carefully weigh the pros and cons of the various approaches. Ultimately, law enforcement agents alone have the power to enforce these laws, and organizing groups may not be able to control the direction a campaign takes. If the choice is made to pursue this type of campaign, it is important to develop good relationships with the law enforcement agencies, seek guarantees that the agencies will not be enforcing immigration laws and ensure that workers are aware of the costs and benefits of taking this approach.

If you decide to take this approach, it is important to get a clear commitment from the agency that it will not be enquiring into immigration status or enforcing immigration law. The National Immigration Law Center (NILC) has gathered a list of state and local non-cooperation ordinances and policies which is available at <http://www.nilc.org/immlawpolicy/LocalLaw/>. If your city does not already have one, getting one adopted should be the first step in your campaign. If your city does have one, you should ensure that it is being followed.

The New York State Attorney General has issued a formal opinion that immigration status is not relevant to enforcement of state wage and hour laws. This opinion is available at:

[http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003\\_f3.html](http://www.oag.state.ny.us/lawyers/opinions/2003/formal/2003_f3.html). It may be useful to see if your state Attorney General would be interested in issuing a similar opinion.

### **Possible Campaign: Enacting A Theft Of Services Law At The Local Level**

In states, like Louisiana that do not have such criminal laws, advocates may consider the possibility of a municipal ordinance criminalizing failure to pay wages. This can have the effect of drawing attention to the problem of non payment of wages and stigmatizing bad employers. Advocates in Kansas City, Mo took this approach and in 2004, the city passed [Ordinance No. 040964](#).