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22-1614

# Wage Theft Civil Penalty

Denver City Council

January 9, 2023



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OFFICE OF CITY COUNCIL

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# The process

Spring 2019: IUPAT and COJWJ reached out to CMs Gilmore and Lopez

Fall 2019: Reviewed state complaint process; explore other municipalities' legislation.

2021: Explored drafting possibilities to include: independent contractors, up the chain liability, and badging on public projects.

Fall 2022: Finalize draft; share with employers and the public.

Upon passage: Auditor's office to begin rule making and enforcement process

Summer 2019: Stakeholder group process kick off to explore a Wage Bond.

2020: Continued to meet with stakeholders. Decided against a wage bond.

Spring 2022: Decided to build on minimum-wage structure; began drafting.

Winter 2022: Legislative process



# The Problem

Wage theft happens when a worker is paid less than the full wages to which they are legally entitled.

Wage theft happens in every industry. The top violators at the federal level are

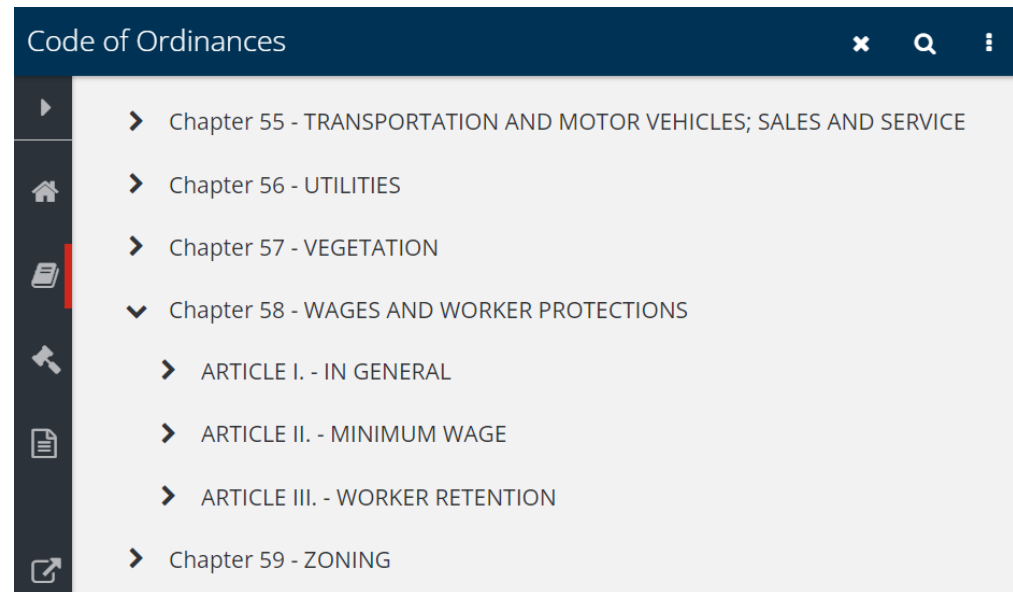
- 1) Accommodation, food services
- 2) Manufacturing
- 3) Construction
- 4) Retail trade



# The Policy: Changes to DRMC

## Revises Section 58

- **Division 1**  
Both minimum wage and wage theft
- **Division 2**  
Minimum wage specific
- **Division 3**  
Wage theft specific



# The Policy



## *An administrative pathway*

- By submitting a complaint to the auditor, workers can get paid more quickly (compared to Denver criminal or State administrative routes)



## *Provides restitution*

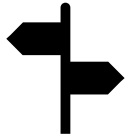
- Payment of withheld wages + 12%

## **Holds employers “up the chain” accountable**



- Allows the auditor to seek restitution for the worker from whomever in the chain can pay.
- Fills an important gap in current city and state legislation.

# The Policy



## *Allows flexible penalties*

- The auditor may order treble damages (3x stolen wages), job reinstatement, and/or a fine up to \$25k.
- There are fines for failing to certify payroll (\$1k), providing false information (\$1k), and retaliating against an employee (\$5k).



## *Establishes a private right of action*

- A worker may choose to bring a civil action in court, rather than via complaint to the auditor.

# Newest Improvements

- Added language that clarifies the definition of “worker” includes independent contractors.
- Added a 14-day notice period
  - At the time of complaint
  - Notify direct employer and "chain"
  - Provides ability to pay the worker before the auditor begins their investigation and incur no fines/fees.
- Updated and aligned date for annual reporting on data collection.





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# Appendix



## How is this different from current wage theft law?

	Denver Civil	Denver Criminal	Colorado Civil
Enforcement Official(s)	Denver Auditor	Denver Municipal Prosecutors	Colorado Department of Labor & Employment
Maximum Claim	Unlimited	\$2,000	\$7,500 per employee, per claim
Independent Contractors	Yes	No	No
Penalties	<p>Withheld wages + 12% interest</p> <p><i>Discretionary:</i></p> <ul style="list-style-type: none"> <li>- Treble damages</li> <li>- Reinstatement</li> <li>- Fine \$0 - \$25k</li> </ul>	<p>Restitution and other equitable remedies</p> <p>Up to \$1k fine</p> <p>Up to 300 days in jail</p>	<p>Withheld wages</p> <p>Fine up to \$50 per day</p> <p>After 14 days:</p> <p>(a) greater of 2x withheld wages or \$1,000; or</p> <p>(b) greater of 3x withheld wages or \$3,000, if willful</p> <p>After 60 days: an additional fine of 50% total penalties and additional penalty of the greater of 50% total penalties and fines or \$3,000.</p>

# Public engagement

Regular stakeholder meetings, beginning in 2019

Hosted two virtual townhalls in November: 90 registrants  
*Recording available at [bit.ly/denverwagetheft](https://bit.ly/denverwagetheft)*

Offered briefings to 20 local chambers, construction and restaurant associations, etc.

Distributed information to DEDO, DSBO, and Mayor's office

# FAQs

## *Is this limited to construction?*

- No, the legislation applies across industries, to any employer acting in Denver, with limited exceptions.

## *What if an employer makes an honest mistake?*

- Penalties are at the discretion of the auditor and intended to penalize employers who:
  - intentionally withhold wages,
  - do not fix issues within 30 days, and/or
  - do not cooperate with an investigation

## *What if an employer violates both minimum wage and wage theft?*

- The auditor must choose to enforce one or the other– no double dipping is allowed.

# FAQs

## *How will a worker file a complaint?*

- The specifics will be developed during the rulemaking process but generally, a worker will submit an online form with their name, details about the wage theft, and any helpful documentation.

## *How long do workers have to bring a complaint?*

- Three years

## *Will this apply to homeowners who hire a contractor, like a plumber?*

- No, a homeowner is not an employer because they are not “regularly engaged in business or commercial activity.”

# FAQs

## *How do I know if an independent contractor is covered by this law?*

- This legislation does not apply to independent contractors while acting solely in such capacity. A person is an "independent contractor" when the person is in business for himself or herself. The bill provides several factors to determine who is a “worker” under the law (and thus protected by this legislation) and who is a true independent contractor.

# FAQs

## *Does this duplicate current law?*

There are currently two pathways for Denver workers to remedy wage theft– Denver’s criminal wage theft ordinance (D.R.M.C. § 38-51-9) and Colorado’s wage theft statute (C.R.S. § 8-4-113). This proposed legislation differs in important ways from current law:

- ❑ This will grant Denver the authority to enforce wage violations (via the auditor’s labor division, which already enforces minimum wage) without depending on Colorado’s Department of Labor and Employment’s capacity or rules.
- ❑ Criminal and state claim investigations can take months or even years to resolve. Based on minimum wage enforcement, the auditor anticipates being able to get workers paid in weeks, not months.
- ❑ The maximum claim amount is not capped. Accordingly, this is the only pathway for workers who have had more than \$7,500 stolen.

Most importantly, a tremendous remaining gap is the inability to *collect* legally earned wages– when an employer closes shop and reincorporates as another entity, a worker has no recourse. Authorizing the auditor to pursue employers up the chain will help address this remaining gap.

Where can I see this information again?



<http://bit.ly/denverwagetheft>

