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22-1614

# Wage Theft Civil Penalty

Finance & Governance Committee

December 6, 2022



**DENVER**  
OFFICE OF CITY COUNCIL

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# Agenda

- How did we get here?
- What is wage theft?
- Why is this a priority in Denver?
- What will the proposed legislation do?

# The process

**Spring 2019:** IUPAT and COJWJ reached out to CMs Gilmore and Lopez to express their concerns about wage theft in Denver

**Fall 2019:** Reviewed current complaint process at state to explore opportunities to support efficiencies from the city side; explore other municipalities' legislation.

**2021:** Explored drafting possibilities to include stakeholder's policy priorities: inclusion of independent contractors, up the chain liability, and badging on public projects.

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

**2023:** Planned implementation; Auditor to grow capacity, establish complaint procedure, begin enforcement

**Summer 2019:** CM Gilmore, Torres, and Sawyer kick off the stakeholder group process to explore a Wage Bond.

**2020:** Continued to meet with stakeholders. CW Sawyer stepped in to lead the process when Gilmore was elected CP in July 2020. Decided against a wage bond.

**Spring 2022:** Decided to build on minimum-wage structure; worked with stakeholders to accomplish policy goals within that framework.

**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.

- Overtime violations
- Off-the-clock violations
- Meal break violations
- Illegal deductions
- Employee misclassification violations



# The problem

- \$728M in legally earned wages is stolen from Colorado workers each year (CO Fiscal Institute)
- Affects 1 in 10 workers, especially low-wage, immigrant, and female workers (Center for Urban Economic Development, 2009)
- 68% of low wage workers in large metro areas suffered at least one pay-related violation *in their previous week of work*. (Center for Urban Economic Development, 2009)



# The problem

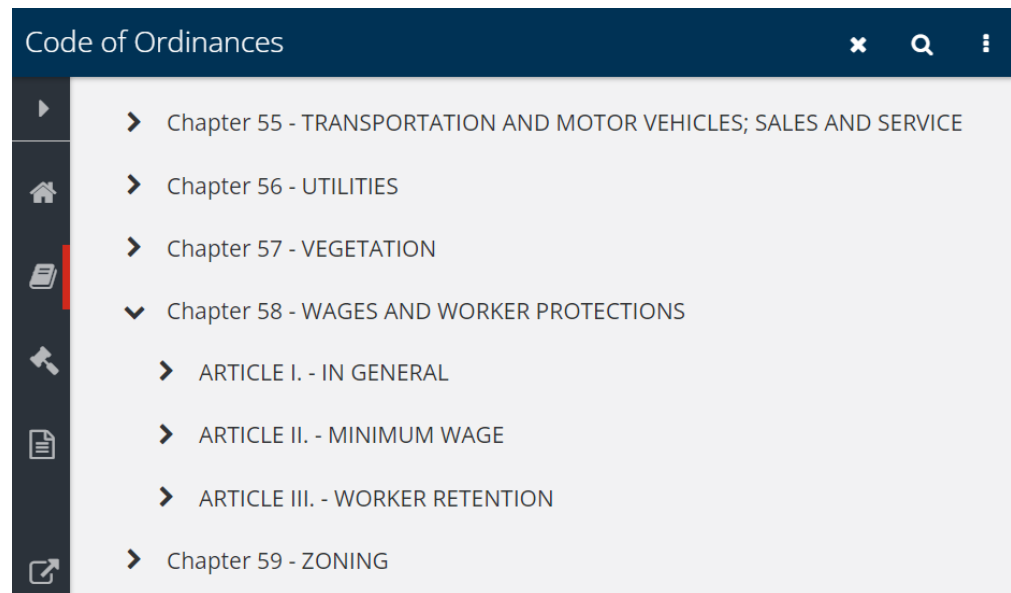
- Wage theft happens in every industry
- Federal top violators are:
  1. Accommodation and food services
  2. Manufacturing
  3. Construction
  4. Retail trade



# The nerdy stuff

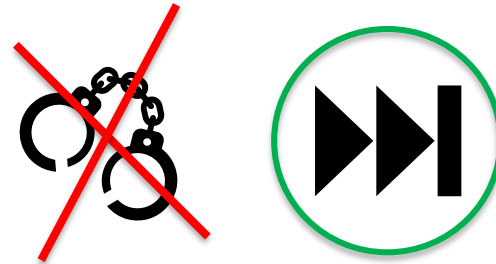
## Revises Section 58

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





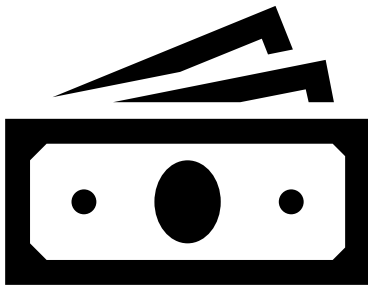
## The policy: *an administrative pathway*



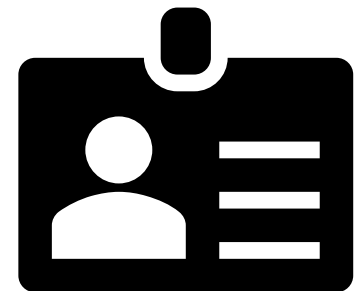
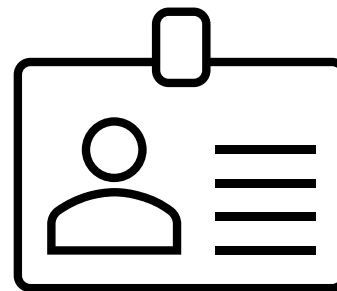
- Denver and Colorado law already provide criminal penalties for wage theft.
- By avoiding courts and threats of jail time, workers can get paid more quickly.

# The policy: provides restitution & protects independent contractors

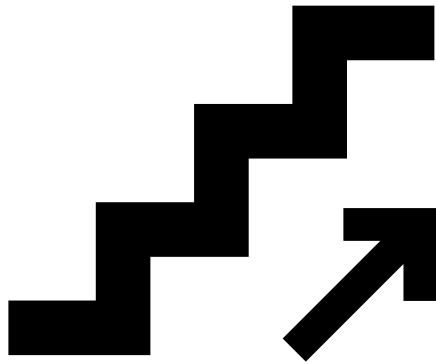
Payment of withheld wages  
+ 12% interest



Includes independent contractors  
working as employees.



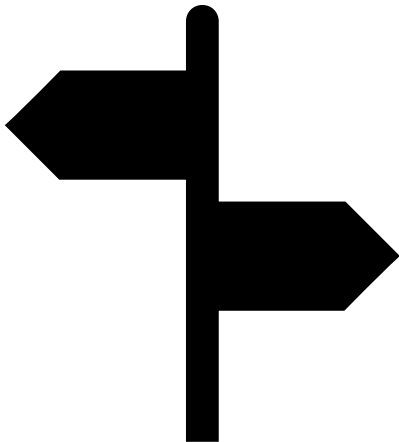
# The policy: Holds employers “up the chain” accountable



Allows the auditor to seek restitution for the worker from whomever in the chain can pay.

The auditor will start with the direct employer and then may move up the chain, link by link.

# 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).

# The policy: Establishes a private right of action



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

The worker may be entitled to:

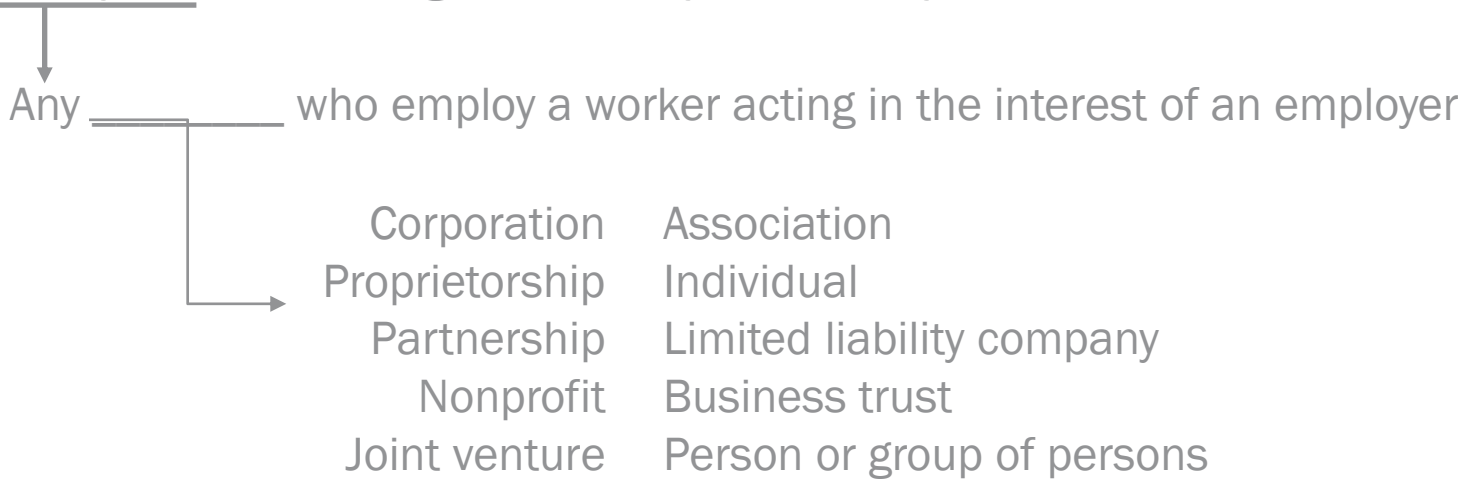
- payment of wages + interest
- \$100 per day,
- treble damages,
- reinstatement of employment, and
- attorney's fees.

This only applies to the direct employer, not up-the-chain.

# The details

## *Who does this apply to?*

Employers operating in the City & County of Denver



## 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>

# The details

## *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



The details

*What happens when an employer violates both minimum wage and wage theft?*

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

## The details

# *How does a worker file a complaint?*

The complaint process will be established by the auditor in 2023.

You'll need to provide:

- your name,
- a detailed statement of the alleged violation, and
- provide any documentation that helps prove your complaint.

You must bring the complaint within 3 years of the violation.

# The 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

# The legislative timeline

- December 6<sup>th</sup>: FinGov committee
- January 3<sup>rd</sup>: First reading
- January 9<sup>th</sup>: Second reading
  - Courtesy 1hr public hearing

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# Questions



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