

York City — found that two-thirds of low-wage workers have been the victims of wage theft.

The loss of a small amount of money from a paycheck might be a hindrance or nuisance to someone more fortunate, Dale says, but, “We’re talking about people living hand to mouth on a shoe string.”

He continues, “In my experience people who are getting ripped off understand they are getting ripped off but may feel if they raise the issue that they will wind up with no job at all.”

Oregon’s minimum wage, currently \$9.10 but soon to be \$9.25, is tied to inflation and is one of the highest in the nation. Still, at that rate, a family of three supported by a minimum-wage worker employed full-time remains below the federal poverty line.

Schuck says the recent cases he’s seen involve instances such as people who have to go to mandatory job training but don’t get paid for the hours they spend there. A current case before the U.S. Supreme Court involves claims of unpaid wages for the time spent in security screening lines at the end of shifts by hourly warehouse employees contracted out with Amazon.com. Employee Jesse Busk alleges he spent up to 25 minutes a day, unpaid, waiting in line.

Schuck says such gambits work for companies because not only are people afraid of losing their jobs, they are afraid of later problems. For instance, if they file a claim after they quit, they fear that their former employers might give them a bad recommendation. Schuck often tells workers to come back and talk to him about litigation for lost wages after they have already gotten another job.

In a class-action suit filed in Eugene, Logan and Corby Vance, workers at Little Big Burger near the UO campus, allege that they and other employees worked more than 40 hours a week but were never paid overtime. Logan Vance also alleges he was fired in retaliation for complaining that workers were not getting paid overtime and suggesting to other workers that they take action to get their pay. Little Big Burger says as the matter is proceeding in court, they’re unable to comment on it publicly.

Oregon law protects workers from retaliation, Schuck says, but he also notes that just as wage laws are violated, so are the laws designed to protect workers from retaliation. “I always tell a potential client of the risk,” he says.

The issue of wage theft is underreported because, as local attorney Drew Johnson points out, “It’s better to have a job than a wage claim.”

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— MICHAEL DALE, NORTHWEST WORKERS’ JUSTICE PROJECT

Complaints and Justice

Johnson litigates class-action suits involving wage claims in Eugene together with fellow attorney Alan Leiman. Class-action suits occur when one person or a group of people sue on behalf of a larger group of people, usually in an effort to create change.

Leiman says he has seen companies change their problematic policies, such as altering time clocks, soon after a case is filed against them. He says one common form of wage theft is companies who “promote” an employee to a salaried, instead of hourly, managerial position, exempt from overtime pay. The employee thinks he has a promotion but instead works longer hours for less money.

In addition to talking to an attorney, there are several routes workers can go if they think they have a wage claim. Unions such as the Pacific Northwest Regional Council of Carpenters will help members as well as nonmembers negotiate the intricacies of filing a wage claim. “We try to be almost an advocacy group for worker justice,” Basom says. “We like to be a place people can turn to for assistance” because the process can be daunting.

The council supported workers in allegations made in the fall of 2013 involving the the Eugene Capstone student housing project, in which workers complained of unpaid overtime, checks being withheld and unsafe and unsanitary conditions. According to BOLI

Communications Director Charlie Burr, the case is still open in BOLI’s administrative prosecution unit. BOLI is looking into X Wall Incorporated, a subcontractor of CEI, which was Capstone’s general contractor on the project.

Capstone’s Eugene spokesman Pat Walsh says the company “believes that its contractors and subcontractors must follow all local, state and federal employment laws.” He says that “because this is an ongoing investigation it’s not appropriate to comment further.”

Burr says BOLI gets contacted not only by workers themselves but also sometimes by a third party, like the carpenters union. For example the union might suspect its workers are not getting paid the prevailing wage on a construction project. The prevailing wage is basically the minimum wage workers can be paid on a public project.

To Nike’s apparent dismay, the Oregon Legislature in the 2013 session passed a bill requiring prevailing wages to be paid on land that the Oregon University System owns or will use, occupies or ultimately owns, even if the construction or renovation is paid for by a private entity. Phil Knight of Nike has paid for millions of dollars in construction at the UO, and *The Oregonian* reported that a Nike lobbyist made a last-minute attempt to pull the vote in the House before it passed.

Burr says BOLI does not act like an advocate for the complainant when it investigates. However, according to Gerhard Taeubel of BOLI’s Wage and Hour Division, if the agency does find a violation, it can make a monetary finding — it can attempt to collect the wages, and if there are record-keeping issues, can assess penalties.

If the company has repeated violations, then Burr says BOLI can seek debarment, meaning it’s not eligible to be paid on a public project for three years. He says there are more than 80 contractors currently debarred in Oregon.

Local Claims

Leiman and Johnson represented several workers in class action litigation against Delta Sand and Gravel that resulted in a settlement of \$1.3 million. Payments from \$4,000 to \$20,000 began in early November. The workers’ allegations included that Delta didn’t pay the correct overtime, didn’t pay the correct prevailing wages on public works projects and failed to accurately track, record and classify work, which resulted in underpaid wages.

In March 2012 and April 2013, after a BOLI investigation into Delta’s prevailing wage practices, the

company paid \$404,000 to the four workers and more than 100 other employees and former employees. In addition to BOLI, workers who believe they are not getting their full wages can also turn to a private attorney and file either a personal case or a class-action suit.

The four plaintiffs alleged that the BOLI settlement did not result in the full wages owed. The two sides mediated and a settlement was reached in May 2014, according to court documents.

Delta issued a statement saying the company “is pleased to have the recent lawsuit settled.” And adds, “The management team can now completely focus our time and energy to operating and growing our family-owned business,” concluding that it appreciates and values all its employees, past and present.

In another class-action suit, this one against Seneca Sawmill, David Scott, a chipper operator who was working at Seneca’s Hwy. 99 mill complex, alleges that workers were given reduced pay for meal breaks for which they didn’t get the full 30 minutes, and that the mill switched workers’ start times from the time they clocked in to a different set start time.

The August demand for a jury trial also says that because break times and start times were changed, workers are also owed for overtime wages.

Seneca Vice President and General Manager Todd

Payne says that Seneca “has reviewed the litigation and believes it is without merit. Seneca will vigorously defend the litigation and expects to prevail.”

Honest and Not-So-Honest Mistakes

If companies risk large penalties from BOLI — this past summer Google’s data center in The Dalles was hit with \$20,000 in civil penalties for meal and rest period violations in its construction — or costly lawsuits, why then engage in dubious payroll antics?

Leiman says that the little bits of time employers skim off paychecks add up to hundreds of thousands of dollars in profits, increasing over time, making it worth the risk. He points out that this means the community loses out in payroll taxes that go to support needs such as mass transportation.

Eugene attorney Margaret Wilson has worked on both sides of the issue. She has represented employees in claims against companies, but also represents and advises employers. She says in her work she has come across some unscrupulous businesses who don’t follow the law and don’t pay minimum wage, but she also deals with a lot of small businesses who “don’t know the law, who make a mistake and want to make it right.”

Wilson says some small businesses she’s dealt with have accidentally paid “straight time” (regular wages) instead of overtime, which is regular wages plus half of that wage, simply because they didn’t know the law.

Wilson says for those small companies, their errors can hurt them badly — even put them out of business because costs can be huge from penalties to attorneys’ fees. For example, she says in a minimum wage suit, the employer could wind up owing 30 days worth of wages — more than \$2,000 — even if the claim was only for a couple hours’ worth of lost wages.

“Wage laws are really complicated,” Wilson says. “Most of the time employers don’t really know the law.”

If a company does go out of business or can’t pay, Oregon has a Wage Security Fund that many people don’t know about, Wilson says, that can pay up to \$4,000 per worker.

One thing Wilson runs into is employers who download a handbook off the internet that isn’t specifically for Oregon — Oregon has really strict laws and is different from other states, she says. She recommends looking at the BOLI website or getting a lawyer to help navigate the wage system. “Good people, nice people inadvertently screw up,” she says.

Solutions?

“Payroll fraud is a huge, huge thing,” Basom says. And it doesn’t just hurt employees, it hurts other companies. “In construction, for example, contractors save 30 percent using these practices” and put forth lower bids on contracts “stealing jobs from honest contractors.”

He says the companies “are not paying their taxes and that accounts for billions and billions in unpaid taxes, taxes that should be going to pay for schools, infrastructure, roads and things like that communities need.”

Basom points out Capstone was given more than \$8 million in tax breaks from the city of Eugene.

Workers can turn to lawyers and to BOLI. They can also turn to advocacy groups such as the Northwest Workers’ Justice Project. One of NWJP’s projects is the Oregon Coalition to Stop Wage Theft, which is made up of unions, religious groups and nonprofits such as Eugene-based Beyond Toxics, Community Alliance of Lane County and Centro Latino Americano. Among the group’s goals are stronger laws and stronger enforcement on claims. To that end it is pressing the Oregon Legislature for more changes in the next session.

Dale of NWJP says, “People should know that wages get stolen, and to the extent they want to be part of the solution, there are very basic things they can do.”

He suggests that if you contract with someone to provide services, check to make sure they are paying workers fairly — with a few narrow exceptions, paying the minimum wage is the law. He also advises paying tips in cash. “If it’s on the credit card, 60 percent of the time it never gets to the workers, national studies show.” ■