

Stolen Labor: Wage Theft in Colorado

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Highlights

- There are over 623,000 Colorado workers who—whether they are Black, white, or brown— are employed in industries considered to be at high risk for wage theft. Workers of color are more likely to work in such industries, though, as 38 percent of workers at a high risk for wage theft are Black, Latinx, Asian, Indigenous, or another race, despite making up 28 percent of total employment.
- Colorado immigrants are also more likely to work in industries at high risk for wage theft
- Workers in the construction and food service industries are most likely to have their wages stolen relative to their share of total employment.
- In particular, it's notable that construction workers make up only 7 percent of total employment but receive 40 percent of all back wages paid.
- Wage theft cases involving workers in the administrative support and waste management industries also make up a disproportionately high percentage of cases compared to their percentage of total employment.
- Conversely, workers in the Public Administration and Professional, Scientific, and Tech industries are much less likely to have their wages stolen than other industries compared to their share of total employment.
- More men work in industries at high risk for wage theft than women.
- Colorado workers who are younger than 25 years old and older than 65 years old are more likely to be employed in industries at high risk for wage theft than other age groups.
- State lawmakers and other policymakers can help by creating policies encouraging workers to report violations, deterring retaliation from employers, and bolstering the authority of the Colorado Department of Labor and Employment to enforce wage theft laws.

Introduction

In [a 2013 report](#), the Colorado Fiscal Institute (CFI) estimated that nearly 500,000 Colorado workers are affected by some form of wage theft at a cost of nearly \$750 million a year in lost wages and benefits. The loss of these wages not only directly affects those workers and their families, it hurts all of us. That's because wage theft results in lost tax revenue for schools, roads, and other important community priorities; and weakens systems like the unemployment insurance program that help bolster Colorado's economy during recessions. That report found state and local governments lost between \$25 million and \$42 million in revenue each year as a result of wage nonpayment and the Unemployment Insurance Trust Fund lost nearly \$5 million each year.

CFI's report showed workers who are most likely to experience in sectors most likely to have wage payment violations were construction and hospitality. It did not examine the workers most at risk of not being paid fairly or at all by unscrupulous employers. This report does just that. Using data from the US Department of Labor and the US Census Bureau, this report looks at the industries with the highest number of claims of wage theft and the race, gender, age and immigration status of the people who work within them.

How Does Wage Theft Happen?

Wage theft can occur in a number of different forms:

Nonpayment of wages

This occurs when employers don't pay employees for all or some hours of worked or neglect to pay them in a timely manner.

Underpayment of wages

This is when an employer pays workers less than was promised, or less than the state or federal minimum wage; or when workers are denied wages for overtime.

Misclassification of employees

An employee can be misclassified when they are labeled as an "independent contractor" by an employer in order to skip out on requirements to pay minimum wage or overtime, to avoid other employment laws, or to avoid paying worker's compensation, unemployment insurance and income tax. It can also take place when, for example, a regular employee is called a "salaried manager" to avoid paying that worker overtime.

Deduction violations

These occur when an employer lowers a worker's pay by making illegal deductions from paychecks. An example might be unlawfully charging workers for the use of tools, materials, or transportation necessary to do their jobs.

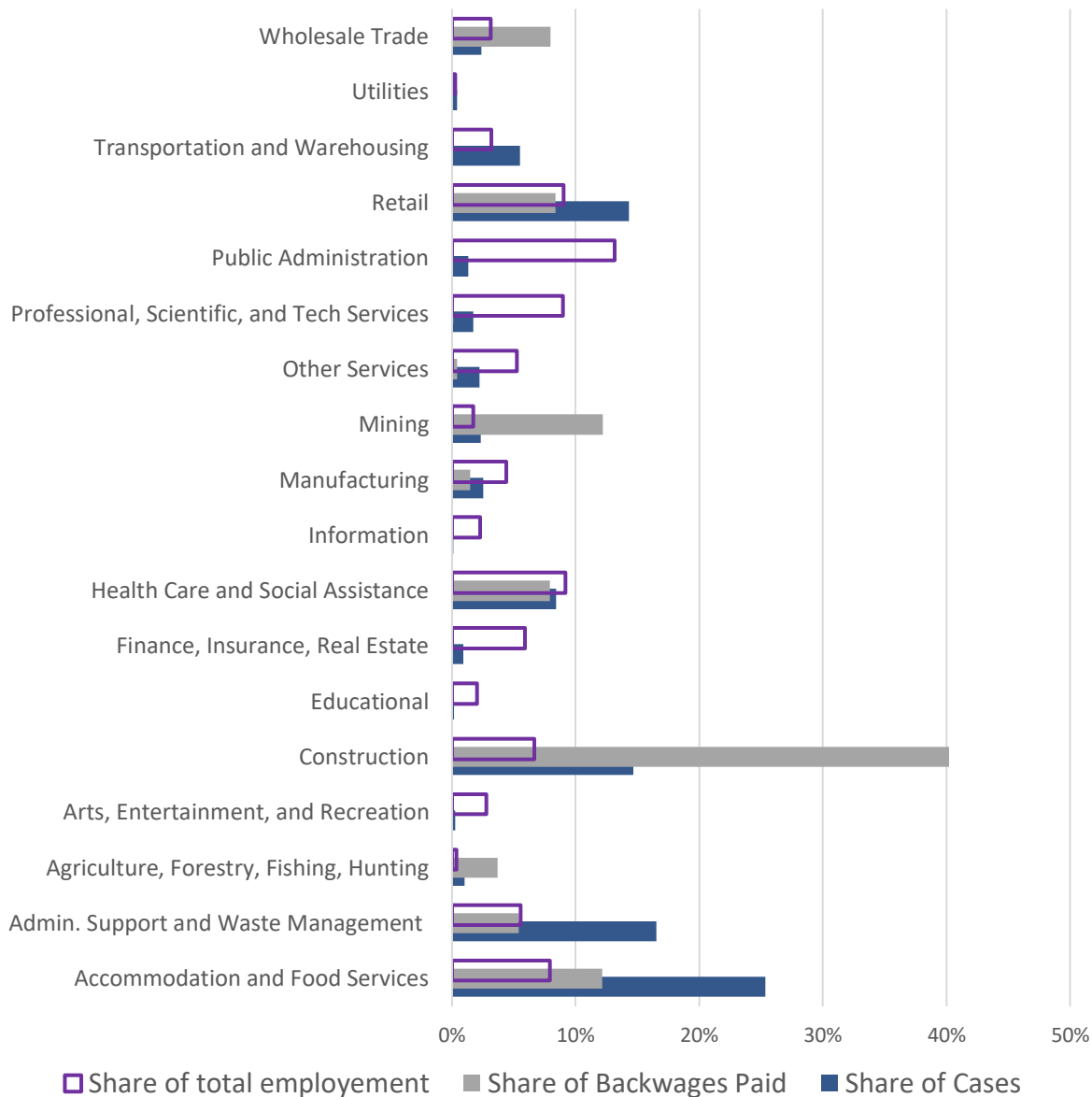
Tipped job abuse

This occurs when employees whose pay includes tips are paid less than legally mandated, when an employer forces tips to be shared with managers, or when an employer steals tips workers have earned.

Data on What Wage Theft is Reported

From 2011 to 2017, Colorado workers in a variety of types of jobs were victims of wage theft, according to the Fair Labor Standards Act (FLSA). In the graphic below, the hollow purple bar shows each sector's share of employment in Colorado. The gray and blue bars show the sector's share of FLSA violations and back wages paid.

Colorado FLSA Violations by Industry 2011-2017



Source: (NAIC) share of total employment from BEA; 2011-2017 back wages paid and FLSA violations from Department of Labor enforcement database

The two sectors hit hardest by FLSA violations are construction and hotel/food service. The construction industry makes up just 7 percent of total employment in Colorado, but accounts for 15 percent of FLSA cases and an enormous 40 percent of back wages paid. The hotel and food service industry accounts for 25 percent of wage and hour compliance cases, though only 8 percent of jobs are in those industries. In addition to those two industries, administrative support (which includes waste management), transportation and warehousing, and the retail sector all have a higher share of FLSA cases than their share of state employment.

Demographics of Workers Most at Risk of Wage Theft

Of the 2.9 million workers in Colorado in 2016, around 623,000 (approximately 21 percent) of those workers are considered to be at high risk of wage theft.

CFI defines workers with a high risk of wage theft as those making below \$13 an hour and who work in industries that had a greater share of wage and hour (FLSA) case claims than their industry's portion of the economy. Industries that fit this description include construction; arts, entertainment, and recreation; accommodations and food service; agriculture, forest, and fishing; manufacturing; transportation and warehousing; and administrative support. CFI used the 2016 ACS microdata to determine the demographic information about workers in the total work force and those at high risk of wage theft.

| | Total Work Force in Colorado 2016 | | High Risk of Wage Theft Jobs in Colorado 2016 | |
|----------------------------|--------------------------------------|------|--|-----|
| Total Workers | 2,967,085 | 100% | 623,364 | 21% |
| Race | | | | |
| Latinx | 559,154 | 19% | 177,549 | 28% |
| White | 2,123,451 | 72% | 382,494 | 61% |
| Black | 113,561 | 4% | 26,782 | 4% |
| American or Alaskan Indian | 15,316 | 1% | 3,981 | 1% |
| Asian | 93,185 | 3% | 16,027 | 3% |
| Other, two or more | 62,428 | 2% | 16,531 | 3% |
| Sex | | | | |
| Male | 1,588,281 | 54% | 379,946 | 61% |
| Female | 1,378,804 | 46% | 243,418 | 39% |
| U.S. Citizenship | | | | |
| Yes | 2,764,585 | 93% | 538,258 | 86% |
| No | 202,500 | 7% | 85,106 | 14% |
| Age | | | | |
| 16- 25 | 557,006 | 19% | 193,772 | 31% |
| 26-35 | 688,899 | 23% | 133,525 | 21% |
| 36-45 | 602,580 | 20% | 92,988 | 15% |

| | | | | |
|--|---------|-----|--------|-----|
| 46-55 | 571,445 | 19% | 75,629 | 12% |
| 56-65 | 417,934 | 14% | 72,259 | 12% |
| 65 and older | 129,221 | 4% | 55,191 | 9% |
| <i>Source: CFI analysis of 2016 PUMS microdata</i> | | | | |

Non-citizen workers are twice as likely to fall into the high risk of wage theft category as citizen workers. Approximately 7 percent of workers are non-citizens while 14 percent of the workers at risk of wage theft are non-citizens.

Latinx workers are more likely to experience wage theft than white workers. Latinx workers make up about 19 percent of workers in Colorado but are employed in 29 percent of high wage theft risk jobs.

Workers below 25 years old and over 65 years old are also more likely to be employed in industries with a high risk for wage theft than workers of other ages. Young workers make up 19 percent of the total work force in Colorado, but work in 31 percent of jobs at high risk of wage theft. Though older workers make up a smaller share of both categories, 9 percent of older workers are employed in jobs with a high risk of wage theft though they make up only 4 percent of total employment.

Colorado Workplace Protections

CFI’s analysis showed workers of color, workers who have immigrated to Colorado, workers who earn low wages, and the youngest and oldest workers are most likely to work in industries at the highest risk for wage theft. Yet, in many cases, these workers are also the least likely to feel empowered to speak out about workplace violations. Like workers in most states, Colorado workers bear the burden of enforcing their own protections—meaning the state’s current system for enforcing wage laws requires workers to come forward and report violations.¹ A lack of knowledge about their rights, or the fear of retaliation from their employer if they do file a complaint, means many of these workers do not assert their rights or make complaints.

The fear of retaliation is not unfounded. One study showed 43 percent of workers who experienced wage theft and complained to their employer or attempted to form a union, “experienced one or more forms of illegal retaliation,” and another 20 percent of workers who felt their employers had violated the law failed to come forward at all for fear of retaliation.² Other studies have confirmed that complaints have been met with some form of retaliation or been ignored. Workers with the most to lose, like workers who earn low wages and workers who are immigrants, are even more unlikely to pursue a claim.

Given the demographic characteristics of the workers in the “high risk of wage theft” category, it is essential that Colorado:

¹ Exposing Wage Theft Without Fear: States Must Protect Workers from Retaliation. National Employment Law Project, June 2019.

² Ibid. 4.

- Continues to pursue policies and procedures that help workers better understand their rights and advocate for themselves;
- Creates effective deterrents for employers, whether that passing means strong anti-retaliation laws or increasing fines and penalties;^{3, 4} and
- Bolsters the authority of the Colorado Department of Labor and Employment (the state agency charged with enforcing labor protections) to proactively enforce the laws that protect workers and prevent wage theft.⁵

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³ Galemba, Rebecca and Randall Kuhn. *Wage Theft and Its Victims: Research*. University of Denver, March 7, 2019. Accessed August 27, 2019 at <https://dujustwagesproject.wordpress.com/2019/03/07/wage-theft-and-its-victims-in-colorado-research/>.

⁴ Galemba, Rebecca. *Opinion: Criminalizing Wage Theft is Only One Step in the Right Direction*. The Colorado Sun. April 29, 2019. Accessed August 29, 2019 at <https://coloradosun.com/2019/04/29/wage-theft-colorado-bill-law/>.

⁵ For a detailed account of policy recommendations see Colorado Fiscal Institute's *An Agenda for Colorado's Workers: Colorado Needs A Modern Department of Labor And Employment To Protect The State's Workers And Responsible Employers*. December 2018. <https://www.coloradofiscal.org/wp-content/uploads/2018/12/An-Agenda-for-Colorados-Workers.pdf>