



## Wage Theft in Denver – Realities and Solutions

**Rebecca Galemba**, University of Denver

In Denver, Colorado, Latino day laborers wait for work on a street corner, which is set dramatically against the Rocky Mountains and the Broncos stadium. Pay is not just low but quite uncertain. As day laborer Félix explained, one employer kept saying “I will pay you” as he called three times to ask for his money. Delinquent employers often stop answering phones, change numbers, or give fake ones. And the problems are not just local. Nationwide wage theft may well worsen under President Donald Trump as undocumented immigrants are criminalized and driven further underground by his immigration policies.

### Wage Theft and Its Victims

The term wage theft includes all the ways workers are denied earned wages and benefits protected by federal and state labor laws – including underpayment and illegal deductions, misclassification, improper deductions of tips, and denied overtime pay as well as outright withholding of wages. Day laborers in construction are among the most vulnerable to such abuses – and they are numerous in Denver, which is experiencing a construction boom. Over the coming year, my research associates and I plan to survey 400 workers. Of the 91 day laborers we have surveyed thus far, 53, almost three-fifths, have experienced wage theft, many quite recently.

Nationally, as of 2014, Latinos occupied 32.3% of construction and extraction occupations; Colorado employs one of the highest percentages of Latinos in construction in the country. In Colorado, the construction industry recorded the largest share of Fair Labor Standards Act violations in 2013. According to a recent study, “foreign-born Latinos had an especially high minimum wage violation rate of 35 percent, double the rate of U.S.-born Latinos and nearly six times the rate of U.S.-born whites.” Non-unionized workers are especially at risk.

### How Wage Theft Happens

Day laborers explain the often purposeful tactics employers use to cheat on wages:

- The employer promises to pay the worker at the end of the week, only to disappear or not show up on Friday. Day laborers call this the mistake of “dreaming for Friday.”
- Checks bounce. Or, in another twist, employer take workers to the bank to cash checks, ask the workers to go to the bathroom and disappear before they return.
- Employers say they have not received payments and cannot dispense wages.
- Employers string workers along on subsequent projects with promises to pay accumulated wages on the next project, a practice known as “kiting.”

## What Can Day Laborers Do?

One year of qualitative research and preliminary survey results reveal that cheated workers often despair in the face of ineffective regulatory and enforcement measures. As one worker put it, “you might work with them for a few days and then on the last day, they just won’t pay you. And what can we do? They take advantage.”

Many workers believe that it is better to try to get another job tomorrow than to waste time chasing wages unlikely to materialize. Others fear drawing attention from authorities. “I don’t want problems,” explained one worker. Even though federal labor law enforcement is not supposed to discriminate on the basis of immigration status, many undocumented laborers are afraid to report wage and hour and safety violations. The Colorado Department of Labor and Employment has authority to adjudicate wage claims, but the process is too lengthy for many low-wage workers.

Wage theft was included in Denver’s petty theft ordinance in 2007, but cases are rarely filed; the law sets a high burden for proving employers’ criminal intent and only allows workers to recoup up to \$1000. A more promising local approach has happened in Boulder, Colorado, where a 2007 ordinance imposes criminal fines and possible jail time with no maximum ceiling on claim amounts. There is also a lower burden of proof—just failure to pay wages. The Boulder Community Relations and Office of Human Rights can investigate withheld wage claims and collaborate with the police, unlike the situation in Denver where police lack clear guidance on how to proceed with wage claims.

Despite uneven and inaccessible legal routes, some workers take direct action to prevent wage theft—by demanding cash payments each day, asserting a minimum wage floor at the street corner, and taking photos of completed work and employers’ license plates. Workers also help one another by spreading the word to avoid cheating employers.

## How Policies Could Be Improved – to Everyone’s Benefit

Wage theft can be countered through a multi-pronged approach. Workers, employers, and the public need to be educated and state-level agencies charged with enforcement should be supported. Local ordinances like Boulder’s can make a good start, but many low-wage workers are still uncertain or fearful about turning to public agencies. Community groups that include workers can help in the ongoing quest for wage justice. In Denver, for example, volunteers in the Direct Action Team work out of El Centro Humanitario to help workers recoup wages. A better-informed public can learn to recognize and censor such practices.

Disregarding wage theft as a mere “cost of doing business” or as something too inconsequential or time consuming to combat allows unjust practices to persist and grow. Weak labor law enforcement and the criminalization of undocumented immigrants encourage employers to cheat – depressing workplace standards for immigrant and native workers alike. Left unchecked, wage theft precipitates a race to the bottom, allowing cheating employers to engage in many other bad practices and putting responsible, law-abiding employers at an economic disadvantage. Ultimately, everyone suffers. Ongoing illegal workplace practices reduce incomes and security for all workers and families.