

WAGE THEFT IN AOTEAROA/NEW ZEALAND:

How employers are stealing millions of dollars from workers and how to fix it

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EXECUTIVE SUMMARY

- “Wage theft” is when employers steal from workers by paying them less than the minimum wage, not paying them at all, failing to pay holiday pay, not paying for work on public holidays, or charging unlawful employment premiums;
- Wage theft in the United States is estimated to cost workers up to US\$50 billion a year in money stolen from them by employers;
- In Aotearoa/ New Zealand, wage theft costs workers millions of dollars;
- Wage theft drives families into poverty, means workers cannot support their families, and leads to harmful, long-term outcomes for children growing up in families with very low incomes;
- The Prime Minister and former Prime Minister have said that workers in this country are not employable, don’t turn up to work, or would fail drug tests. However, the real issue is that employers in Aotearoa/New Zealand are cheating workers by paying them less than legal entitlements;
- This country should introduce a new offence of wage theft, punishable by imprisonment;
- Aotearoa/New Zealand should begin publishing every six months “name and shame” lists of employers who fail to pay the minimum wage, modelled on the United Kingdom’s name and shame lists.

RECOMMENDATIONS

1. Aotearoa should introduce a new offence of “wage theft,” punishable by imprisonment.
2. Penalties for wage theft and for other breaches of minimum employment standards should be increased. In particular, employers who fail to pay the Minimum Wage should be charged a penalty of three times the amount which should have been paid to the worker. The penalty should be given to the employee.
3. The Ministry of Business, Innovation & Employment should publish every six months a list of employers who have committed wage theft by failing to comply with minimum employment standards. The lists should be modelled on the United Kingdom’s “name and shame lists.”
4. Additional resources should be provided to MBIE to enable it to carry out more investigation and enforcement of minimum employment standards.
5. Businesses which engage in wage theft and fail to comply with minimum employment standards should not be permitted to tender for government contracts.
6. Businesses which engage in wage theft and fail to comply with minimum employment standards should have relevant licences revoked by local authorities and government agencies.

INTRODUCTION

Prime Minister Bill English (who was then the Finance Minister) in April 2016 told a Federated Farmers' meeting that "there's a cohort of Kiwis who now can't get a licence because they can't read and write properly and don't look to be employable – y'know, basically young males."¹ Mr English in an audio recording said that –

"They won't show up, you can't rely on them and that is why immigration is a bit permissive to fill that gap."²

Questioned about the remarks subsequently in Parliament, Mr English said that he stood by his views, which were a "realistic description" of the situation.

"Well, the Government is at the sharp edge of this every day, and I referred to the common response from New Zealand employers that many of the people on our Ministry of Social Development list will not show up to the jobs they are offered and will not stay in the jobs that they are offered. If he [the Member of Parliament asking the question] has not heard that from dozens of New Zealand employers, he is out of touch."³

Former Prime Minister John Key on 5 September 2016 said on Radio New Zealand's *Morning Report* programme that the Government would continue to bring large numbers of workers into Aotearoa/ New Zealand, as many employers could not get New Zealanders to work, due to workers' problems with drugs or work ethics.⁴

The then-Prime Minister said that –

"We bring in people to pick fruit under the RSE (Recognised Seasonal Employer) scheme, and they come from the islands, and they do a fabulous job. And the government has been saying 'well, OK, there are some unemployed people who live in the Hawke's Bay, and so why can't we get them to pick fruit,' and we have been trialling a domestic RSE scheme.

¹ Sherman M. and Wong, S., - Kiwi workers 'hopeless' – English, 13 April 2016, Newshub <http://www.newshub.co.nz/home/politics/2016/04/kiwi-workers-hopeless---english.html>.

² Ibid.

³ English, B., Response to Oral Question, Hansard, New Zealand Parliament, 14 April 2016 - https://www.parliament.nz/en/pb/hansard-debates/rhr/document/51HansD_20160413_00000008/oral-questions-questions-to-ministers.

⁴ Key, J, Morning Report, Radio New Zealand, 5 September 2016 <http://www.radionz.co.nz/news/political/312562/immigrants-needed-due-to-nz-workers-work-ethic,-drug-use-pm>.

“But go and ask the employers, and they will say some of these people won’t pass a drug test, some of these people won’t turn up for work, some of these people will claim they have health issues later on. So it’s not to say there aren’t some great people who transition from Work and Income to work, they do, but it’s equally true that they’re also living in the wrong place, or they just can’t muster what is required to actually work.”

Mr English on 27 February 2017 said that the Government was still receiving “robust” complaints from businesses that they could not obtain workers, particularly in the hospitality and horticulture industries.

“One of the hurdles these days is just passing a drugs test.

“Under workplace safety, you can’t have people on your premises that are under the influence of drugs. And a lot of our younger people can’t pass that test.”⁵

Mr English stated that the Government did not keep records of failed or refused drug tests, but employers spoke to him about this “two or three times a week.”⁶

This paper argues that the real issue is not that New Zealand workers are lazy or drug addicted, or lacking in skills. Instead, Aotearoa/New Zealand, like many other Western nations, has a major problem of wage theft by employers. Employers in Aotearoa/New Zealand, the United States and the United Kingdom each year steal billions of dollars from employees by illegally paying less than the minimum wage, not paying for work at all, taking employees’ tips, failing to pay holiday pay, not paying for work on public holidays and unlawfully charging employment premiums to workers.

The minimum wage is currently \$15.25 an hour and will rise to \$15.75 an hour from 1 April 2017. The current Living Wage is \$19.80 an hour. It will increase on 1 July 2017. The minimum wage in Aotearoa/New Zealand is not enough to live on. When employers pay less than the minimum wage - as this paper details in numerous cases – it is little wonder that workers do not accept positions.

Accepting work paid at less than the minimum wage means workers must agree to their employers illegally paying less than the minimum wage, and also means that full-time work will not earn them enough to support themselves and their families.

⁵ Davison, I. – English defends net migration levels, New Zealand Herald, 27 February 2017.

⁶ Ibid, p 1.

The Government needs to act decisively to end wage theft and ensure that workers are paid their legal entitlements for the work they do.

WHAT IS WAGE THEFT ?

“Wage theft” is when employers do not pay workers the full entitlements the law requires. Most commonly, wage theft involves employers –

- Paying less than the minimum wage;
- Not paying at all for some work;
- Failing to pay holiday pay;
- Failing to pay for work performed on public holidays; and
- Charging employment premiums. These are unlawful payments, commonly taken by employers from migrant workers. In particular, migrant workers may be charged thousands of dollars in premiums by employers for the provision of jobs or for assistance with immigration applications.

The term “wage theft” has been used in the United States for many decades. The San Francisco Wage Theft Task Force in its 2013 final report described wage theft as -

“ “Wage theft” is when an employer steals from an employee by failing to comply with legal requirements regarding working terms and conditions. This “theft of service” is unlawful, and even criminal, and comes in many forms:

- An employer pays an employee less than the legally required minimum wage for every hour that he or she works.
- An employer pays a worker a fixed daily or weekly amount that fails to compensate him or her at the required minimum hourly rate or applicable overtime rate.
- An employer requires an employee to work “off the clock.”
- An employer commits payroll fraud by misclassifying an employee as an “independent contractor” or as an employee “exempt” from overtime and break requirements.
- An employer steals an employee’s tips, or illegally deducts money from a worker’s paycheck.
- An employer pays an employee late, with a check that has insufficient funds, or fails to give an employee their last paycheck after they have quit or been fired.”⁷

In the United States, wage theft by employers is estimated to cost workers up to US\$50 billion a year. More details of wage theft in the United States and United Kingdom are set out in the subsequent sections of this report.

⁷ San Francisco Wage Theft Task Force - San Francisco Wage Theft Task Force Final Report, 2013
<http://sfgov.org/olse/sites/default/files/FileCenter/Documents/11224-Wage%20Theft%20Task%20Force%20Final%20Report.pdf>.

Wage theft is also a serious issue in Aotearoa/New Zealand. It is impossible to estimate how much employers steal from workers each year, but the problem is a major one. Details of specific instances of wage theft in this country in recent years are set out in the section below titled *Wage Theft in Aotearoa/New Zealand*.

WAGE THEFT IN THE UNITED STATES

In the United States, the failure to pay employees the remuneration to which they are legally entitled is called by its correct name: wage theft.

Most United States businesses are required to comply with employment and labour laws setting minimum wages, health and safety standards and record-keeping requirements relating to employees.

The American Fair Labor Standards Act provides that “any employer” who violates minimum wage or unpaid overtime compensation laws may be liable for both the shortfall and liquidated damages, meaning double damages. The act’s definition of “employer,” includes supervisors and high-ranking executives, as well as officers and directors.

The issue of wage theft – employers not paying workers the minimum wage, not giving them their tips, or not paying them at all – has in recent years come to be recognised as a major problem.

In 2008, a landmark study was carried out of 4387 workers in low-wage industries in the three largest cities in the United States – Chicago, Los Angeles and New York City. The research led to the publication of the report *Broken Laws, Unprotected Workers – Violations of Employment and Labor Laws in America’s Cities* in 2009.⁸ The key findings of the paper were that –

- Workplace violations were severe and widespread in the low-wage labour market. 26 per cent of the sample of low-wage workers were paid less than the minimum wage in the week prior to the survey. 60 per cent were underpaid by more than US\$1 an hour. 76 per cent of those who worked more than 40 hours were not paid the legally-required overtime rate;
- Almost a quarter of the surveyed workers arrived early and/or stayed late after their shifts in the week prior to the research. 70 per cent of them did not receive any pay for the work they performed on top of their regular shifts;

⁸ Bernhardt, A. Milkman, R. Theodore N. et al *Broken Laws, Unprotected Workers – Violations of Employment and Labour Laws in America’s Cities*, Centre for Urban Economic Development, UIC, National Employment Law Project, UCLA Institute for Research on Labor and Employment, 2009.

- 86 per cent of the workers had worked enough hours to be legally entitled to at least one meal break, but 69 per cent received no breaks at all, had their breaks interrupted, or worked during their breaks;
- 30 per cent of the tipped workers in the sample were not paid the tipped worker minimum wage and 21 per cent experienced illegal tip stealing by their employers or supervisors;
- 57 per cent of the workers in the week prior to the survey did not receive the wages documentation required by law;
- The apparel and textile manufacturing, personal and repair services, and private household sectors all had workplace violation rates of more than 40 per cent. Restaurants, retail and grocery stores and warehouses had violation rates of 20 to 25 per cent. The rates in residential construction and home health care were 12 to 13 per cent. The overtime violation rates for childcare workers were 90 per cent, while the minimum wage violation rates were 66 per cent;
- Workers at businesses with less than 100 employees were at greater risk of experiencing violations than those in larger firms;
- Women were significantly more likely than men to experience minimum wage violations and foreign-born workers were nearly twice as likely as their United States counterparts to suffer minimum wage violations. African-American workers had a violation rate triple that of white workers;
- 68 per cent of the sample experienced at least one pay-related violation in the week prior to the survey. The average worker lost US\$51, out of average weekly earnings of \$339. Assuming a full-time, full-year work schedule, the report calculated that those workers lost an average of US\$2634 annually, out of total earnings of US\$17,616. That translated into wages theft of 15 per cent of earnings;
- The study calculated that, each week, approximately 1,114,074 workers in the three cities combined had at least one pay-based violation. Extrapolating from those figures, the researchers estimated that front-line workers in low-wage industries in Chicago, Los Angeles and New York City lost more than \$56.4 million per week as a result of employment and labour law violations.

A 2011 report, *The Movement to End Wage Theft – A Report to the Discount Foundation*, noted that actions to recover unpaid wages had resulted in hundreds of settlements reached by employers and the United States Department of Labor, with many individual settlements covering hundreds –

and sometimes thousands – of workers⁹. The amounts involved in some instances totalled millions of dollars.

“And while the magnitude of recovered unpaid wages is striking, for every violation that is adjudicated, tens of thousands more workers are quietly losing significant portions of their pay each week, falling through the cracks of an under-resourced government enforcement system. These workers, many of whom earn low wages in the best of times, are faced with unmet needs and rising levels of household debt as a result of illegal employer practices. When combined with low earnings and tenuous job security, wage theft poses serious, everyday challenges to millions of workers and their families.

“Powerful inducements exist for workers to accept this mistreatment and to endure workplace hardships individually and silently. Insecure employment arrangements, threats of employer retaliation, insufficient knowledge of employment laws, immigration status, little confidence that government enforcement agencies will safeguard workers’ rights, and plain economic necessity: together these combine to raise the potential costs of worker activism in defense of employment rights. As a result, employers have the upper hand in low-wage industries – and the problem of wage theft deepens.”¹⁰

The report also noted that enforcement actions by the Wage and Hour Division of the United States Department of Labour fell from 51,643 in 1998 to 29,584 in 2007, despite an increase in the number of worksites and employees.¹¹ The number of investigators in the Wage and Hour Division decreased by 20 per cent during that period, dropping to 732 to cover the entire United States by 2007.

The paper said that, although the agency recognised that low-wage workers were the segment of the workforce most vulnerable to violations of wage and hour laws, for much of the reporting period it failed to identify and target low-wage industries. Even when evidence was provided, the Wage and Hour Division did not use the information to increase enforcement of high-violation industries.¹²

“The breakdown in compliance monitoring has had a predictable effect on employer behavior. When the likelihood of detection is remote (or if the amount collected in penalties and damages is too small), employers in low-wage industries have little incentive to comply with the law; the low risk associated with noncompliance renders worker protections ineffective.”¹³

⁹ Theodore, N. The Movement to End Wage Theft – A Report to the Discount Foundation, October 2011, The Discount Foundation http://www.faircontracting.org/PDFs/wage_theft/Wage_Theft_Report_2011_Oct.pdf, p 4.

¹⁰ Ibid, p 4.

¹¹ Ibid, p 7.

¹² Ibid, p 7.

¹³ Ibid, p 8.

Kim Bobo in her 2008 book, *Wage Theft in America: Why millions of working Americans are not getting paid – and what we can do about it*¹⁴ said that billions of dollars in wages were being illegally stolen from millions of workers each and every year.

“The employers range from small neighbourhood businesses to some of the nation’s largest employers – Wal-Mart, Tyson, McDonald’s, Target, Pulte Homes, federal, state and local governments and many more.

“Wage theft occurs when workers are not paid all their wages, workers are denied overtime when they should be paid for it, or workers aren’t paid at all for work they’ve performed. Wage theft is when an employer violates the law and deprives a worker of legally mandated wages.”¹⁵

Bobo said that surveys had found that 60 per cent of nursing homes stole workers’ wages; 78 per cent of restaurants in New Orleans stole workers’ wages; 100 per cent of poultry plants stole workers’ wages; and almost half of day labourers had their wages stolen.¹⁶

She noted that the Economic Policy Foundation estimated that companies annually stole US\$19 billion in unpaid overtime.

“Millions of workers are having their wages stolen. Two, possibly as many as 3, million workers aren’t being paid the minimum wage. More than 3 million workers are misclassified by their employers as independent contractors when they are really employees, which means their employers aren’t paying their share of payroll taxes and many workers are being illegally denied overtime pay. Untold millions more aren’t being paid overtime because their employers claim they are exempt from overtime laws, when they really aren’t. Several million more aren’t being paid for their breaks or have illegal deductions made from paychecks. The scope of these abuses is staggering.”¹⁷

United States government studies have found widespread wage theft over many years. The Department of Labor’s *Year 2000 Poultry Processing Compliance Report 3 (2000)* found 100 per cent non-compliance among poultry processing plants it investigated. The Bureau of National Affairs and Department of Labor reported that 47 per cent of garment contractors and manufacturers investigated were found to be breaching the law. The Department of Labor also recorded “unacceptably low” compliance in agricultural industries specialising in cucumbers, lettuce and onions. The Department of Labor, Employment Standards Administration, Nursing Home

¹⁴ Bobo, K. *Wage Theft in America: Why millions of Americans are not getting paid – and what we can do about it*, The New Press, 2008.

¹⁵ Bobo, K. extract from *Ibid*, In these times, 24 November 2008
http://inthesetimes.com/article/4061/the_crisis_of_wage_theft/.

¹⁶ *Ibid*, p 8.

¹⁷ *Ibid*, p 9.

2000 Compliance Survey Fact Sheet said that 60 per cent of nursing homes surveyed were non-compliant.¹⁸

The National Employment Law Project in July 2013 published details of employment law breaches in a paper titled *Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States*. The study documented what it called “a broad and worsening wage theft crisis in the United States.”¹⁹

“These studies show that far from being incidental or rare, wage theft takes place in industries that span the economy, including retail, restaurant and grocery stores; caregiver industries such as home health care and domestic work; blue collar industries such as manufacturing, construction and wholesalers; building services such as janitorial and security and personal services such as dry cleaning and laundry, car washes, and beauty and nail salons.”²⁰

Meixell and Eisenbrey in a 2014 article titled *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year*²¹ said survey evidence suggested that wage theft cost workers billions of dollars a year. They said wage theft represented a transfer from low-income employees to business owners that worsened income inequality, hurt workers and their families, and damaged the sense of fairness and justice that a democracy needed to survive. Meixell and Eisenbrey said that, if the findings of the research discussed above relating to New York, Chicago and Los Angeles were generalisable to the rest of the United States low-income workforce of 30 million, wage theft was costing workers more than US\$50 billion a year.²²

“It is useful to compare the cost of these wage and hour violations with crimes that are better recognized and greatly more feared, though they are much smaller in their overall dollar impact. All of the robberies, burglaries, larcenies, and motor vehicle thefts in the nation cost their victims less than \$14 billion in 2012, according to the FBI’s Uniform Crime Reports. That is well over one-third of the estimated cost of wage theft nationwide.

“Looking in more detail, in the United States in 2012, there were 292,074 robberies of all kinds, including bank robberies, residential robberies, convenience store and gas station robberies, and street robberies. The total value of the property taken in those crimes was \$340,850,358... No one knows precisely how many instances of wage theft occurred in the U.S. during 2012, nor do we know what the victims suffered in total dollars earned but not paid. But we do know that the total amount

¹⁸ Smith, R. and Ruckelhaus, C. Solutions, Not Scapegoats: Abating sweatshop conditions for all low-wage workers as a centrepiece of immigration reform, *Legislation and Public Policy*, Vol 10:555, 2007, pp 559- 560.

¹⁹ National Employment Law Project – *Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States*, July 2013.

²⁰ Ibid.

²¹ Meixell, B. and Eisenbrey, R. *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year*, Economic Policy Institute, 11 September 2014 <http://www.epi.org/publication/epidemic-wage-theft-costing-workers-hundreds/>

²² Ibid.

of money *recovered* for the victims of wage theft who retained private lawyers or complained to federal or state agencies was at least \$933 million – almost three times greater than all the money stolen in robberies that year.”²³

Meixell and Eisenbrey said the total recovered was greater than US\$933 million, as figures were not available for the money recovered for wage theft victims by six state Departments of Labor and five Attorneys-General.

“Obviously, the nearly \$1 billion collected is only the tip of the wage-theft iceberg, since most victims never sue and never complain to the government. It is notable that the number of Fair Labor Standards Act (FLSA) cases filed in federal court each year has been rising rapidly, from 5302 in 2008 to 7764 in 2013, according to Federal Judicial Caseload Statistics reported by Seyfarth Shaw LLP. The number of case filings is more than five times the number 20 years ago.”²⁴

Michael de Groote also compared the cost of robberies with wage theft.

“There are thieves stealing billions of dollars in America who are not robbers targeting convenience stores or banks. They are not thugs pointing guns and grabbing cash at gas stations. The billions stolen are part of “wage theft,” and the culprits in the workplace are the employers, not employees.”²⁵

De Groote said that the cost of bank, gas station and convenience store robberies in 2012 was US\$139 million. However, Department of Labor figures showed that, in the same year, \$280 million in illegally-withheld back wages was recovered from companies. He quoted one of the authors of the *Broken Laws* study, Ruth Milkman, as saying that if the Government pursued wage theft in the same way that Los Angeles cracked down on jaywalking “this problem would go away.”²⁶

Jeff Sposs in a 2016 article titled *One of the biggest crime waves in America isn't what you think it is*²⁷ observed that, in dollar terms, employers were the group of Americans which stole the most from their fellow citizens each year. He said the scope of the problem could not be precisely ascertained, but research suggested that American workers were being bilked of between US\$20 billion and \$50 billion annually.²⁸

²³ Ibid.

²⁴ Ibid.

²⁵ De Groote, M. Wage theft: How employers steal millions from American workers every week, Desert News, 24 June 2014.

²⁶ Ibid.

²⁷ Sposs, J. One of the biggest crime waves in America isn't what you think it is, The Week, 15 August 2016 <http://theweek.com/articles/642568/biggest-crime-waves-america-isnt-what-think>.

²⁸ Ibid.

A 2014 *New York Times*²⁹ article said that a “flood” of cases had been brought in California and across the United States accusing employers of violating minimum wage and overtime laws, erasing work hours and wrongly taking employees’ tips. The story said that worker advocates argued that wage theft had become far too prevalent.

“Some federal and state officials agree. They assert that more companies are violating wage laws than ever before, pointing to the record number of enforcement actions they have pursued. They complain that more employers – perhaps motivated by fierce competition or a desire for higher profits – are flouting wage laws...

“David Weil, the director of the federal Labor Department’s wage and hour division, says wage theft is surging because of underlying changes in the nation’s business structure. The increased use of franchise operators, subcontractors and temp agencies leads to more employers being squeezed on costs and more cutting corners, he said. A result, he added, is that the companies on top can deny any knowledge of wage violations. ‘We have a change in the structure of work that is then compounded by a falling level of what is viewed as acceptable in the workplace in terms of how you treat people and how you regard the law,’ Mr Weil said. His agency has uncovered nearly \$1 billion in illegally unpaid wages since 2010. He noted that the victimised workers were disproportionately immigrants.”³⁰

Les Leopold in 2014 calculated that US\$50 billion a year was enough to cover the wage bill for over 1.2 million jobs paying US\$20 an hour.³¹

The Wall Street Journal interviewed David Weil, the administrator of the Department of Labor’s Wage and Hour Division, after his first year in the job and asked him what had surprised him most. He replied –

“There are still violations of our standard labor laws that are almost jaw-dropping. Sometimes companies violate the law because they don’t understand it. But there are companies out there that aren’t complying because they don’t want to or don’t feel they need to.”³²

The Public Welfare Foundation reported in 2015 that a recent study conducted for the Department of Labor and based on 2011 data found that more than 300,000 workers in both New York and California suffered minimum wage violations each month. It was calculated that over two million workers across the United States were paid less than the federal or state minimum wage.³³

²⁹ Greenhouse, S. More workers are claiming ‘Wage Theft’, *New York Times*, 31 August 2014.

³⁰ *Ibid*, p 2.

³¹ Leopold, L. As Bad as You Think It is, It’s Worse: Wage Theft Comes to America, www.huffingtonpost.com, 11 November 2014.

³² Cited in *Effective Wage Theft Enforcement*, Public Welfare, 3 September 2015, p 1.

³³ *Ibid*, p 1.

Wage theft laws

The proliferation of wage theft in the United States has resulted in moves to counter it and to recover stolen wages for employees. States are toughening laws governing wage theft and lifting penalties for employers who steal wages.

In 2015, 20 states raised their minimum wages, but there was concern that those increases would not be paid to workers.

“Though millions of workers are expected to benefit from the increased wages, there are concerns that many of them will not receive the extra money to which they are now entitled. The struggle to increase wages has been no less serious than the struggle to ensure that workers actually receive them.”³⁴

The Public Welfare Foundation recorded that, in 2015, the Department of Labor’s Wage and Hour Division had 300 more investigators than it did at the beginning of the Obama administration, with the number reaching almost 1100. Further, while 75 of the division’s investigations were traditionally driven by complaints, by the end of 2014 almost half had been pro-actively initiated by the division.³⁵

The Labor Department is now seeking liquidated damages on top of lost wages in settlements for wage theft claims. Liquidated damages cover additional costs incurred by workers and their families when they are not paid properly, such as late payments on bills. Federal and state governments have also begun working together to take action on wage theft.³⁶

In a Minnesota case, sheetrock company Franklin Drywall had collective bargaining agreements with several unions under which it was required to pay a specified amount of money into pension and benefit funds for every hour worked by employees in particular job classifications³⁷. As part of a plea agreement, the company president, Phillip Franklin, admitted that he ordered employees to underreport hours by falsifying time sheets and submitting false information to union pension and benefit funds, thereby evading payment of at least US\$190,000 owed to the pension and benefit funds.

³⁴ Ibid, p 1.

³⁵ Ibid, p 2.

³⁶ Ibid, p 2.

³⁷ Alaniz, R. – Employers Paying the Penalty for Wage and Hour Violations, 8 March 2012, [www.accountingweb.com](http://www.accountingweb.com/aa/standards/employers-paying-the-penalty-for-wage-and-hour-violations) <http://www.accountingweb.com/aa/standards/employers-paying-the-penalty-for-wage-and-hour-violations>.

Franklin was sentenced to two years' jail and a potential fine of \$3.3 million.

Workers are taking action themselves to obtain unpaid wages. Restaurant Opportunities Centers United pioneered the use of settlement agreements in wage theft cases to obtain outstanding wages, as well as changes in employment practices aimed at preventing wage theft in future. The Coalition of Immokalee Workers has used the market power of corporate purchasers of tomatoes to exert pressure to enforce minimum wages and other employment laws.³⁸

California

Assembly Bill 469 provided for reform of state law and criminal penalties for violating minimum wage and overtime requirements and for better disclosure to workers of the terms of their employment agreements. The Employee Misclassification Act made it unlawful for employers to misclassify workers as independent contractors when they were employees. Assembly Bill 2014 authorised the Labor Commissioner to recover liquidated damages for payment of less than the minimum wage.³⁹ The Wage Theft Protection Act 2011 gave greater protection to workers and changed the way they were notified of basic employment information.⁴⁰

Connecticut

Senate Bill 798 was tabled, providing for twice the full amount of wages recovered by a worker or labour organisation to be awarded in successful civil actions to recover wages not paid by businesses.⁴¹

Cook County, Illinois

From 1 May 2015, Cook County gave the county power to refuse to allow businesses to operate or do business with the county for up to five years if the business had violated state or federal wage-payment laws. The Cook County Wage Theft Ordinance provides that employers who breach wage laws may face the following consequences –

- Being ineligible to receive or renew county business licences;
- Being banned from contracting with Cook County;

³⁸ Ibid, p 3.

³⁹ National Consumers League – Wage Theft: Laws protecting workers
<http://www.natlconsumersleague.org/worker-rights/148-wage-theft/532-wage-theft-laws-protecting-workers>. p 1.

⁴⁰ Department of Industrial Relations, State of California – Wage Theft Protection Act of 2011 – Notice to Employees, p 1.

⁴¹ National Consumers League, op cit, p 2.

- Being in default under existing county contracts;
- Ineligibility for property tax incentives.⁴²

Those seeking to contract with Cook County are required to swear that they have not been found to have wilfully or repeatedly violated federal or state wage payment laws.⁴³

District of Columbia

The District of Columbia's Wage Theft Prevention Amendment Act 2014 took effect on 26 February 2014. It increased penalties for employers who commit wage-hour violations; made it easier for workers to collect awards; and provided anti-retaliation protections for employees.⁴⁴

Fayetteville, Arizona

The mayor made a proclamation condemning wage theft and said he would establish a Mayor's Taskforce on Wage theft, assign a police officer to investigate it, and set up a hotline so wage theft could be reported.⁴⁵

Illinois

Illinois in 2010 introduced the most significant reforms to wage theft law in 60 years, passing five amendments to the Illinois Wage Payments and Collections Act. These took effect on 1 January 2011 and increased fines and penalties for employers stealing wages and made it easier for low-paid workers to obtain assistance from the Illinois Department of Labor or the courts to collect their legal entitlements.⁴⁶ The changes heightened criminal penalties for violations of the act, making wilful failure to pay wages a class B misdemeanour for amounts of US\$5000 or less, and a class A misdemeanour for larger sums. Repeated offences within two years became class 4 felonies.⁴⁷

Maryland

Maryland has introduced a pre-judgment lien to give workers improved chances of collecting unpaid wages from fly-by-night employers. The Maryland

⁴² Fisher Phillips – Cook County's New Wage-Theft Ordinance, www.fisherphillips.com, 24 February 2015, p 1.

⁴³ Ibid, p 2.

⁴⁴ Department of Employment Services, District of Columbia – DC's Wage Theft Prevention Amendment Act of 2014 Takes Effect February 26, 2015.

⁴⁵ National Consumers League, op cit, p 2.

⁴⁶ Public Welfare, op cit, p 2.

⁴⁷ Franczek Radelet – Illinois Governor signs Wage Theft Enforcement Act.

Wage Protection & Collection Law regulates the timing and payment of wages and also amended the definition of “wage” to include overtime pay.⁴⁸

Massachusetts

Massachusetts passed a bill in 2008 introducing mandatory treble damages for employers found guilty of violating wage and hour laws, including for inadvertent violations.⁴⁹

Miami- Dade County

The Miami-Dade Theft Ordinance was the first county-wide law against wage theft. It prohibits wage theft and empowers the county legal authority to intervene to recover back pay for workers who have been victims of wage theft.⁵⁰

Nebraska

In 2010, Nebraska passed the Employee Classification Act to protect workers in the construction and delivery services industries from being misclassified as subcontractors.⁵¹

New Jersey

New Jersey in 2012 introduced a bill to improve enforcement of wages laws and raise penalties for failure to comply. The legislation was modelled on other initiatives across the United States designed to prevent wage theft.⁵²

New York

New York in 2012 enacted the Wage Theft Protection Act to prevent misclassification of employees as contractors; protect workers from being forced to work off the clock; and increase penalties and enforcement for non-payment and underpayment of wages.⁵³

North Carolina

North Carolina introduced a bill to tighten protections for workers not paid their legal entitlements.⁵⁴

⁴⁸ National Consumers League, op cit, p 1.

⁴⁹ Ibid, p 1.

⁵⁰ Ibid, pg 2.

⁵¹ Ibid, p2.

⁵² Lexology – New Jersey introduces bill enhancing penalties for failure to pay wages
<http://www.lexology.com/library/detail.aspx?g=2927d833-698c-416c-ad76-07c82bfc83f5>.

⁵³ National Consumers League, op cit, p 2.

⁵⁴ Ibid, p 2.

Palm Beach

The Palm Beach County Wage Theft ordinance was shelved after businesses sought to pass a state bill nullifying city and county wage theft ordinances.⁵⁵

San Francisco

Between 2004, when the San Francisco Minimum Wage Ordinance became effective, and 2011, the Office of Labor Standards Enforcement recovered more than US\$4.8 million for 2761 employees not paid minimum wages and overtime by employers in San Francisco.

A 2006 national study of day labourers, including hundreds of interviews with day labourers in San Francisco, conducted by the University of California, Los Angeles, the University of Illinois and New School University, found that one in two day labourers experienced wage theft in the two months prior to being surveyed. A 2011 report by the Chinese Progressive Association on workers in Chinatown restaurants found that one in two workers was paid less than the minimum wage.

The San Francisco Board of Supervisors created the Wage Theft Task Force in June 2012, stating that wage theft was a pervasive problem disproportionately affecting immigrants and low-wage workers. The supervisors said that wage theft caused significant harm to San Franciscans as its victims could not make ends meet individually or for their families; responsible businesses faced unfair competition from employers paying below legal wages; and the city government lost significant tax revenue.

The 15-member taskforce was charged with making recommendations as to how wage theft could be addressed. Its report, *San Francisco Wage Theft Task Force Final Report*, was released in 2013.⁵⁶ The paper proposed that San Francisco should create a permanent Wage Theft Task Force to meet quarterly to co-ordinate efforts to address wage theft, continue ongoing education campaigns and strategise about how to obtain compliance from the city's worst violators. Other suggestions included mechanisms to verify compliance; banning non-complying employers from benefiting from city recognition programmes or tax incentives; permitting departments to suspend or revoke

⁵⁵ Ibid, p 3.

⁵⁶ San Francisco Wage Theft Task Force – San Francisco Wage Theft Task Force Final Report, 2013
<http://sfgov.org/olse/sites/default/files/FileCenter/Documents/11224-Wage%20Theft%20Task%20Force%20Final%20Report.pdf>.

permits for non-compliance; and increasing the number of affirmative cases brought against wage theft perpetrators.⁵⁷

Seattle

Seattle in 2011 made wage theft a criminal offence and gave the city power to revoke business licences for individuals convicted of wage theft.⁵⁸ Seattle's Wage Theft Ordinance took effect on 1 April 2015 and aims to offer workers better protection from wage theft. The Office of Labor Standards can investigate workers' complaints of non-payment of wages and tips. The Administrative Wage Theft Ordinance creates an administrative process for addressing wage theft complaints, but does not replace criminal investigations. Under the Seattle Municipal Code, it is a crime to withhold payment of wages and tips.⁵⁹

In addition to requiring payment of unpaid wages and tips and accrued interest and civil penalties, Seattle provides that employers who refuse to comply with remedies may be declined business licences. Cases of possible criminal wage theft can be referred to the Seattle Police Department for further investigation or to the City Attorney's Office for prosecution.

Texas

In Texas, wage theft is dealt with by local law enforcement under the Theft of Services Law, which provides that partial payment of wages is insufficient to negate an intent to steal wages.⁶⁰

Utah

Utah in 2008 enacted a provision making it fraud to misclassify an employee to avoid paying workers' compensation insurance coverage. The law provides for the creation of a council to study how to reduce costs resulting from the misclassification of workers.⁶¹

Washington

⁵⁷ Ibid, p 2.

⁵⁸ National Consumers League, op cit, p 2.

⁵⁹ Office of Labor Standards, Seattle City, Wage Theft Ordinance <http://www.seattle.gov/laborstandards/ordinances/wage-theft>.

⁶⁰ National Consumers League, op cit, p 2.

⁶¹ Ibid, p 2.

Washington has passed a law to give the state's Department of Labor more powers to combat wage theft, including imposing penalties on businesses that repeatedly violate wage laws, as well as requiring such firms to pay bonds.⁶²

⁶² Ibid, p 2.

WAGE THEFT IN THE UNITED KINGDOM

The National Minimum Wage Act 1998⁶³ introduced a statutory requirement for employers to pay a specified amount of remuneration for work performed. From April 2016, a National Living Wage was introduced for workers aged over 25. Almost all workers in the United Kingdom are entitled to the National Minimum Wage or the National Living Wage. Workers are defined in section 54 of the act.

However, figures from the Annual Survey of Hours and Earnings in 2012 showed that around 287,000 jobs held by people aged over 16 paid less than the National Minimum Wage for adults and younger workers. That figure was equivalent to one per cent of jobs in the United Kingdom.⁶⁴

MP Chris Bryant on 5 March 2013 said in Parliament that there had not been a single prosecution for breach of the National Minimum Wage in the previous two years, even though 13 per cent of those working in care homes were paid less than the National Minimum Wage.⁶⁵ The answer to a Parliamentary Question further showed that there were no prosecutions for minimum wage non-compliance until 2007, nine years after the law was passed. By 2013, only nine prosecutions had ever taken place.⁶⁶

The United Kingdom Government in October 2013 introduced measures to crack down on employers breaking the National Minimum Wage law. These included making it easier for businesses to be “named and shamed,” as well as new penalties four times higher than previously.

On 8 June 2014, the Department for Business, Innovation & Skills released a list of 25 employers who had failed to pay the National Minimum Wage.⁶⁷ In October 2015, 113 employers who did not pay their workers the National Minimum Wage were named and shamed. Between them the companies owed employees more than £387,000. The sectors spanned retail, education, hairdressing, catering and social care.⁶⁸

⁶³ National Minimum Wage Act 1998 - <http://www.legislation.gov.uk/ukpga/1998/39/contents>.

⁶⁴ Full Fact Team – Is the Government failing to enforce the minimum wage ?

⁶⁵ Ibid, p 1.

⁶⁶ Ibid, p 2.

⁶⁷ Department for Business, Innovation & Skills – Government names employers who fail to pay minimum wage <https://www.gov.uk/government/news/government-names-employers-who-fail-to-pay-minimum-wage>.

⁶⁸ Department for Business, Innovation & Skills – New National Minimum Wage offenders named and shamed, October 2015.

In the August 2016, 197 companies were revealed to have failed to pay employees the legal minimum wage. The companies owed a total of £465,291 to workers. Between October 2013 and August 2016, 687 employers were named and shamed, and more than £3.5 million was found to be owing.⁶⁹

On 15 February 2017, 350 firms were named for failing to pay either the National Minimum Wage or the National Living Wage. The businesses included hair salons, hotels, care homes and retailers. 15,500 workers were underpaid. The businesses were ordered to pay £995,233 to workers, as well as penalties totalling £800,000 to HM Revenue & Customs.⁷⁰

The Department for Business Innovation & Skills and the Home Office in 2015 released a consultation paper titled *Tackling Exploitation in the Labour Market*. The document contained four key proposals –

- The establishment of a statutory Director of Labour Market Enforcement to set priorities for enforcement bodies across areas ranging from criminally-minded exploitation to payroll errors;
- The creation of a new offence of aggravated breach of labour market legislation;
- Increasing intelligence and data sharing between existing enforcement bodies and other agencies to strengthen the targeting of enforcement;
- Widening the remit, strengthening the powers and changing the name of the Gangmasters Licensing Authority to enable it to tackle serious worker exploitation more effectively.⁷¹

The Government in January 2016 published its response to the paper, agreeing to implement all four proposals.

The Department for Business, Energy and Industrial Strategy in July 2016 published a paper titled *National Minimum Wage and National Living Wage*:

⁶⁹ Department for Business, Energy & Industrial Strategy – Largest ever list of National Minimum Wage offenders published.

⁷⁰ Butler, S and Booth, R – Debenhams tops government’s shame list for underpaying staff, The Guardian, 15 February 2017 <https://www.theguardian.com/business/2017/feb/15/debenhams-tops-governments-shame-list-for-underpaying-staff>.

⁷¹ Department for Business Innovation & Skills and Home Office – Tackling Exploitation in the Labour Market – Government Response, January 2016 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/491260/BIS-16-11-government-response-to-tackling-exploitation-in-the-labour-market.pdf. P 5.

*Policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break National Minimum Wage law.*⁷²

The paper said that the Government was “absolutely clear” that anyone entitled to be paid the National Minimum Wage and the National Living Wage should receive it.

“The enforcement of the NMW and NLW is therefore essential and we are committed to cracking down on employers who break the law in this area in all sectors across the country.”⁷³

The document said that the introduction of the National Living Wage increased the number of workers paid at statutory minimum rates. That, along with a rise in the number of sectors affected by the minimum wage, could raise non-compliance risks. Accordingly, the Government had announced a package of measures to improve compliance and strengthen enforcement of the minimum wage. This included increasing financial penalties for non-compliance from 100 to 200 per cent of the arrears owed by the employer; setting up a dedicated team in HM Revenue & Customs to focus on the most serious non-compliance; and increasing HM Revenue & Customs’ enforcement budget.⁷⁴

The paper said that, while civil powers would be sufficient to deal with most cases, criminal investigation was appropriate for a small minority of employers who persistently failed to comply or refused to co-operate with compliance officers.⁷⁵ Criminal proceedings can be brought when employers refuse or wilfully neglect to pay the National Minimum Wage; when wage records are not kept or false entries are made or false returns furnished; when compliance officers are delayed or obstructed; or when people fail to provide information.⁷⁶

“The objective of these criminal offences is to support the underlying mechanisms for enforcement of the minimum wage by ensuring that payment of the minimum wage and the role of the compliance officers are taken seriously. Employers who commit an offence under the 1998 Act are liable to criminal prosecution and as such may be liable to a fine.”⁷⁷

⁷² Department for Business, Energy & Industrial Strategy – National Minimum Wage and National Living Wage: Policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break National Minimum Wage law, July 2016
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/539577/bis-16-373-enforcement-policy-document-national-minimum-wage.pdf.

⁷³ Ibid, p 4.

⁷⁴ Ibid, p 4.

⁷⁵ Ibid, p 7.

⁷⁶ Ibid, p 12.

⁷⁷ Ibid, p 12.

Criminal investigations are conducted by officers from HMRC's Fraud Investigation Service to ensure they are carried out to a criminal standard.

However, Robert Booth in a 2016 article said that just three employers were prosecuted for paying workers below the minimum wage, despite HM Revenue & Customs finding close to 700 who had broken the law in the preceding two-and-a-half years.

"Since February 2014, the government has "named and shamed" 700 employers who have underpaid more than 13,000 workers by over £3.5 million. But less than a quarter of a percent of them have been prosecuted under laws that in theory provide for prison sentences in the most extreme cases of wilful non-compliance."⁷⁸

⁷⁸ Booth, R – Only three out of 700 firms prosecuted for paying below minimum wage, The Guardian, 28 September 2016.

WAGE THEFT IN AOTEAROA/ NEW ZEALAND

This section of the paper examines wage theft in Aotearoa/New Zealand. It is divided into three parts. The first section contains the information provided to the writer of this report in response to an Official Information Act request.

The second section comprises a partial list of wage theft cases in Aotearoa/New Zealand between February 2014 and February 2017.

The third section is a brief summary of the findings of a report on worker exploitation in Aotearoa/New Zealand published in December 2016.

Official Information Act material

The writer of this report requested information under the Official Information Act from the Ministry of Business, Innovation & Employment (MBIE) about breaches of minimum wage, and record-keeping laws by employers over the five years to October 2016.

MBIE was only created in 2012. A major change to its information technology system means that earlier information is either not available, or would only be available if a very large number of hours were spent searching for it.

Accordingly, the scope of the information sought was amended by agreement and MBIE provided responses to the following three questions -

1 How many investigations were completed by MBIE or its predecessor agencies and what was the breach rate for paying employees less than the minimum wage; failing to pay holiday pay; failing to keep records relating to employment as required by law; and failing to keep employment agreements by financial year and industry for the period July 2012 to June 2016 ?

2 What investigations were carried out and what breach types were identified for the period July 2012 to June 2016 ?

3 What industries were found to have breaches for the period July 2014 to June 2016 ?

The responses to the questions are set out below -

- 1) Investigations completed and breach rate by financial year (July to June) and Industry (level1 ANZSIC) for the period July 2012 to June 2016.

MBIE response: Labour Inspectorate completed⁷⁹ 3,314 investigations between July 2012 and June 2016 and achieved a breach rate⁸⁰ of 65%. For industry⁸¹ breakdown, please refer to the table 1 below.

Since 2012 the Labour Inspectorate has progressively changed the way it investigates from being reactive to a more targeted proactive approach. This involved introducing a guided self-resolution process for the more straight forward complaints, allowing inspectors to focus on more complex investigations into serious exploitation, large systems issues and non-compliant business models. Overall, the Inspectorate has seen a 66% reduction in complaint based investigations (53% reduction in *all* complaints to the inspectorate) and a 154% increase in proactive investigations.

TABLE 1

Financial years	2012-13		2013-14		2014-15		2015-16		Total	
	completed	breach rate	completed	breach rate						
Accommodation and Food Services	261	69%	260	63%	204	69%	206	68%	931	67%
Administrative and Support Services	40	63%	31	65%	45	56%	33	82%	149	65%
Agriculture, Forestry and Fishing	184	67%	233	64%	218	58%	213	67%	848	64%
Arts and Recreation Services	10	80%	6	67%	5	60%	13	62%	34	68%
Construction	41	78%	40	63%	37	68%	81	63%	199	67%
Education and Training	18	61%	8	63%	9	11%	17	82%	52	60%
Electricity, Gas, Water and Waste Services	3	67%	4	100%	2	50%	2	100%	11	82%
Financial and Insurance Services	2	50%					1	100%	3	67%
Health Care and Social Assistance	26	69%	22	55%	9	56%	13	38%	70	57%
Information Media and Telecommunications	5	60%	8	63%	3	0%	3	67%	19	53%
Manufacturing	38	63%	18	78%	27	59%	18	78%	101	67%
Mining	2	50%							2	50%
Not Elsewhere Included	40	58%	46	59%	20	40%	3	67%	109	55%
Other Services	60	67%	49	71%	46	78%	19	74%	174	72%
Professional, Scientific and Technical Services	8	75%	7	57%	5	60%	5	60%	25	64%
Property and Business Services	1	100%							1	100%

⁷⁹ Based on ANZIC 06 Industry classification.

⁸⁰ Completed investigation - investigation is considered to be completed if an investigation end date is populated on the Inspectorate's client management system and a decision has been made whether breaches of employment standards occurred or not. Not all investigations conducted by the Inspectorate are completed. Some investigations are ceased due to inability to reach this decision due to events outside the Labour Inspectorate's control or for other reasons.

⁸¹ Breach rate is calculated as the ratio of all completed investigations and those which identified breaches.

Public Administration and Safety	10	60%	5	60%	4	75%			19	63%
Rental, Hiring and Real Estate Services	5	40%	3	100%	6	50%	6	67%	20	60%
Retail Trade	111	67%	89	57%	101	54%	122	58%	423	59%
Transport, Postal and Warehousing	40	75%	25	72%	31	71%	7	57%	103	72%
Wholesale Trade	6	50%	4	75%	6	83%	5	40%	21	62%
Total	911	67%	858	64%	778	61%	767	66%	3314	65%

- 2) Investigations with breaches identified by the breach type and financial year (July to June) for the period July 2012 to June 2016.

MBIE response: Labour inspectorate completed 3,314 investigations, of which 2,145 identified breaches (table 2). There can be multiple breaches identified per one investigation. Please refer to table 3 for breach type breakdown.

TABLE 2

Financial year	2012-13	2013-14	2014-15	2015-16	Total
Investigations which identified breaches	614	547	478	506	2145

TABLE 3

Breach types	2012-13	2013-14	2014-15	2015-16	Total
Annual holidays	333	239	183	264	1019
Holiday & leave record	101	165	161	226	653
Individual employment agreements	185	214	254	277	930
Public holidays	166	159	183	230	738
Wages & time records	116	200	225	237	778
Minimum Wage Act 1983	101	126	103	125	455
Wages Protection Act 1983	37	36	34	57	164
Sick and bereavement leave	25	32	52	75	184
Other breaches	13	14	35	24	86
Total	1077	1185	1230	1515	5007

- 3) Investigations with breaches identified by breach type and Industry (level1 ANZSIC) for the (grouped) period July 2014 to June 2016.

MBIE response: Labour Inspectorate identified 2,745 between July 2014 and June 2016. For industry and breach breakdown, please refer to table.

TABLE 4

	Annual holidays	Holiday & leave record	Individual employment agreements	Public holidays	Wages & time records	Minimum Wage Act 1983	Wages Protection Act 1983	Sick and bereavement leave	Other breaches	Total
Accommodation and Food Services	159	130	165	140	148	74	22	28	22	888
Administrative and Support Services	22	12	26	33	13	8	11	9	2	136
Agriculture, Forestry and Fishing	73	84	152	72	132	79	38	9	16	655
Arts and Recreation Services	2	6	4	5	4	1				22
Construction	39	30	36	34	23	10	9	21	7	209
Education and Training	14	2	10	12				24		62
Electricity, Gas, Water and Waste Services	2	1		1	1	2				7
Financial and Insurance Services			1		1					2
Health Care and Social Assistance	2	3	4	2	4	2	2	1		20
Information Media and Telecommunications	1	2	2	1	1			1		8
Manufacturing	16	8	11	10	8	6	1	8	4	72
Not Elsewhere Included	5	4	2	7	6	1		2	1	28
Other Services	23	30	30	18	34	9	1	9	1	155
Professional, Scientific and Technical Services	4		2			2			2	10
Public Administration and Safety	3	1	2	2	1	1		1		11
Rental, Hiring and Real Estate Services	2	1	1	3				3		10
Retail Trade	61	65	67	56	63	23	6	10	4	355
Transport, Postal and Warehousing	16	7	13	14	21	9				80
Wholesale Trade	3	1	3	3	2	1	1	1		15
Total	447	387	531	413	462	228	91	127	59	2745

Source: Labour Inspectorate

Wage theft and minimum employment law breaches in Aotearoa/New Zealand

This section records some of the wage theft and breaches of other basic employment laws in Aotearoa/New Zealand investigated and uncovered by MBIE between February 2014 and February 2017. The main source is MBIE press releases. However, MBIE does not issue press releases in respect of all breaches investigated and established. The other sources for the information in this section are Employment Relations Authority and Employment Court judgments, and news media reports. This is not a complete list of all the breaches for the period February 2014 to February 2017.

In addition, it is unknown how many cases are never uncovered, as workers who are the victims of breaches are too afraid to come forward and lay complaints. The cases outlined below accordingly represent only a proportion of the problem of wage theft which actually exists in New Zealand.

Record-keeping breaches are very significant in employment law, as if records are not kept it is hard for Labour Inspectors to confirm how many hours have been worked and what the full legal entitlements of workers are.

28 February 2014

Marlborough vineyard contractor TP Manu was ordered to pay \$3000 after deliberately ignoring requests by the Labour Inspectorate to provide timesheets, wage records and copies of employment agreements.⁸²

26 March 2014

In August 2013 the Employment Relations Authority ordered that three Auckland liquor and convenience stores pay \$96,574.33 in wages and holiday pay to 11 migrant workers. The companies were also directed to pay penalties for breaching the Minimum Wage Act 1983, the Holidays Act 2003 and the Employment Relations Act 2000 by not providing employment agreements. In October, the Labour Inspectorate was granted freezing orders as part of recovering the money owed. By March 2014, all the money owing to the

⁸² MBIE – Marlborough vineyard contractor to pay penalty for non-compliance, 28 February 2014
<http://www.mbie.govt.nz/about/whats-happening/news/2014/marlborough-vineyard-contractor-to-pay-penalty-for-non-compliance/?searchterm=Marlborough%20vineyard%20contractor%20to%20pay%20penalty%20for%20non-compliance%2A>.

migrant workers was paid and they also received a significant amount in penalties.⁸³

28 April 2014

MBIE said it had visited 44 dairy farms between December 2013 and early April 2014. 31 were found to be in breach of minimum employment rights. Most of the breaches related to insufficient record keeping. Enforcement action was taken in response to identified breaches, with 22 enforceable undertakings and one improvement notice being issued. One farmer paid an employee \$6000 for the farmer's breach of the Minimum Wage Act. Several cases remained open, with the possibility of more serious enforcement action to come.⁸⁴

5 June 2014

The director of a central Auckland café was directed by the Employment Relations Authority to pay more \$6120 in wage arrears and a \$5000 penalty after requiring an employee to handback \$200 a week from her wages for what the employer told her was a requirement of retaining her work visa. The business was also ordered to pay an additional \$3000 penalty for failing to comply with an Improvement Notice.⁸⁵

3 July 2014

Enforcement action was taken against 18 kiwifruit contractors in the Bay of Plenty following a week-long operation in May by MBIE checking compliance with immigration and employment laws. 35 employers were visited and 22 Improvement Notices were issued for 39 minimum employment standard breaches.⁸⁶

14 August 2014

MBIE released the results of the third phase of its national dairy strategy, which involved visits to farms employing migrant workers. No exploitative conduct was found but a quarter of the farms visited were in breach of

⁸³ MBIE – Ministry's freezing action recovers wage arrears and fines, 26 March 2014
<http://www.mbie.govt.nz/about/whats-happening/news/2014/ministrys-freezing-action-recovers-wage-arrears-and-fines?searchterm=Ministry%3Bs+freezing+action+recovers+wage+>.

⁸⁴ MBIE – Dairy farm visits show majority of farmers breaching employment laws, 28 April 2014
<http://www.mbie.govt.nz/about/whats-happening/news/2014/dairy-farm-visits-show-majority-of-farmers-breaching-employment-laws?searchterm=Dairy+farm+visits+show+majority+of>.

⁸⁵ MBIE – Auckland café boss fined for illegal wage deductions, 5 June 2014
<http://www.mbie.govt.nz/about/whats-happening/news/2014/auckland-cafe-boss-fined-for-illegal-wage-deductions?searchterm=Auckland+cafe+bo>.

⁸⁶ MBIE – BOP kiwifruit contractors in breach of employment laws, 3 July 2014
<http://www.mbie.govt.nz/about/whats-happening/news/2014/bop-kiwifruit-contractors-in-breach-of-employment-laws/?searchterm=BOP%20kiwi%2A>.

employment laws for poor record keeping. A majority of the 42 farms visited were meeting minimum employment standards, but 11 were in breach.⁸⁷

5 November 2014

Sixteen Christchurch labour hire and construction companies audited by MBIE's Labour Inspectorate were found to be in breach of employment laws. 40 companies were audited. With 23 audits completed, 16 firms were found to be making unlawful deductions from wages, keeping insufficient records and preparing incomplete employment agreements.⁸⁸

17 November 2014

A director of a Wellington immigration agency was sentenced for her role in the exploitation of migrant workers in an immigration scam which involved chefs brought to Aotearoa/New Zealand being paid less than the minimum wage and subjected to poor working conditions.⁸⁹

18 November 2014

The Employment Relations Authority ordered a \$5000 penalty for a Christchurch milk distribution business for charging a migrant worker an employment premium for her job that resulted in her take home pay being only \$4.37 an hour. The firm was also ordered to repay the \$8260 the employee was charged in premiums.⁹⁰

21 November 2014

An Auckland restaurant was ordered to pay more than \$10,000 in wages and holiday pay arrears for failing to make payments required by law. In addition, the employer was penalised \$6000 and directed to repay \$7000 charged as a premium for employment.⁹¹

⁸⁷ MBIE – Latest dairy farm visits reveal poor record keeping, 14 August 2014

<http://www.mbie.govt.nz/about/whats-happening/news/2014/latest-dairy-farm-visits-reveal-poor-record-keeping?searchterm=Latest+dairy+farm+visits+>.

⁸⁸ MBIE – MBIE audits find Christchurch companies in breach of employment laws, 5 November 2014 -

<http://www.mbie.govt.nz/about/whats-happening/news/2014/mbie-audits-find-christchurch-companies-in-breach-of-employment-laws?searchterm=MBIE+audi>.

⁸⁹ MBIE – Sentence sends strong message against migrant exploitation, 17 November 2014

<http://www.mbie.govt.nz/about/whats-happening/news/2014/sentence-sends-strong-message-against-migrant-exploitation?searchterm=Sentence+>.

⁹⁰ MBIE – Christchurch employer penalised for charging employment premium, 18 November 2014

<http://www.mbie.govt.nz/about/whats-happening/news/2014/christchurch-employer-penalised-for-charging-employment-premium?searchterm=Christchurch+employer+pen>.

⁹¹ MBIE – Auckland restaurant fined for non-compliance, 21 November 2014

<http://www.mbie.govt.nz/about/whats-happening/news/2014/auckland-restaurant-fined-for-non-compliance?searchterm=Auckland+restaurant+finned+for+non>.

25 November 2014

Enforcement action was taken against 15 employers in the hospitality, retail and services industries in Queenstown following visits to 41 employers to check their compliance with employment and immigration laws. 15 Improvement Notices were issued and 64 breaches of minimum employment standards were identified.⁹²

26 November 2014

A group of Auckland Masala restaurants was ordered to pay \$66,000 in penalties for failing to provide employment records to MBIE's Labour Inspectorate.⁹³

28 January 2015

The Employment Relations Authority ordered wage arrears to be paid to workers and imposed a penalty on a Christchurch construction company for failing to pay the minimum wage and to keep accurate employment records. Labour Inspectorate Southern Regional Manager, Stuart Lumsden, said MBIE was seeing a nation-wide trend of employers treating employees as contractors to avoid keeping records, making payments to the Inland Revenue Department and paying minimum wage and holiday entitlements.⁹⁴

29 January 2015

Enforcement action was taken against eight employers in the kiwifruit sector in Opotiki following MBIE visits to 29 businesses. Eight Improvement Notices were issued for 22 minimum employment standard breaches. MBIE said that the level of non-compliance uncovered was disappointing.⁹⁵

18 February 2015

⁹² MBIE – MBIE acts against Queenstown breaches of employment laws, 25 November 2014
<http://www.mbie.govt.nz/about/whats-happening/news/2014/mbie-acts-against-queenstown-breaches-of-employment-laws?searchterm=MBIE+acts+against+Queenst>.

⁹³ MBIE – Masala restaurants penalised for employment law breaches, 26 November 2014
<http://www.mbie.govt.nz/about/whats-happening/news/2014/masala-restaurants-penalised-for-employment-law-breaches?searchterm=Masal>.

⁹⁴ MBIE – Christchurch construction company penalised for labour law breaches, 28 January, 2015
<http://www.mbie.govt.nz/about/whats-happening/news/2015/christchurch-construction-company-penalised-for-labour-law-breaches/?searchterm=Christchurch%20construction%20company%20penalised%2A>.

⁹⁵ MBIE – MBIE takes enforcement action against Opotiki kiwifruit industry employers, 29 January 2015
<http://www.mbie.govt.nz/about/whats-happening/news/2015/mbie-takes-enforcement-action-against-opotiki-kiwifruit-industry-employers?searchterm=MBIE+takes+enforcement+action+against+Opotiki>.

A Bay of Plenty kiwifruit contractor was penalised \$5000 by the Employment Relations Authority for failing to provide two employees with written individual employment agreements and for presenting fraudulent documents.⁹⁶

19 February 2015

The Employment Relations Authority ordered Vine Strength Ltd and SP 2007 Ltd to pay \$6879 and \$15,837 respectively in unpaid wages to an employee and a \$10,000 fine to MBIE for failure to pay the minimum wage, requiring an employment premium, not paying for some work, and not keeping wage and time records or providing an employment agreement.⁹⁷

9 March 2015

The Employment Relations Authority ordered holiday arrears to be paid to a worker and imposed a penalty on a Greymouth catering business for breaching employment laws. The Authority found that the worker should be paid over \$6000 plus interest in holiday pay arrears, together with a penalty of \$4000.⁹⁸

1 April 2015

MBIE said enforcement action was being taken against 19 employers in the dairy industry for breaching employment law following a three month investigation by the agency. MBIE said the level of non-compliance identified was “extremely high.” 15 Improvement Notices and four enforceable undertakings were issued for 71 minimum employment standards breaches. Most breaches related to poor record keeping but several farms had significant minimum wage breaches. The arrears estimated to be owing was more than \$120,000.⁹⁹

13 April 2015

⁹⁶ MBIE – Kiwifruit contractor penalised for no employment agreements, 18 February 2015
<http://www.mbie.govt.nz/about/whats-happening/news/2015/kiwifruit-contractor-penalised-for-no-employment-agreements?searchterm=Kiwifruit+contrac>.

⁹⁷ MBIE – Marlborough businesses penalised for labour law breaches, 19 February 2015
<http://www.mbie.govt.nz/about/whats-happening/news/2015/marlborough-businesses-penalised-for-labour-law-breaches?searchterm=Marlborough+businesses+penalised>.

⁹⁸ MBIE – Greymouth catering company penalised for labour law breaches, 9 March 2015
<http://www.mbie.govt.nz/about/whats-happening/news/2015/greymouth-catering-company-penalised-for-labour-law-breaches?searchterm=Grey>.

⁹⁹ MBIE – MBIE takes enforcement action for dairy farm employment law breaches, 1 April 2015
<http://www.mbie.govt.nz/about/whats-happening/news/2015/mbie-takes-enforcement-action-for-dairy-farm-employment-law-breaches?searchterm=MBIE+takes+en>.

The Employment Relations Authority ordered two Christchurch discount and liquor stores to pay \$73,345.05 to five employees who had been paid as little as \$8 an hour.¹⁰⁰

3 June 2015

The Employment Relations Authority ordered Taranaki engineering firm Amtec Engineering Ltd to pay arrears owed to workers for public holiday entitlements and a \$5000 fine after a complaint that the employer was not paying workers time and a half for working on public holidays and that payment for alternate holidays was not calculated correctly.¹⁰¹

10 June 2015

MBIE reminded employers that part-time workers who worked regular, rostered hours were entitled to pro-rated holidays and leave. MBIE said it regularly saw cases where people working part-time were not being paid their legal entitlements.¹⁰²

13 July 2015

The Government announced a package of measures to prevent unfair employment practices in the Aotearoa/New Zealand labour market, such as zero hours contracts.¹⁰³

17 June 2015

The Employment Relations Authority ordered three Hawke's Bay horticulture contractors to pay \$22,500 in penalties for failing to provide employment records.¹⁰⁴

31 July 2015

¹⁰⁰ Hayward, M Christchurch companies penalised \$100,000 in Employment Court for underpaying staff, 7 November 2016 <http://www.stuff.co.nz/business/86192483/Christchurch-companies-penalised-100-000-in-Employment-Court-for-underpaying-staff>.

¹⁰¹ MBIE – Taranaki engineering firm penalised for non-compliance with labour laws , 3 June 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/taranaki-engineering-firm-penalised-for-non-compliance-with-labour-laws?searchterm=Taranaki+engineering>.

¹⁰² MBIE – Employers reminded not to confuse part-time and casual workers, 10 June 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/employers-reminded-not-to-confuse-part-time-casual-workers?searchterm=Employers+reminded+no>.

¹⁰³ MBIE – Addressing zero-hour contracts, 13 July 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/addressing-zero-hour-contracts?searchterm=Addressing+zero+hour+con>.

¹⁰⁴ MBIE – Hastings businesses penalised for failure to provide records, 17 June 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/hastings-businesses-penalised-for-failure-to-provide-records?searchterm=Hastings+businesses+penal>.

The Employment Relations Authority ordered Eagle Management Ltd to pay a former employee minimum wage arrears of \$7041 and holiday pay arrears of \$939.18.¹⁰⁵

11 August 2015

The Employment Relations Authority imposed a \$500 penalty on dairy farmer Gilbert Watt for breach of the Minimum Wage Act 1983.¹⁰⁶

31 August 2015

The Employment Relations Authority ordered Pro-Build Canterbury to pay more than \$58,000 in penalties and arrears to workers for breaching employment laws. Pro-Build treated workers as contractors when they were in fact employees and failed to provide them with holiday pay and public holiday entitlements. Pro-Build was ordered to repay more than \$43,000 in holiday pay arrears.¹⁰⁷

8 September 2015

A dairy farmer who failed to pay the minimum wage to two workers paid the amount due and was ordered to pay a penalty of \$2500.¹⁰⁸

10 September 2015

The Employment Relations Authority ordered G L Freeman Holdings Ltd to pay more than \$22,000 in penalties and arrears for failing to pay four former employees wages, holiday pay and sick pay.¹⁰⁹

3 November 2015

MBIE warned employers about their obligations to keep accurate employment records. The Ministry's Labour Inspectorate resolved 332 cases with breaches in time and wage or leave records in 2014. 130 cases involved the agriculture, forestry and fishing industries; 83 related to accommodation and food services; and 38 were in the retail trade. Wellington commercial cleaning company Dentice Facilities Management Ltd was ordered to pay \$7500 in fines for failing to provide wage and time records, and a further \$4300 in

¹⁰⁵ *Smith v Eagle Management Limited* [2015] NZERA Wellington 73, 31 July 2015

¹⁰⁶ *O'Shea v Watt* [2015] NZERA Christchurch 116, 11 August 2015

¹⁰⁷ MBIE – Employment law breaches cost Canterbury rebuild business, 31 August 2015

<http://www.mbie.govt.nz/about/whats-happening/news/2015/employment-law-breaches-cost-canterbury-rebuild-business?searchterm=Employment+law+breaches+cost>.

¹⁰⁸ *Zonneveld v Fleming* [2015] NZERA Christchurch 130, 8 September 2015

¹⁰⁹ MBIE – Christchurch hospitality business fined for breaching labour laws, 10 September 2015

<http://www.mbie.govt.nz/about/whats-happening/news/2015/chch-hospitality-business-fined-for-breaching-labour-laws?searchterm=Christchurch+hospit>.

outstanding holiday pay and interest. Peniel Construction Ltd in Christchurch was fined \$6500 and Tamehana Horticulture Service Ltd in Tauranga was fined \$6000 for record-keeping breaches.¹¹⁰

18 November 2015

The Employment Relations Authority ordered Mele Ford to pay \$19,445.30 in holiday pay owed to 31 ex-employees and \$10,000 as a penalty.¹¹¹

26 November 2015

The Employment Relations Authority ordered Taste of Egypt to pay more than \$91,000 for employment law breaches and arrears owed to workers after it was found that the employer had failed to pay minimum wages and statutory holidays and to provide annual leave to two employees. The two chefs worked in excess of 70 hours and were only paid for 30.¹¹²

3 December 2015

The Employment Relations Authority ordered KRSVP Ltd to pay more than \$7500 in penalties for failing to provide employment records requested by a Labour Inspector.¹¹³

15 December 2015

Henry's Poultry Ltd was convicted of six offences under the Immigration Act 2009 for employing five Samoan nationals who were in New Zealand without visas and one person who was working for the firm on a visitor visa.¹¹⁴

22 December 2015

Yong's Food Company Ltd operating as Hikari Japanese Restaurant in Queenstown was ordered to pay \$6000 after failing to keep employment records.¹¹⁵

¹¹⁰ MBIE – Keep records or face fines – employers warned after recent ERA cases, 3 November 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/keep-records-or-face-fines-employers-warned-after-recent-era-cases?searchterm=Keep+records>.

¹¹¹ Brown v Ford [2015] NZERA Wellington 112, 18 November 2015 <http://www.mbie.govt.nz/about/whats-happening/news/document-image-library/2015%20NZERA%20Wellington.pdf>.

¹¹² MBIE – Nelson restaurant to pay \$91K after MBIE uncovers worker exploitation, 26 November 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/nelson-restaurant-to-pay-91k-after-mbie-uncovers-worker-exploitation?searchterm=Nelson+restaurant+to+pa>.

¹¹³ MBIE – Blenheim vineyard contractor fined for labour law failures, 3 December 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/blenheim-vineyard-contractor-fined-for-labour-law-failures?searchterm=Blenheim+vineyard+co>.

¹¹⁴ MBIE – North Island business fined for employing unlawful workers, 15 December 2015 <http://www.mbie.govt.nz/about/whats-happening/news/2015/north-island-business-fined-for-employing-unlawful-workers?searchterm=North+Island+business+finned+for>.

22 January 2016

Viewbank Dairy Ltd was ordered by the Employment Relations Authority to rectify employment law breaches and pay \$7500 in penalties. Several workers were treated as casual employees when they were permanent staff, and employees were provided with incorrect holiday entitlements.¹¹⁶

30 March 2016

MBIE took enforcement action against six apple pack houses in the Tasman region for breaching employment law. Nine pack houses were visited and breaches were found at six, including failing to pay correct holiday pay, not keeping accurate employment records, and using non-compliant employment agreements.¹¹⁷

31 March 2016

The Labour Inspectorate said it had investigated 42 employers for payroll-related breaches of the Holidays Act since 2012. 20 of the 42 investigations had been completed. Ten Improvement Notices had been issued, six enforceable undertakings were made, one application was lodged with the Employment Relations Authority and there were two voluntary compliance acts. Arrears had to date been determined in eight cases, covering around 2000 employees. The amount of arrears ranged from an average of \$70 per worker to around \$1800 per worker.¹¹⁸

6 April 2016

Wellington business ShopperStop 1 Limited was ordered to pay \$54,000 in penalties for employment law breaches and arrears owed to an employee. The employer had failed to pay minimum wages and holiday pay and to provide statutory holidays and annual leave entitlements. The employee paid \$20,426

¹¹⁵ MBIE – Queenstown restaurant penalised for failure to keep records, 22 December 2015
<http://www.mbie.govt.nz/about/whats-happening/news/2015/queenstown-restaurant-penalised-for-failure-to-keep-records?searchterm=Queenstown+rest>.

¹¹⁶ MBIE – Canterbury dairy farm penalised for employment law breaches, 22 January 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/canterbury-dairy-farm-penalised-for-employment-law-breaches?searchterm=canterbury+dairy+far>.

¹¹⁷ MBIE – MBIE cracks down on Tasman pack houses that breach employment laws, 30 March 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/mbie-cracks-down-on-tasman-pack-houses-that-breach-employment-laws?searchterm=MBIE+cra>.

¹¹⁸ MBIE – Labour Inspectorate investigates employers for Holidays Act breaches, 31 March 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/labour-inspectorate-investigates-employers-for-holiday2019s-act-breaches?searchterm=Labour+Inspectorate+investiga>.

in premiums to the employer to secure the job in order to obtain a work visa.¹¹⁹

2 May 2016

A total of \$71,454 in unpaid public holiday and holiday pay entitlements was recovered for 54 current and eight former employees of eight Whangarei sushi bars following an investigation by MBIE. Nine sushi bars were visited and eight were found to be non-compliant.¹²⁰

11 May 2016

Travel agency Goodego Limited was ordered by the Employment Relations Authority to pay wage arrears of \$2950 and holiday pay to a part-time employee.¹²¹

18 May 2016

The Employment Relations Authority ordered Hawera restaurant Indian Zaika to pay \$7000 in penalties after it failed to provide evidence of compliant wage, time, holiday and leave records to a MBIE Labour Inspector.¹²²

30 May 2016

A business which failed to pay the minimum wage was ordered to pay more than \$45,000 in wage arrears and \$42,000 in penalties.¹²³

7 June 2016

A Napier café owner was ordered to pay a worker \$12,000 after he docked her wages for breaks she never had time to take.¹²⁴

9 June 2016

A Bay of Plenty kiwifruit contracting business was ordered by the Employment Relations Authority to pay more than \$226,000 in arrears owed to workers and

¹¹⁹ MBIE – Courtenay Place shop to pay \$54K after MBIE uncovered labour law breaches, 6 April 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/courtenay-place-shop-to-pay-54k-after-mbie-uncovered-labour-law-breaches?searchterm=Courtenay+Pla>.

¹²⁰ MBIE – MBIE recovers \$71K in arrears owed to Whangarei sushi bar workers, 2 May 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/mbie-recovers-71k-in-arrears-owed-to-whangarei-sushi-bar-workers?searchterm=MBIE+recovers+%2471>.

¹²¹ *Zhou v Goodego Limited* [2016] NZERA Auckland 141, 11 May 2016.

¹²² MBIE – Hawera restaurant penalised for failure to provide employment records, 18 May 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/hawera-restaurant-penalised-for-failure-to-provide-employment-records?searchterm=Hawera+>.

¹²³ *Feeney v Sharmas & Sons (2009) Ltd* [2016] NZERA Auckland 169, 30 May 2016

¹²⁴ Harris, C – Napier café owner docked worker's pay for breaks she was never allowed to take, 7 June 2016
<http://www.stuff.co.nz/business/80812802/napier-cafe-owner-docked-workers-pay-for-breaks-she-was-never-allowed-to-take>.

penalties for breaching employment laws. Freemind Enterprize Ltd was ordered to pay \$161,343.67 plus interest to 121 employees and \$65,000 in penalties for failing to pay holiday pay, time and a half pay for public holidays and minimum wages.¹²⁵

13 June 2016

The Employment Relations Authority found that two linked South Auckland employers who paid a migrant worker \$4 an hour had breached the requirement to pay the minimum wage, as well as failing to keep accurate records and to provide an employment agreement. The two companies were ordered to repay wages and holiday pay arrears totalling \$45,33.13, and a further \$42,000 in penalties.¹²⁶

14 July 2016

A Hastings business supplying workers to local orchards was ordered to pay \$6567.42 after failing to provide written employment agreements or keep records for its 15 employees.¹²⁷

9 August 2016

A Wellington employer who required a migrant worker to pay more than \$10,000 in premiums was ordered to repay the money to the employee. The business was directed to pay a total of \$28,781.23 to the employee for minimum wage arrears and holiday pay arrears as well as for repayment of the premiums. The firm was ordered to pay a further \$25,000 as a penalty for breaching the Minimum Wage Act.¹²⁸

14 August 2016

¹²⁵ MBIE – BOP Kiwifruit employer owes \$226K after breaching employment law, 9 June 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/bop-kiwifruit-employer-owes-226k-after-breaching-employment-law?searchterm=BOP+Kiwifruit>.

¹²⁶ MBIE – Auckland pub and bottle shop owners fined for paying migrant worker \$4 an hour, 13 June 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/auckland-pub-and-bottle-shop-owners-fined-for-paying-migrant-worker-4-an-hour?searchterm=Auckland+pub>.

¹²⁷ MBIE- Hawke's Bay contractor fined \$6000 for employment law breaches, 14 July 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/hawkes-bay-contractor-fined-6000-for-employment-law-breaches?searchterm=Hawke%27s+Bay+contractor+>.

¹²⁸ MBIE – Grocery store penalised for exploiting vulnerable migrant workers, 9 August 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/grocery-store-penalised-53-000-for-exploiting-vulnerable-migrant-worker?searchterm=Grocery+store>.

An Insight documentary on Radio New Zealand reported on a trend by employers to circumvent minimum employment conditions by hiring contractors rather than employees.¹²⁹

15 August 2016

The Employment Relations Authority ordered a business to pay \$23,000 in penalties for breaches of employment laws. The Authority concluded that the claim for unpaid wages of \$70,595 was not made out but the employer agreed that wages were owing and the parties were directed to seek to settle the claim.¹³⁰

19 August 2016

A joint operation involving the Labour Inspectorate, Immigration New Zealand and Inland Revenue in Marlborough vineyards found contractors committing serious breaches of employment standards. Ten contractors were visited and two were discovered to be breaching minimum wage, holiday pay and record-keeping requirements. A further seven contractors were asked to provide additional records.¹³¹

23 August 2016

The Employment Relations Authority ordered Curry Pot on Lincoln Limited to pay \$11,400 to a worker in reimbursement of money paid in contravention of the Wages Protection Act 1983. The firm was also directed to pay the woman \$31,413.19 for unpaid wages, working on public holidays and holiday pay.¹³²

25 August 2015

An employer who failed to pay wages and leave but subsequently made the correct payments was ordered by the Employment Relations Authority to pay a \$500 penalty.¹³³

31 August 2016

¹²⁹ Cowie, T., Insight: Labour-hire companies – exploitation or opportunity, 14 August 2016 <http://www.radionz.co.nz/national/programmes/insight/audio/201811741/insight-labour-hire-companies-exploitation-or-opportunity>.

¹³⁰ *Williams v Marx* [2016] NZERA Wellington 100, 15 August 2016

¹³¹ MBIE – Serious employment breaches found in Marlborough vineyards, 19 August 2016 <http://www.mbie.govt.nz/about/whats-happening/news/2016/serious-employment-breaches-found-in-marlborough-vineyards?searchterm=Serious+employment>.

¹³² *Patel v Curry Pot on Lincoln Limited* [2016] NZERA Christchurch 137, 23 August 2016 <https://assets.documentcloud.org/documents/3036022/2016-NZERA-Christchurch-137-1.pdf>.

¹³³ *Smith v Manku* [2015] NZERA Wellington 82, 25 August 2015

A & J Zaknic & Sons Ltd was ordered by the Employment Relations Authority to pay a penalty of \$6000 for failing to provide written employment agreements to five workers and for failing to keep holiday and leave records for two workers.¹³⁴

1 September 2016

A motor inn and café in Lewis Pass was ordered to pay \$19,296 in penalties and arrears for failing to pay a migrant worker the minimum wage and holiday pay. The worker was not paid for the first three months of work – a total of 552 hours.¹³⁵

15 September 2016

Dayton Trading Ltd was ordered to pay a penalty of \$28,000 for breaching the Minimum Wages Act 1983, the Holidays Act 2003 and the Employment Relations Act 2000.¹³⁶

16 September 2016

A total of 21 employment law breaches across 14 farms out of 28 dairy farms visited was found when the Labour Inspectorate checked compliance on Waikato dairy farms. Seven Improvement Notices were issued, three warnings were given and \$9000 in infringement fees was imposed.

27 September 2016

A Taranaki dairy farm was ordered to pay at least \$87,000 for serious employment law breaches after failing to pay the minimum wage or to pay for work on public holidays. The investigation was marred by allegations of bullying when two of the employees were pressured into signing an agreement to settle their claims for \$8500, well below the amount the farmer later admitted they were owed. The two couples on the farm had been paid between \$25,000 and \$33,000 each, meaning they were paid well below the minimum wage for the long hours they worked. The joint employment agreements were also illegal. The \$64,000 in arrears initially paid went to five

¹³⁴ Employment Relations Authority [2016] NZERA Auckland 296 31 August 2016

http://apps.employment.govt.nz/determinations/PDF/2016/2016_NZERA_Auckland_296.pdf.

¹³⁵ MBIE – Lewis Pass motor inn fails to pay migrant worker for three months, 1 September 2016

<http://www.mbie.govt.nz/about/whats-happening/news/2016/lewis-pass-motor-inn-fails-to-pay-migrant-worker-for-three-months?searchterm=Lewis+Pass>.

¹³⁶ A Labour Inspector v Dayton Trading Ltd [2016] NZERA Auckland 313, 15 September 2016

http://apps.employment.govt.nz/determinations/PDF/2016/2016_NZERA_Auckland_313.pdf.

employees working on the farm at the time of the inspection, as well as to six former employees.¹³⁷

30 September 2016

North Shore foodcourt Food City Limited was ordered to pay \$126,897.93 in arrears to five workers employed as cleaners in the business, with a further \$37,500 penalty being imposed by the Employment Relations Authority. The food court did not pay minimum wages or holiday pay or keep employment records.¹³⁸

11 October 2016

Optimizer HQ Limited was ordered to pay wage arrears of \$104,723.42 to an employee.¹³⁹

13 October 2016

A Kumeu strawberry grower was penalised \$6000 after being caught a second time failing to provide written employment agreements or to keep accurate holiday and leave records.¹⁴⁰

4 November 2016

The Brown Owl Bakery in Napier was ordered to pay \$14,423 in penalties and arrears after failing to pay the minimum wage and to keep employment records. \$8783 in minimum wage arrears was paid to two employees.¹⁴¹

7 November 2016

Two South Island discount and liquor stores were penalised \$100,000 after five employees were paid as little as \$8 an hour. The employers had earlier been ordered to pay \$73,345.05 in compensation to the employees.¹⁴²

¹³⁷ MBIE – Taranaki dairy farmer to pay at least \$87,000 for serious employment law breaches, 27 September 2016 <http://www.mbie.govt.nz/about/whats-happening/news/2016/taranaki-dairy-farmer-to-pay-at-least-87-000-for-serious-employment-law-breaches?searchterm=Taranaki+dairy+>.

¹³⁸ MBIE – North Shore food court pays \$164,397 for employment law breaches, 30 September 2016 <http://www.mbie.govt.nz/about/whats-happening/news/2016/north-shore-food-court-pays-164-397-for-employment-law-breaches?searchterm=North+Shore+food+court+pays>.

¹³⁹ *Sami v Optimizer HQ Limited* [2016] NZERA Auckland 324, 11 October 2016

http://apps.employment.govt.nz/determinations/PDF/2016/2016_NZERA_Auckland_342.pdf.

¹⁴⁰ MBIE – Twice-caught strawberry grower must pay \$6000 for employment failures, 13 October 2016

<http://www.mbie.govt.nz/about/whats-happening/news/2016/strawberry-grower-penalised?searchterm=Twice+caught+>.

¹⁴¹ MBIE – Napier bakery pays \$14,423 for employment law failures, 4 November 2016

<http://www.mbie.govt.nz/about/whats-happening/news/2016/napier-bakery-pays-14423-for-employment-law-failures?searchterm=Napier+bakery+>.

10 November 2016

An employer who operated a Coffee Club café in Parnell, Auckland, repaid a \$16,900 premium received by it and one of its employees to help an employee with a visa.¹⁴³

17 November 2016

An employer who pleaded guilty to a charge of obstructing a Labour Inspector in relation to records and other matters was granted a discharge without conviction in the Employment Court.¹⁴⁴

28 November 2016

A man who worked part-time on a roster at a holiday park in which he lived and in return received money and a free licence to occupy a site was held by the Employment Court to be an employee rather than a volunteer. The court left the parties to determine how much pay the man was owed, with leave reserved to return to court if the parties could not agree.¹⁴⁵

30 November 2016

The Employment Relations Authority ordered a kebab shop in Rotorua to pay \$73,661 in penalties and arrears for failing to pay the minimum wage and holiday pay and for not keeping accurate records. Just Kebab Limited was directed to pay \$33,661 in arrears to an employee, and penalised \$40,000.¹⁴⁶

7 December 2016

Businesses were warned not to disguise employees as “volunteers,” following a nationwide investigation that revealed concerning employment practices. Labour Inspectorate General Manager George Mason said that businesses could not evade their obligations as employers by calling their workers

¹⁴² Hayward, M – Christchurch companies penalised \$100,000 in Employment Court for underpaying staff, 7 November 2016 <http://www.stuff.co.nz/business/86192483/Christchurch-companies-penalised-100-000-in-Employment-Court-for-underpaying-staff>.

¹⁴³ MBIE – Settlement sees visa assistance premium repaid, 10 November 2016 <http://www.mbie.govt.nz/about/whats-happening/news/2016/migrants-visa-application-declined?searchterm=Coffee+Club>.

¹⁴⁴ *Carr v Sharma* [2016] NZEmpC 151, 17 November 2016

¹⁴⁵ *Kidd v Beaumont* [2016] NZEmpC 158, 28 November 2016

<https://www.employmentcourt.govt.nz/assets/Documents/Decisions/2016-NZEmpC-158-Kidd-v-Beaumont-Judgment-of-Chief-Judge-Colgan-28-November-2016.pdf>.

¹⁴⁶ MBIE – Employment Court’s \$100,000 ruling makes an impact, says Labour Inspectorate, 30 November 2016 <https://www.employment.govt.nz/about/news-and-updates/employment-courts-100000-ruling-makes-impact-says-labour-inspectorate/>.

volunteers and then simply rewarding them with beds in a dormitory, food and Wi-Fi rather than a fair wage.¹⁴⁷

14 December 2016

A Bombay Hills labour contracting business, Binde Enterprises Limited, was ordered to pay \$428,164 in arrears and penalties for breaches of employment laws. The company was directed to pay \$208,184 in arrears to 75 employees after it failed to pay minimum wages, provide holiday pay or keep accurate records.¹⁴⁸

15 December 2016

The Labour Inspectorate successfully applied to have company officers made personally liable for \$138,836 in arrears in the preceding month in two separate cases, after the companies involved went into liquidation. The wife of a Nando's franchisee was found liable in November for the \$70,053 in arrears that the company owed in unpaid wages and holiday pay when the company was liquidated and the director was declared bankrupt. Eight migrant workers who had been working at the Henderson restaurant were owed money, including one employee who was owed more than \$20,000 in arrears. In another case, the owner-operators of retail clothing stores across Auckland were found personally liable for \$68,783 in unpaid wages and holiday pay owed by their companies.¹⁴⁹

21 December 2016

A Newshub story reported that four Indonesian welders working at a Napier sawmill were being paid little more than \$3 an hour and that this was permitted by current visa rules.¹⁵⁰

23 December 2016

Imai Japanese Food Services owner, Rosanna Imai, was fined \$10,000 in the Auckland District Court and ordered to make an emotional harm payment of \$5000 to her victims after five Filipino workers recruited to come to Aotearoa/

¹⁴⁷ MBIE – Inspectorate says no more disguising business employees as “volunteers”, 7 December 2016
<https://employment.govt.nz/about/news-and-updates/inspectorate-says-no-more-disguising-business-employees-as-volunteers/>.

¹⁴⁸ MBIE – Massive penalty for serious breaches of employment law, 14 December 2016
<http://www.mbie.govt.nz/about/whats-happening/news/2016/horticulture-labour-for-hire-contractor-to-pay-%24428%2C000-for-serious-employment-law-breaches?searchterm=Horticulture+labour+for+hire+contrac.>

¹⁴⁹ MBIE – Personal liability means no escape from paying staff, says Labour Inspectorate, 15 December 2016
[http://www.mbie.govt.nz/about/whats-happening/news/2016/personal-liability-means-no-escape-from-paying-staff-says-labour-inspectorate?searchterm=Personal+.](http://www.mbie.govt.nz/about/whats-happening/news/2016/personal-liability-means-no-escape-from-paying-staff-says-labour-inspectorate?searchterm=Personal+)

¹⁵⁰ Morrah, M – Napier welders being paid \$3 an hour, legally, Newshub, 21 December 2016
<http://www.newshub.co.nz/home/new-zealand/2016/12/napier-welders-being-paid-3-an-hour-legally.html>.

New Zealand to work as Japanese chefs or sushi cooks were made to work more than 60 hours a week and underpaid over \$55,000.¹⁵¹

11 January 2017

Three owner-operators of a clothing business were ordered by the Employment Relations Authority to pay \$60,000 for intimidating two of their previous employees. The employees had served as witnesses in a MBIE Labour Inspectorate investigation.¹⁵²

2 February 2017

Jafar Kurisi was sentenced in the Auckland District Court to home detention of 12 months and ordered to pay reparation of \$55,000 to six exploited foreign workers. The employees were not paid holiday pay or the minimum wage.¹⁵³

8 March 2017

A service station owner who allegedly told an employee either to pay \$25,000 for a job offer or to work for free was ordered to pay over \$40,000 by the Employment Relations Authority.¹⁵⁴

9 March 2017

The Employment Court fined the owners of a Te Kuiti bakery and café who failed to pay wages owed to a Filipino migrant worker. An Employment Relations Authority determination in March 2016 found that the worker had not been paid for extra hours worked and had not been paid holiday pay or public holiday pay. The employer was ordered to pay the worker but failed to do so.¹⁵⁵

14 March 2017

MBIE announced that a car wash business in Auckland had paid \$35,151 in arrears to 97 employees following a Labour Inspectorate investigation which

¹⁵¹ Stuff – Filipino national fined \$10,000 for exploiting migrant workers, 23 December 2016

<http://www.stuff.co.nz/business/87918274/Filipino-national-fined-10-000-for-exploiting-migrant-workers>.

¹⁵² MBIE – Indian clothing retailers ordered to pay \$60,000 for intimidating ex-employees, 11 January 2017 <http://www.mbie.govt.nz/about/whats-happening/news/2017/indian-clothing-retailers-ordered-to-pay-60-000-for-intimidating-ex-employees?searchterm=Indian+clothing+retailers>.

¹⁵³ *The Queen v Kurisi* [2017] NZHC 62, 2 February 2017 <https://www.courtsofnz.govt.nz/cases/r-v-ali-and-kurisi/@images/fileDecision>.

¹⁵⁴ Theunissen, M, ERA hears: Pay \$25K or work for free, *The New Zealand Herald*, 8 March 2017.

¹⁵⁵ Miller, C, Bakery owners fined \$11K for not paying migrant from Philippines, *The New Zealand Herald*, 9 March 2017, p A15.

found that it had failed to provide correct holiday pay; keep proper wage, time and holiday records; or provide employment agreements.¹⁵⁶

27 March 2017

An auto valet in South Auckland was ordered to pay \$241,451 in penalties and arrears after a Labour Inspectorate investigation found serious breaches of employment law. Labour Inspectorate regional manager, Loua Ward, said that Manukau Auto Valet Ltd had for six years or more deprived some 221 employees of basic employment entitlements by failing to pay the minimum wage or holiday pay to employees leaving the company. The company paid \$96,451 in arrears to MBIE for the 221 employees and was ordered to pay a further \$145,000 in penalties after the Inspectorate successfully took the case to the Employment Relations Authority.¹⁵⁷

20 April 2017

An Auckland grocer was penalised \$12,000 by the Employment Relations Authority after a Labour Inspectorate investigation uncovered attempts to charge a migrant worker a premium. The employer demanded that the shop manager pay \$20,000 – later reduced to \$18,000 – in exchange for the employer supporting the employee’s visa.¹⁵⁸

Report on worker exploitation in Aotearoa/ New Zealand by the Human Trafficking Research Coalition

A report prepared by Dr Christina Stringer for the Human Trafficking Research Coalition and titled *Worker Exploitation in New Zealand: A Troubling Landscape* was released in December 2016. The study comprised two parts: a desk review of secondary sources about worker exploitation in Aotearoa/New Zealand between 2005 and 2015, and 105 semi-structured interviews with workers – predominantly temporary migrant workers – from a range of industries.

The research found that workers experienced varied forms of exploitation, including –

¹⁵⁶ MBIE – Auckland car-wash pays \$35,151 to migrant employees following Labour Inspectorate investigation, 14 March 2017 <http://www.mbie.govt.nz/about/whats-happening/news/2017/auckland-car-wash-pays-arrears-to-employees-following-investigation>.

¹⁵⁷ Nadkarni, A. – Auckland car wash penalised \$145K for underpaying more than 200 staff, 8 April 2017 - <http://www.stuff.co.nz/taranaki-daily-news/business/91360511/Auckland-car-wash-penalised-145k-for-underpaying-more-than-200-staff>.

¹⁵⁸ MBIE – Auckland grocer penalised \$12,000 for attempt to exploit migrant worker, 20 April 2017.

- Non-payment or underpayment of wages, with temporary migrants not being paid for hours worked or earning as little as \$4 to \$5 an hour. Temporary migrants were often controlled by threats to report them to Immigration New Zealand if they complained;
- Excessive work hours without breaks;
- Deductions of income taxes from wages, but the taxes not being paid to Inland Revenue;
- Non-payment of holiday pay;
- No formal employment contracts; and
- Degrading treatment.¹⁵⁹

The paper examined industries ranging from construction to dairy, horticulture, hospitality, education and prostitution. It found that some workers had been charged recruitment fees of up to \$20,000, and had also been significantly underpaid.

The research reported that many workers earned less than the minimum wage, with underpayment of wages also being common. One employee, who worked 90 hours, was paid for only 45 hours. Some workers received no payment at all for their labour.

Some workers on trial periods, who should have been paid the minimum wage, were paid between \$0 and \$10 an hour during their trial periods.¹⁶⁰ Employers also told workers they had no money to pay them. It was common for those on student visas working in the horticulture sector not to be paid regularly. Instead, they were given money for food or rent. In some cases, employees were asked to return money as inflated charges for accommodation, food and transport.¹⁶¹ Many employees were not paid holiday pay.¹⁶²

The document noted that the Government had recognised the seriousness of exploitation of migrant workers in Aotearoa/New Zealand by providing an additional \$32 million in funding to a Labour Inspectorate taskforce in July 2015.¹⁶³

¹⁵⁹ Stringer, C. Worker Exploitation in New Zealand: A Troubling Landscape, The Human Trafficking Research Coalition, December 2016, pp vi – ix.

¹⁶⁰ Ibid, p 23.

¹⁶¹ Ibid, p 24.

¹⁶² Ibid, p 24.

¹⁶³ Ibid, p 20.

The study recommended that the Government actively commit to funding further research into vulnerable demographics identified in the report, as well as monitoring industrial sectors in which exploitation was taking place and regularly publishing the results of the monitoring to measure and quantify the issue.

Other proposals included creating a human trafficking office; adopting Memoranda of Understanding with other countries from which workers were recruited so that protections could be implemented; education for new migrant workers about their rights; and the establishment of a New Zealand Labour Code/ red flag system for human trafficking and labour exploitation.

CONCLUSION

The above discussion of wage theft in the United States, the United Kingdom and Aotearoa/New Zealand illustrates that wage theft is a pervasive problem in the three nations.

Employers in these three countries are stealing billions of dollars a year from workers. This is harmful both to workers and their families, as well as to the wider community.

Employees paid less than the amount to which they are entitled cannot support themselves and their families. The minimum wage in Aotearoa/New Zealand is very low (\$15.75 an hour) , and is already not enough for a family to survive on. When workers are paid even less than that, they and their families are driven into severe poverty.

This means children grow up disadvantaged. The family does not have enough money to obtain healthy housing, to buy nutritious food, or to pay for children to partake in school activities.

Aotearoa/ New Zealand was the first country in the world to introduce a national minimum wage in 1894.¹⁶⁴ It is a sad indictment that, 123 years later, so many employers do not comply with minimum wage requirements.

An online search of Employment Relations Authority's determinations using the key words "minimum wage" on 15 November 2016 returned 315 results.

The lack of public and governmental condemnation of employers who engage in wage theft stands in marked contrast to the punitive attitude in Aotearoa/New Zealand to beneficiaries alleged to have committed benefit fraud.

It is important to use the term "wage theft" to emphasise that employers are actually stealing from workers and to place their actions in the same context as theft and burglary.

¹⁶⁴ MBIE - Employers' Perspectives – Part Two: The Minimum Wage System, Labour & Immigration Research Centre, 2012 <http://www.mbie.govt.nz/publications-research/research/labour-market-and-skills/employers-perspectives-part2-minimum-wage.pdf>.

The fact that wage theft is so pervasive in Aotearoa/ New Zealand means that additional steps are required to combat it. These are outlined in the subsequent *Recommendations* section.

RECOMMENDATIONS

1. Aotearoa should introduce a new offence of “wage theft,” punishable by imprisonment.
2. Penalties for wage theft and for other breaches of minimum employment standards should be increased. In particular, employers who fail to pay the Minimum Wage should be charged a penalty of three times the amount which should have been paid to the worker. The penalty should be given to the employee.
3. The Ministry of Business, Innovation & Employment should publish every six months a list of employers who have committed wage theft by failing to comply with minimum employment standards. The lists should be modelled on the United Kingdom’s “name and shame lists.”
4. Additional resources should be provided to MBIE to enable it to carry out more investigation and enforcement of minimum employment standards.
5. Businesses which engage in wage theft and fail to comply with minimum employment standards should not be permitted to tender for government contracts.
6. Businesses which engage in wage theft and fail to comply with minimum employment standards should have relevant licences revoked by local authorities and government agencies.