State Legislature must protect workers from wage theft

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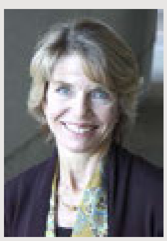

The state Legislature needs to enact currently pending legislation to protect workers from wage theft. Low-wage workers in many settings - day laborers, car wash workers, dishwashers, construction workers - are often deprived of the wages they earn. This occurs with shocking frequency. Sometimes employers simply fail to pay the wages required by agreement and by law. Sometimes employers pay much less than has been earned. Wage and hour violations of state and federal law are common.

Low-wage workers are especially vulnerable to such abuse. Employers know that these individuals cannot afford legal representation. Frequently these individuals are undocumented and employers believe that they will not come forward to make claims. A 2010 study by the UCLA Labor Center found that every week eight out 10 low-wage workers suffered a pay-related violation, losing a total of more than $26 million dollars in wages per week in Los Angeles alone.

California has tried to deal with this problem by having the labor commissioner of the Department of Industrial Relations enforce the state's wage and hour laws. But this approach has proven grossly inadequate. The labor commissioner lacks the resources to effectively enforce the wage payment laws in the tens of thousands of cases of wage theft that are filed annually. Although the labor commissioner has made great strides forward in the recent years under the leadership of Commissioner Julie Su, it is unrealistic to expect that the state will budget sufficient resources to solve a problem of this magnitude through agency enforcement actions alone.

There also has been a serious problem with these enforcement actions: They have named as the defendant the corporation for which the individuals worked. But with surprising frequency, these corporations have gone out of business by the time the Department of Industrial Relations issues an order requiring payment of wages. A judgment against a defunct corporation leaves the workers with nothing. In many cases, the owners anticipate lawsuits and transfer the corporation's assets to other corporations or to themselves so that they can continue to operate a profitable business and bilk their workers and other creditors.

It takes scores of hours of investigation and attorney time to trace the assets to a new corporation and then a whole new round of litigation to prove that the workers are entitled to be paid from the assets of the new corporation or the owners. Thus, it is

Tuesday, August 12, 2014

California Supreme Court

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The state Supreme Court on Monday struck from the November ballot an advisory proposition that would have asked voters whether Congress should amend the U.S. Constitution to limit campaign spending by corporations.

U.S. Court of Appeals for the 9th Circuit

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Law Practice

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unsurprising that a UCLA Labor Center study found that only 17 percent of individuals who won wage judgments from the labor commissioner between 2008 and 2011 were able to collect even a penny of the wages they were owed.

A 2010 study ... found that every week eight out 10 low-wage workers suffered a pay-related violation, losing a total of more than $26 million dollars in wages per week in Los Angeles alone.

The labor commissioner has begun trying to resolve this judgment collection problem in recent years, most notably by establishing a partnership with the Wage Justice Center (a nonprofit legal organization in Los Angeles). Since 2013 the labor commissioner and the Wage Justice Center have worked tirelessly to enforce some of the thousands of unpaid wage judgments produced by the labor commissioner and have begun filing the complex litigation necessary to unwind the type of fraudulent transfers of assets that is often used to evade payment of wage judgments by businesses that employ low-income workers. Given the resource-intensive nature of this litigation and the magnitude of the problem, it would take hundreds, if not thousands, of lawyers and investigators to fully remedy the problem. Although the state and nonprofits have a role to play, it is not reasonable to expect them to solve this problem through government enforcement alone. Workers themselves must have tools to effectively enforce their rights.

This is not a new problem and there is a well-established solution. California already has provided it to one class of workers: mechanics, which includes construction contractors, plumbers, electricians and anyone who performs labor to improve real property. Mechanics are permitted by California law to assert liens against the property they have worked on to collect wages that they are due. Because the lien is against the property, the wages can be collected even if the corporation has gone out of business. Nor does enforcement necessarily depend on hiring a lawyer to file litigation or bringing an administrative action before the Department of Industrial Relations. In fact, the vast majority of mechanic's lien claims are resolved through negotiation by the parties without ever burdening the court system or state enforcement agencies.

The limitation, though, is that only mechanics, those who improve a piece of real property, can take advantage of this law. A bill currently pending in the legislature, Assembly Bill 2416 (Stone), would solve this problem by allowing all workers to assert liens to collect unpaid wages. Anyone who performs labor (excluding certain high-income employees) would be able to do this. Those who are owed wages will be able to use the liens to enforce their wage claims, even when the companies have gone out of business or fraudulently transferred assets. Moreover, AB 2416 should lead to more negotiated resolutions of wage disputes, decreasing the burden and expense for the court system and the Department of Industrial Relations.

The bill has passed the Assembly and now is pending in the state Senate. It is urgent that it be passed and signed by Gov. Jerry Brown. This is a bill to protect the most vulnerable in our society and would simply provide a mechanism to make sure that low-wage workers get the money they are owed. This is about enforcing contracts and wage laws, but it also is about basic fairness and decency.

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