

FOUR REASONS AN ACT TO PREVENT WAGE THEFT HELPS BUSINESSES

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1. RESPONSIBLE BUSINESS OWNERS GET CUT OUT OF MARKETS BY RAMPANT WAGE THEFT

The rise of wage theft seriously impacts not only workers but also many companies across multiple industries. Weak enforcement of wage and hour laws creates an environment in which cheating businesses can continuously game the system to increase profits, and the rare penalty can be absorbed as just another cost of doing business.

Law-abiding businesses thus stand to benefit from *An Act to prevent wage theft*, a bill that would level the playing field on which businesses compete. Unfortunately, sometimes those “playing fields” are so rigged that the most responsible businesses are effectively barred from entrance.

For example, the National Employment Law Project (NELP) found that labor violations are “endemic” in the janitorial industry. Janitorial labor is a significant expense and an unethical employer can save up to 30% of labor costs¹ by misclassifying employees as independent contractors—and a full 93% of janitorial firms are actually independent contractors or franchises.² As a result, responsible janitorial companies rarely bother to compete for contracts in the massive retail industry because cheating competitors have pushed bids so low that it is impossible to profit without breaking the law. One cleaning company owner recounted a call from a local branch of a national big-box store chain: He was proposed \$425 to clean the site seven nights a week, far from what would be needed to pay the minimum wage required by law.³

A Low-Road Case: M&M Cleaning, Inc. of Malden

In 2015, **M&M Cleaning, Inc. of Malden** successfully bid for a contract for janitorial services for Cambridge Public Library and Cambridge Senior Center. M&M Cleaning not only refused to hire any incumbent workers, but also paid their new workers significantly below the city’s living wage and forced them to work some hours off the clock. Also, some workers were paid as employees, while others were misclassified as independent contractors (meaning with no payroll deductions). The union lobbied the city council to amend the living wage ordinance to allow for a prevailing wage and to level the playing field for more responsible businesses. On a subsequent round of bids, M&M was rejected due to pending investigations into their wage payments.

In another incident, M&M Cleaning was the low bidder for a contract with the Boston Water and Sewer Commission. M&M’s bid was so low that the Maintenance Contractors Trust Fund—a joint labor-management watchdog organization including members of SEIU Local 32BJ and about 70 responsible janitorial contractors—was able to demonstrate to the Commission that M&M could not possibly provide the service at that price without breaking law. The bids were successfully thrown out; however since then the Commission has extended a contract to another cleaning contractor “not much better” than M&M. Despite these cases, M&M has continued to operate in multiple sites including in Boston, Revere, Chelsea, and in Rhode Island.^{4, 5, 6}

2. UNCHECKED CHEATING COMPETITION IS A BARRIER TO RESPONSIBLE BUSINESSES INVESTMENT AND GROWTH

Responsible employers often would like to pay more to attract experienced workers and reduce turnover, but the downward pressure in industries rife with violators makes that difficult. *An Act to prevent wage theft* would support fair competition among businesses in ways that would actually benefit the Commonwealth—by offering better services, developing more efficient delivery models, and pursuing other positive innovations, rather than by finding ever more ways to cheat workers and game the system for greater profits.

A High-Road Case: Royal Hospitality Services

Royal Hospitality Services is an industrial laundry with hundreds of employees represented by UFCW Local 1445, whose negotiations with Royal Hospitality have achieved worker access to benefits beyond those that non-union laundry workers typically receive such as 80% of their health insurance employer-covered and matched retirement

1 Mike Gallagher (Director, Maintenance Contractors Trust Fund), interview.

2 Ruckelshaus, Catherine, Rebecca Smith, Sarah Leberstein, and Eunice Cho. *Who’s the Boss: Restoring Accountability for Labor Standards in Outsourced Work*. National Employment Law Project, May 2014, 109-110.

3 Mike Gallagher (Director, Maintenance Contractors Trust Fund), interview.

4 Mike Gallagher (Director, Maintenance Contractors Trust Fund), interview.

5 MCTF Newsletter December 2015 *Cleaning up the Cleaning Industry*

6 MCTF Newsletter February 2016 *Cleaning up the Cleaning Industry*

plan contributions. Furthermore, Royal Hospitality workers currently earn up to \$13.00/hour as Local 1445 has fought to keep wages above the low-wage industry average; recent minimum wage increases in Massachusetts have helped to increase the wages for many laundry workers in the state because so many are only given minimum wage.⁷

The wage and benefit negotiations between Royal Hospitality and Local 1445 are embedded in a rigged local market—unethical companies can undercut companies like Royal Hospitality that work with unions, not through innovation or more efficient operations, but by stealing wages from their workers. In the current landscape of fettered labor law enforcement, such unethical companies can bid low for institutional contracts, safe in the knowledge that their business model of cheating workers will slip under the radar or else earn a mere slap on the wrist. This unfair competition has impeded Royal Hospitality's ability to grow their good business and create more and better jobs for Massachusetts workers.

Existing tools for enforcement are no longer enough to ensure an environment for healthy competition and positive innovation. Enforcement is a fundamental pillar of *An Act to prevent wage theft*. The bill would give the Attorney General the ability to issue stop work orders against businesses found in violation of wage and hour laws. This is an important tool that would encourage timely resolutions rather than the weeks, months, or years it can take now to hold employers accountable. Passing this bill is an essential step toward cleaning up markets, making room for good businesses that abide by the law to thrive and grow, and sweeping out bad businesses that use illegal practices to gain an illegal competitive advantage.

CHEATING COMPANIES HAVE PUSHED BIDS SO LOW THAT IT IS IMPOSSIBLE TO COMPETE WITHOUT BREAKING THE LAW.

3. RESPONSIBLE BUSINESS OWNERS ARE NOT HARD TO DISTINGUISH FROM UNETHICAL BUSINESS OWNERS

The US Department of Labor revealed in one investigation that a third of employers found in violation of wage and hour laws had continued to violate them even after being caught,⁸ indicating there are far more than a “handful” of intentional violators, as business advocates like the National Federation for Independent Business claim.⁹

A Low-Road Case: William Ashmore

William Ashmore, the owner of construction firms Empire Construction Group and Continental Concepts, Inc., is a repeat violator of wage and hours laws. He has several claims filed against him at the Attorney General, and yet he continues to win jobs on the basis of low bids. The reach of his business is wide—three different worker centers in Eastern Massachusetts are supporting workers who have been victims of his wage theft practices. For example, in different cases at various worksites, seven workers have been robbed of almost \$37,000.00 in wages (ranging from \$2,188 to \$17,285) and are still fighting for payment.¹⁰

Ashmore is a regular subcontractor for Callahan Construction, a general contractor known (and publicly condemned by the Mayor of Cambridge¹¹ and Quincy City Councilors¹²) for “using subcontractors that fail to comply with the most basic of state and federal wage, hour, and employment law.”¹³ It has been an uphill battle for workers to hold Ashmore accountable for stealing their hard-earned wages, and they have no recourse to hold Callahan accountable even as Callahan benefits financially from the bids Ashmore keeps low through wage theft—giving Callahan an incentive to look away from Ashmore’s violations. Callahan and Ashmore’s business-as-usual theft takes profitable work away from good, honest companies that do well by their workers.

Employers making an honest mistake behave very differently from employers who build their business plans on the presumption of wage theft: They pay up and they don’t do it again. These cases rarely enter the legal system because a simple conversation with a worker or advocate clears up the problem.

7 Fernando Lemus (UFCW Local 1445), interview.

8 U.S. Department of Labor, *Performance and Accountability Report*, 2009, 102.

9 Pugh, Tony. “New economy fallout—‘wage theft’ from paychecks.” *McClatchy DC*, June 4, 2012.

10 Diego Low (coordinator, MetroWest Worker Center), interview. The other worker centers are Centro Comunitario de Trabajadores of New Bedford and the Brazilian Worker Center of Allston. Documents available by request.

11 City of Cambridge, Office of the Mayor. *Office of the Mayor to AvalonBay Communities*, March 10, 2016. Letter.

12 City of Quincy, Office of the City Council. *Office of the City Council to Mr. John J. Flatley*, April 28, 2016. Letter.

13 Ibid.

4. AN ACT TO PREVENT WAGE THEFT ULTIMATELY REWARDS RESPONSIBLE BUSINESS OWNERS FOR CHOOSING HIGH-ROAD EMPLOYMENT PRACTICES

Business owners who deal fairly and honestly with their workers have little to be concerned about by *An Act to prevent wage theft*. One business owner interviewed in Northampton said the bill would help “make sure I’m doing the job that I’m supposed to be doing—I don’t mind that oversight. It doesn’t scare me.”¹⁴ And as many responsible business owners already know, “high-road” practices, such as investing in workers and paying living wages, can often improve efficiencies and increase profits.¹⁵

A High-Road Case: Union Hotels in Boston, Massachusetts

More than half of Boston’s hotel workers are represented by UNITE HERE Local 26. This has enabled the union to successfully turn hotel jobs into family sustaining jobs. Boston union hotel housekeepers earn \$20.28/hour (in contrast to the median wage for all Boston housekeepers of \$14.81/hour¹⁶) and have access to health coverage, legal assistance, housing funding, a pension fund, and many other benefits.

Another major benefit for Boston hotel workers is the employer-funded Boston Education, Skills and Training (BEST) Hospitality Training Center, which UNITE HERE Local 26 has negotiated through its contracts. The Center provides free hotel job training to current union members and selected Boston residents, including two hotel job training programs for African Americans and immigrants that advance diversity in hiring, and has become a hiring pipeline with 300 workers trained and hired by about 30 hotels and hospitality venues since 2007. Retention rates are 90% after three years for workers hired through the Center, which benefits hotel management through reduced turnover costs and increased productivity from a more experienced workforce.¹⁷

With their higher wages, Boston’s union hotel workers bring an additional \$35 million per year in spending¹⁸ to their own home communities such as Roxbury, East Boston, and Dorchester, which does not take into account the positive economic impact of almost \$58 million in additional benefits that Boston union hotel workers enjoy compared to standard non-union hotel worker benefits.¹⁹ The hotel industry in Boston is robust. It is clear that hotels can be profitable while supplying high quality jobs, benefits, and advancement opportunities for workers, and in turn uplifting their workers’ communities.

By strengthening enforcement tools that would counteract the downward pressure of wage and hour law violators, *An Act to prevent wage theft* promotes an environment where employers will see even greater rewards for their high-road business practices while their low-road competitors who violate the law can be better held accountable.



THIS BILL IS AN ESSENTIAL STEP TOWARDS CLEANING UP MARKETS, MAKING ROOM FOR GOOD BUSINESSES TO THRIVE AND GROW.

14 Lindahl, Chris. “Increasing enforcement at state and local levels in Massachusetts combats wage theft.” *Daily Hampshire Gazette*, February 28, 2016.

15 Ton, Zeynep. *The Good Jobs Strategy: How the Smartest Companies Invest in Employees to Lower Costs & Boost Profits*. New York: Houghton Mifflin Harcourt, 2014.

16 U.S. Bureau of Labor Statistics. “May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates.” Median Wage for 10,660 Maids and Housekeeping Cleaners for 2015 in Boston-Cambridge-Newton NECTA Division. http://www.bls.gov/oes/current/oes_71654.htm, accessed July 6, 2016.

17 BEST Hospitality Training Center internal data

18 One full-time worker earning \$20.28/hour and working 2,080 hours per year in Massachusetts earns approximately \$8,221 more to spend after federal taxes and withholdings and state taxes are removed, compared to if they earned \$14.81/hour. 4,250 full-time workers earn \$34,939,250 more. See [https://smartasset.com/taxes/massachusetts-tax-calculator#\(\\$20.28 * 2080 results in \\$42,184 pre-tax and \\$32,717 after tax wages; \\$14.81 * 2080 results in \\$30,805 pre-tax and \\$24,496 after tax wages. \\$32,717-\\$24,496=\\$8,221.\)](https://smartasset.com/taxes/massachusetts-tax-calculator#($20.28%20*2080%20results%20in%20$42,184%20pre-tax%20and%20$32,717%20after%20tax%20wages;%20$14.81%20*2080%20results%20in%20$30,805%20pre-tax%20and%20$24,496%20after%20tax%20wages.%20$32,717-$24,496=$8,221.))

19 One Boston union hotel worker receives \$9.54 worth of benefits per hour, in contrast to the estimated \$3.00 worth of benefits per hour a non-union hotel worker receives. 4,250 full-time union hotel workers receive \$57,813,600 in additional benefits per year. $(\$9.54 - \$3.00) * 2,080 \text{ hours} * 4,250 \text{ workers} = \$57,813,600$.