



## Paycheck Deductions: Another Form of Wage Theft

Senators, thank you for inviting me today. My name is Kim Bobo. I am the Executive Director of Interfaith Worker Justice, a national organization that works through a network of interfaith groups and workers centers to improve wages, benefits and working conditions for low-wage workers. I am also the author of *Wage Theft in America: Why Millions of Working Americans are not Getting Paid and What We Can Do about It* (New Press, 2008).

Others are focusing on the sub-minimum wage provision, which is controversial even within the disability rights community. I will focus on illegal paycheck deductions, which are one of the many forms of wage theft that rob billions of dollars from millions of workers each year. The problem of illegal paycheck deductions is illustrated so clearly in the case of Henry's Turkey Service.

Twenty-one men lived in a bunkhouse with boarded up windows, roaches throughout and a non-functioning heater that Henry leased for a grand total of \$600 per month from the city of Atalissa. He then turned around and charged the workers their full federal disability checks and lots more, resulting in them earning \$60.30 per month. Most of the workers had worked for this company for twenty years. According to newspaper articles, Henry's Turkey Service deducted \$487 monthly for each worker's room and board and \$572 for each worker's "kind care."<sup>1</sup> In fact "kind care" seems missing here.

The men, most of them in their 50s and 60s were awakened at 2:30 a.m. At 4:30 a.m. they boarded vans to the turkey plant where they donned geared and then took spots on the line cleaning turkeys. The men were paid a sub-minimum wage, about half what others were paid, theoretically because of how their disability caused them to be less productive than others.<sup>2</sup>

Several government agencies had investigated Henry's Turkey Service over the years. A 1974 memo from Iowa social worker Ed George said that once a man became an employee of Henry's Turkey Service, "he for all practical purposes loses most basic human rights."<sup>3</sup> A 2001 DOL Inspector General report criticized a 1999 Wage and Hour compliance action of this same turkey plant's deductions from disabled workers' paychecks. Not only did the company charge more than the "reasonable cost" for meals, lodging and services, but it deducted from the workers'

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<sup>1</sup> Clark Kauffman, *State closes bunkhouse that housed mentally retarded workers*, Des Moines Register, February 8, 2009.

<sup>2</sup> Ibid.

<sup>3</sup> Amy Lorentzen, *Iowa had known of plant's use of mentally disabled*, The Associated Press, February 25, 2009.

paychecks for “property improvement, building supplies and the owner’s salary expenses unrelated to the operation of the group home.”<sup>4</sup>

This case is so wrong on so many levels – shipping mentally disabled folks from Texas to Iowa to work in a turkey plant, housing folks in unsafe and filthy conditions, stealing wages through blatantly illegal deductions, and government inspections that failed to protect these workers and punish systemic wage theft.

Others are focusing on the sub-minimum wage provision, which is controversial even within the disability rights community. I want to focus on illegal paycheck deductions. Unfortunately, employers routinely take illegal deductions from many workers’ paychecks.

Several Polish cleaning women came to visit the IWJ-affiliated Arise Chicago workers center. As a condition of their employment, they were required to live in a dormitory floor housing eight women. Two women shared a small room and bathroom down the hall. Each woman was charged \$300 per month. Clearly, the employer made money off these workers.<sup>5</sup>

Then there are the workers in Houston whose employer deducted \$1900 from four workers’ paychecks, claiming he had paid a notary to petition for the workers’ citizenship.<sup>6</sup>

The now famous Saigon Grill delivery workers in New York City, whose employer paid them less than \$2 per hour, also deducted \$20 in fines for being slow on entering information into the computer or slamming the door too loudly.

The Cincinnati Interfaith Workers Center assisted workers employed by Diverse Able. The first deduction from paychecks was \$400 for flights from Puerto Rico. Next was the advance on the first paycheck, plus interest, of course. The workers were initially charged up to \$135 per week for four or five of them to stay in a two-bedroom apartment until the workers center intervened and the rent dropped to \$65 per week (probably still higher than the true cost of the housing). Workers were charged \$7 per day for transportation even if they didn’t work each day.<sup>7</sup>

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<sup>4</sup> Office of Inspector General, U.S. Department of Labor, *The Wage and Hour Division’s Administration of Special Minimum Wages for Workers with Disabilities*, Audit Report No. 05-01-002-04-420, March 19, 2001.

<sup>5</sup> Notes from interview with Anna Karewicz, Polish worker rights advocate, Chicago Arise Workers Center.

<sup>6</sup> Kim Bobo, *Wage Theft in America* (New York: The New Press), 2008, page 31.

<sup>7</sup> Notes from interview with Don Sherman, Director, Cincinnati Interfaith Workers Center.

My all-time personal “favorite,” is the employer in Chicago who handed out a list of fines for worker misdeeds that included:

Being late for work – \$100.

Being absent without giving at least 48 hours notification – \$250 and up.

Forgetting to lock the trucks – \$100 from all crew members.

Smoking on job site or in company vehicles – \$150 and up.

Possession of alcohol on site – first offense \$500, second \$1000, third \$1500.

Quitting without giving two weeks notice will forfeit the worker’s previous weeks’ work, unless the worker had been there more than 6 months, in which case the worker must give a month notice or lose paychecks.

This employer sums up the policy: “If you think that your presence (spirit) at the job site is enough to get paid you are wrong. Before you are paid you must reveal the quality and quantity of your work and your loyalty to the company. In the future this is what your pay will be based upon.”<sup>8</sup> And there you have it!

Illegal employer deductions are common for all workers, not just for those covered by the sub-minimum wage. Interfaith Worker Justice offers six recommendations that would help all workers.

**1) Require under FLSA that all employers provide a statement explaining workers’ wages, benefits, and deductions to each worker along with each paycheck.** This would enable workers to ask questions about things that seem odd and to compare hours worked with hours paid. Because most employers provide such a pay-stub already, this requirement will focus on improving transparency and accuracy among those employers who are most likely to cheat workers and will have little impact on most employers. This pay-stub explanation would be similar to the requirements for giving information to migrant workers under the Migrant Seasonal Protection Act.

**2) Require under FLSA that workers agree ahead of time in writing to any fees that will be deducted from their paycheck that are for the workers’ benefit. All workers who are paid sub-minimum wages and have legal guardians must have the guardians’ approval ahead of time.** If food or lodging are being provided “for the workers’ benefit,” then the workers or their guardians should have the ability to say “no” to that benefit if they have to pay for it. This provision would be similar to that required by the Texas Payday Law, which says “The employer may not make deductions unless ordered to do so by a court of competent jurisdiction (as in court-ordered child support payments); authorized to do so by state or federal law (as in IRS withholding); or authorized in writing by the employee, and then only for a lawful purpose.”<sup>9</sup>

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<sup>8</sup> Policy obtained from Anna Karewicz, polish worker rights advocate, Arise Chicago Workers Center.

<sup>9</sup> Description of the Texas Payday Law, which can be found at <http://www.twc.state.tx.us/ui/lablaw/pdlsum.html>.

According to Cristina Tzintzun of the Workers Defense Project, and Austin-based workers center, this law is enormously helpful in challenging illegal deductions.<sup>10</sup> Iowa has a similar law, but without adequate public enforcement or advocacy by a nonprofit agency, the law was meaningless.

**3) Outlaw any housing deductions unless the employer has petitioned to the Department of Labor to provide housing and testifies that the housing is provided at “reasonable cost” and meets all relevant housing codes.** Filing such a housing deduction petition should automatically trigger an unscheduled wage and hour inspection. Many of the worst employers, those who effectively keep workers in slave-like conditions, “provide” housing for their employees.

**4) Pay workers triple damages for illegal deductions.** If a worker agreed to have lunch provided and deducted from his/her paycheck and the actual employer cost of that lunch was \$2 but the employer deducted \$4, the employer would be required to pay the worker \$6 for each lunch (\$2 overcharge times 3) for which he/she was overcharged. This kind of meaningful penalty would help make sure employers calculate costs fairly and accurately.

**5) Support the President’s budget request that would provide more resources for Wage and Hour investigators.** One reason Henry’s Turkey Service wasn’t closed down was because the Wage and Hour investigators who visited this plant in 1999 did not have time to do a follow-up unscheduled visit. My experience with Wage and Hour investigators is that they have way too many cases to deal with, so follow-up seldom occurs. The word the investigators use is “triage.” They are performing triage with workers’ wages. Good laws without adequate enforcement render the laws meaningless. More investigators will reduce the possibility that such situations as Henry’s go undetected.

**6) Target investigations of industries that are widely believed to be making illegal paycheck deductions.** IWJ-affiliated workers centers would recommend investigations of large buffet restaurants, which often house workers in dormitories and take illegal deductions, some cleaning companies who prey on new immigrants, again housing them and taking excessive deductions, construction firms who house employees in the buildings in which they are working, and companies that recruit workers to clean-up after disasters such as Hurricanes Katrina and Ike and the Iowa floods. The same firms that make illegal deductions from paychecks are usually not paying minimum wage or overtime. Wage and Hour investigators probably have a good idea which industries should be investigated as well, but, as I stressed above, there must be enough investigators to do the job.

I am grateful to the committee for its work to investigate what went wrong for these workers, but more important is figuring out how we stop and deter illegal paycheck deductions for all workers in the future.

Kim Bobo  
Executive Director

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<sup>10</sup> Interview with Cristina Tzintzun on March 3, 2009.