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Title: *More Harm Than Good: Criminal Penalties for Wage Theft*, 60 U. RICH. L. REV. __ (forthcoming 2026)

Abstract:

“Wage theft is a crime.” Workers, their advocates, and even some policymakers have made this declaration repeatedly to emphasize the severity of violations of wage and hour laws. In recent years, this campaign has moved beyond mere rhetoric into increased criminal expansion and enforcement. Various obstacles in seeking remedies through the civil system have buoyed this expansion. This article examines the implementation of wage theft criminal strategies through a theoretical framework focused on spheres of harm experienced by impacted workers. Through an analysis of criminal statutes for wage theft and their enforcement, it argues that the different forms of harm inflicted by wage theft demand solutions to wage theft outside of the criminal system.

This article first identifies three spheres of harm caused by wage theft: (1) to individuals laboring in low-wage industries; (2) in the workplace where employers engage in wage theft, and (3) to communities to which impacted workers belong. With so much at stake, this section explains why some have turned to the criminal legal system to address wage theft. It then examines the criminal penalty provisions on the books in all fifty states and Washington, D.C. and analyzes their implementation in certain jurisdictions, using data gathered from various sources. The analysis reveals how the criminal system fails to redress the different spheres of harm experienced by impacted workers. It also shows that wage theft criminal strategies rely on practices within the criminal system that harm the very communities most impacted by wage violations. While recognizing the limitations of the civil system, this article identifies various strategies within that system that are more tailored to remedying the three spheres of harm. It concludes by renewing a call to center workers’ experiences in developing anti-wage theft strategies and to invest in strategies that seek structural change, both within and outside of the legal system.