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Robbed on the job: Advice on fighting wage theft



Interview by [Barbara Bogaev](#) [Marketplace Money for Friday, January 4, 2013](#)

Every year millions of Americans are victims of what some call wage theft -- a practice in which a company fails to compensate workers for their time, short-changes them on their benefits or intentionally misclassifies employees in order to save money. And even though all that is illegal, Kim Bobo, executive director of Interfaith Worker Justice and author of "Wage Theft in America," says it's surprisingly common in the U.S.

"Minimum wage and overtime violations are two of the most common ways that wage theft occurs. Another way is payroll fraud, when employers intentionally call people independent contractors when they are really employees. Now if your boss -- not you -- declares you an independent contractor, you probably aren't one. Then there is also tip stealing. About 10 percent of tipped workers actually don't get their tips; their employers just don't give it to them," says Bobo. "This is really a crime wave in the nation. And it's a crime wave that we don't recognize."

Bobo says there are some situations where it's a little confusing whether you can pay someone as an independent contractor or not, but that's not the case for most of the misclassification that occurs in the U.S. A lot of misclassification, she says, occurs in the back of restaurants. For example, some dishwashers and cooks are mistakenly called independent contractors.

"The common sense rule is: if you get up in the morning, you look at yourself in the mirror and you say, 'I'm going to business for myself, I'm working for myself today,' then you are indeed an independent contractor. If you get up in the morning and say, 'I'm going to work for somebody else,' you are an employee. No matter what they call you -- you are an employee," says Bobo.

Bobo says this type of misclassification is a serious problem for both low-wage and middle-income workers.

"Probably the most egregious cases are against low-wage workers in a number of sectors," says Bobo. "But you also have middle-income workers. I was talking to a worker the other day and she said she was supposed to get overtime, but her employer says [they] don't pay overtime. So if you work overtime, I'm not going to pay it. But they're given so much work they can't possibly get it done in 40 hours and they'll get fired if they work more than 40 hours. So they all just write down we worked 40 hours. So again, it's common practice for firms to just say we don't pay overtime as if it's a personal choice. It's not a personal choice, there are clear laws on this."

The Department of Labor is supposed to enforce fair labor practices. But Bobo says there aren't enough people on the job to protect workers against wage theft. She says that while the Labor Department is dedicated, there are only 1,000 enforcement staff members to protect 135 million workers in the nation -- or one enforcement staff person for every 135,000 workers.

"The laws are very clear. You have to pay people minimum wage. You have to pay overtime. Most workers are employees, not independent contractors. You have to give workers their tips. You have to give 'em their last paycheck. You can't deduct for weird deductions," says Bobo. "But if you have a law and you have no enforcement or inadequate enforcement, it doesn't work."

For anyone who is experiencing wage theft, Bobo says you should first understand what your rights are by going to the website CanMyBossDoThat.com. She advises workers experiencing wage theft to call or place a claim with the Department of Labor. She also suggests you educate others by looking at the [Innerfaith Worker Justice](http://InnerfaithWorkerJustice.com) website, which has a slew of resources on wage theft and what you can do to stop it in your community.



[Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid-And What We Can Do About It](#)

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