

The Wild, Wild West for Low Wage Workers with Wage and Hour Claims

Author : Suja A. Thomas

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Llezzlie L. Green, [Wage Theft in Lawless Courts](#), 107 *Cal. L. Rev.* 1303 (2019).

People with low salaries recover less frequently for their claims against their employers than those with larger salaries. The problems include that lawyers lack the incentive to take these cases. They have less to gain monetarily, and the costs can even exceed the recovery. Professor Green tells us that low income individuals with wage and hour claims in small claims courts face these difficulties and more—indeed “wage theft” and it is theft condoned by the courts.

Professor Green opens her insightful article with a story about a case that her clinic tried. An hourly employee worked approximately 12 hours a day and was paid around \$5 an hour. When she brought a wage and hour case in small claims court asserting \$2500 in lost income, the court rejected the claim, concluding there was a simple contract between the worker and the employer—which had not been breached. The appellate court asked more questions and concluded that the wage and hour laws had been violated—awarding her \$2,500.

Her client was fortunate. It takes money to appeal cases, and appellate courts may not always get it right. This typical case in a small claims court illustrates the wild, wild west for low wage workers. They may not recover—not because they do not have a good claim, but rather because the small claims courts do not know the law. This is not a small problem. A whopping 60% of workers may be underpaid.

Professor Green summarizes the wage and hour laws, including the Fair Labor Standards Act and state laws, which employers may violate by not compensating or not properly compensating workers. “Wage theft” significantly affects low wage workers’ bottom line, including the ability to pay for basic needs such as housing. While class action cases can help these workers, where class claims do not exist or are not feasible, these workers are left to bring their claims in small claims court on their own.

The procedure in small claims courts is designed to be simple and efficient. However, this can lead to problems. Pro se litigants often do not know the law, so they may not assert the right claims. Some judges in small claims courts may not even have a law degree, so pro se litigants may not be given adequate legal advice from them. Additionally, even a judge who has a legal background may not understand the wage and hour laws. Similar to the court in her legal clinic’s case, Professor Green argues that many small claims courts improperly interpret the law to be simply a contractual relationship governed by a [Lochner](#)-type analysis instead of protected by a set of federal and state laws.

Additional problems for employees with wage and hour claims include that employers are more likely to have witnesses—those who work for them—to support their side of the story. Moreover, courts tend to rely on unreliable stock stories or, in essence, stereotypes for what happened to an employee in any given case.

If a worker manages to win on liability, they may still lose. Workers are supposed to receive liquidated damages in the amount of double the back wages they lost to compensate them for the employer not paying them on time. This can help with losses such as late fees they had to pay when they could not make a payment. Although liquidated and treble damages in addition to attorneys’ fees are available, courts often do not award these damages and fees and grant only backpay. This leaves employers incentivized to underpay their employees. If sued by an employee, they will simply have to pay—with minimal fees for their attorneys—for nonpayment of wages.

To remedy wage theft, Professor Green argues for important changes to small claims courts based on safeguards discussed in the United States Supreme Court case of [Turner v. Rogers](#). These include courts providing: basic information to plaintiffs about employees' wage and hour rights under the law; a more specific form with wage and hour type questions; discovery; and an opportunity to present evidence that they are employees and not independent contractors. Additionally, courts should make express findings about the case, require employers to provide information about their ability to pay; and finally, require judicial training on the wage and hour laws. Professor Green also emphasizes the importance of a litigant informing the court of the case theory through a careful description of the facts and law.

Professor Green has a convincing argument. Who would want to litigate one of these claims in small claims court. Is it even fair that these claims are relegated to inferior treatment in these courts? Should juries decide these questions? That is a question for another day. In the meantime, reform is clearly necessary to ensure that workers are paid what they should be paid.

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