

PROTECTING WORKERS:

Wage Theft Enforcement for the Local Prosecutor

About the Institute for Innovation in Prosecution

The Institute for Innovation in Prosecution at John Jay College of Criminal Justice (IIP) provides a collaborative national platform that brings together prosecutors, policy experts, and the communities they serve to promote data-driven strategies, cutting-edge scholarship, and innovative thinking. The IIP is dedicated to criminal justice that promotes community-centered standards of safety, fairness, and dignity.

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Letter from Queens County District Attorney Melinda Katz

Since taking office in January 2020, I have made it my priority to protect everyone who lives and works in Queens, including workers who have historically received little attention when they have become the victims of economic crimes. Not only is wage theft a pervasive problem: it also disproportionately impacts the most vulnerable members of our community.

In my role as District Attorney, I have dedicated resources to seeing that hardworking New Yorkers who have been victimized through wage theft are seen and heard. I created our Housing and Worker Protection Bureau and designated a specialized team of investigators and prosecutors to right the wrongs of those who have had their earnings stolen or have in some other way been victimized by economic crime.



Thankfully, our office is not alone in this endeavor. This guide is the result of a collaborative process that brought together practitioners, advocates and directly impacted people from across the country. The working group discussed the common challenges involved in prosecuting wage theft and shared strategies for overcoming these barriers. My office was proud to be a part of this distinguished group, both to share what we have learned in our work and to engage with new and innovative ideas.

It is my hope that the strategies outlined below will help prosecutors to more effectively partner with and advocate for their most vulnerable residents. This guide represents an important part of that effort and I look forward to future collaborations.

A handwritten signature in black ink that reads "Melinda Katz". The signature is fluid and cursive, with a long horizontal line extending from the end.

Melinda Katz
District Attorney, Queens County, NY

Introduction

Wage theft is one of the most commonly committed crimes in the United States¹ and one of the least likely to be prosecuted, costing the most vulnerable low-income wage earners millions of dollars every year.

The National Employment Law Project estimated that over 4.6 million workers earning less than \$13 per hour in the private sector were victims of wage theft in 2019 alone.² Immigrants are particularly vulnerable to wage theft. One study found that industries with higher percentages of foreign-born workers had higher rates of wage theft.³

Wage theft took on added importance during the COVID-19 pandemic, as thousands of frontline workers were unlawfully denied their pay. In 2021, the U.S. Department of Labor recovered \$13.8 million in back wages for health care workers and \$34.7 million for food service workers.⁴

Combatting the pervasiveness of wage theft has historically fallen to private civil enforcement, which has proven to be a limited deterrent. Not only may low-income victims lack the resources to sue their employers, but even those who bring suit will find a low likelihood of success in the face of forced arbitration agreements and class action waivers. An estimated 98% of workers in the private sector will not file claims due to these contractual obstacles.⁵

In an effort to fill this gap, a growing number of local prosecutors are now pursuing wage theft cases. For example, in Austin, Texas, the U.S. Department of Labor and the Travis County District Attorney's Office signed a memorandum of understanding to improve workplace protections and the enforcement of wage theft laws.⁶ In addition, several local prosecutors across the country have formed new units specifically designed to combat crimes by employers against workers.⁷ These units are an example of prosecutors shifting resources away from enforcement models that criminalize poverty, and instead investing in strategies that protect marginalized populations. Their success is crucial to ensuring that millions of wage theft victims see justice.

With this in mind, the Institute for Innovation in Prosecution at John Jay College of Criminal Justice convened a working group of prosecutors experienced in investigating wage theft, leaders of community-based organizations, and directly impacted people with relevant experience. Each member

1 Nicole Hallett, *The Problem of Wage Theft*, 37 YALE L. & POL'Y REV. 93, 97 (2018).

2 Hugh Baran & Elisabeth Campbell, [Forced Arbitration Helped Employers Who Committed Wage Theft Pocket \\$9.2 Billion in 2019 From Workers in Low-Paid Jobs](#), NAT'L EMP. L. PROJECT, June 2021, at 1.

3 Susan Ferriss & Joe Yerardi, [Wage Theft Hits Immigrants—Hard](#), CTR. FOR PUB. INTEGRITY (Oct. 14, 2021).

4 [WHD by the Numbers 2021](#), U.S. DEP'T OF LAB. (2021).

5 Baran & Campbell, *supra* note 2, at 1.

6 News Release, [U.S. Department of Labor, Travis County District Attorney Commit to Expand, Improve Protection of Workers' Wages, Enforcement of Laws](#), U.S. DEP'T OF LAB. (Nov. 2021) ("Officials from the U.S. Department of Labor and the Travis County District Attorney's Office signed a Memorandum of Understanding to expand and improve the protection of Travis County's workforce, enforcement of wage laws and level the playing field for responsible employers. The memo represents an effort by both agencies to collaborate more effectively on areas of common interest, including sharing training materials, conducting joint investigations and enforcement actions, and sharing information as appropriate for their respective responsibilities.").

7 Terri Gerstein, [How District Attorneys and State Attorneys General are Fighting Workplace Abuses](#), ECON. POL'Y INST. (May 17, 2021) ("Several district attorneys have created dedicated units or subunits specifically for this function, including San Diego DA Summer Stephan in 2021; Queens (N.Y.) DA Melinda Katz and San Francisco DA Chesa Boudin in 2020; Philadelphia DA Larry Krasner in 2019; and more.") (citations omitted).

of the working group provided valuable insight into what prosecutors should consider when pursuing wage theft cases, how best to investigate them, and how to work with impacted communities. The Guide that follows is a culmination of these conversations and synthesizes the participants' insights on an important, emerging field of prosecution. It should be noted that other organizations, including [Public Rights Project](#) and the [Harvard Labor and Worklife Program State and Local Enforcement Project](#), have done extensive work in wage theft prosecutions and were invaluable resources in the production of this document.

Beyond the practical steps needed to effectively prosecute wage theft, this Guide also emphasizes alternatives to incarceration. Prosecutors should consider alternatives to incarceration when appropriate to hold employers accountable. Such alternatives could require sizably fining those who run organizations that commit wage theft to deter them and others from reoffending, and reporting offending companies to enforcement agencies that can revoke the companies' licenses and permits. Prosecutors should also seek to hold accountable those at the highest levels of organizations that commit wage theft, rather than primarily targeting low-level offenders. We hope that this Guide will inspire other prosecutors to pursue wage theft cases in ways that are not overly punitive and do not further contribute to mass incarceration.

Barriers to Prosecuting Wage Theft

Wage theft prosecution is a new area of focus in many jurisdictions across the country. Educating actors in the criminal justice system on the harm and prevalence of wage theft is therefore important, as is informing impacted communities that wage theft will be investigated by law enforcement. Furthermore, prosecutors should be aware of challenges in identifying victims and collecting evidence, both because wage theft often occurs within the "informal economy" and because undocumented immigrants are more likely to be victimized. This section addresses these obstacles in more detail.

Developing Expertise

Wage theft is an emerging area of focus for many prosecutors' offices. Therefore, prosecutors may not be familiar with how to build wage theft cases. Offices must develop internal expertise in prosecuting wage theft. Refer to Appendix A for a list of resources about wage theft prosecution and related topics for prosecutors to learn about the field.

Case Intake

Victims may be unaware that prosecutors will pursue wage theft cases. Therefore, people may not report instances of wage theft to law enforcement. Workers may also be reluctant to report wage theft because they fear law enforcement, or worry they will be blacklisted in their industry. Prosecutors must conduct extensive community outreach to foster trust with victims and develop pipelines that bring cases to their offices.

Educating the Judiciary

Because wage theft prosecution is relatively new, prosecutors' offices may need to explain the nature

of wage theft to judges, as well as the applicable law. Prosecutors should not assume judges are informed about wage theft schemes, related statutes, and the harms of this crime.

Challenges with Victims

Undocumented immigrants are frequently the victims of wage theft, and employers may dissuade them from contacting law enforcement agencies by threatening to report them to immigration authorities. One solution to this hurdle is for prosecutors to make clear that the immigration status of victims is not a concern of their office and that the prosecutor's priority is the recovery of wages. This is discussed further in the *Intersection of Wage Theft and Immigration* section.

Challenges in the Investigation Process

Most local police officers and investigators do not have expertise in investigating wage theft or lack information about the law on this issue. Therefore, wage theft investigations are more commonly conducted by the state department of labor or state police units. These agencies have limited resources with which to pursue wage theft and may overlook smaller cases as a result.

Issues of Proof

Many traditional forms of evidence may not be available in wage theft cases. Victims of wage theft are often paid in cash and do not have the necessary records to prove their employment. Sometimes employers will partially pay their employees in order to appease them. Prosecutors in the working group also noted instances where general contractors accused of wage theft shifted the blame to subcontractors and claimed to be unaware of any theft. To confront issues of proof, prosecutors' offices should publicize that they are pursuing wage theft cases and encourage workers to document their hours, communications, phone contacts, names of managers, their paystubs, and locations of job sites where they worked. Furthermore, prosecutors should consider non-traditional evidence when building a case, such as screenshots of text messages or photos that show the victim's geo-location at the worksite. An employer's own data may also reveal evidence that can be used in a criminal case against them - for instance, some have surveillance information that may contain relevant data about a worker.

Practice Point

A directly impacted member of the working group detailed one instance in which law enforcement officers were called because workers were locked out of a building site and were not paid for weeks. When the police arrived, they gave no assistance to the victims and stated that law enforcement was powerless to help. The working group member and his coworkers felt defenseless and frustrated because their work tools remained in the building and their access cards had been deactivated. Prosecutors should ensure that officers patrolling construction zones have a basic understanding of wage theft and are trained to refer cases when appropriate.

Common Wage Theft Schemes

The ways in which employers commit wage theft vary. In some cases, workers are coerced into handing over portions of their wages to their superiors as a condition of employment. Others are told that their wages will be temporarily withheld until a later date, only to never be paid those wages. Workers who speak out against these practices face possible retaliatory termination and detriment to their future employment opportunities. Prosecutors should familiarize themselves with the following common types of wage theft schemes.

Deposit Schemes

This is a common type of wage theft scheme in which employers take a “deposit” from their employees, typically by withholding the first week or two of compensation. The employers often claim that the wages are withheld in order to incentivize employees to fully complete the job and promise to pay the full wages once the job is finished. Once the project is completed, the employers will cut off contact with their employees, who are then unable to recover the “deposit.” Sometimes, the employer’s registered LLC will indicate that it has gone out of business, making it even more difficult for employees to pursue their stolen wages.

Kickback Schemes

In the typical kickback scheme, a foreman employs workers on the condition that they pay the foreman kickbacks out of their wages in exchange for employment. For example, a foreman may demand a certain percentage of the worker’s pay for each day the worker is employed at a job site.

Paying Under the Prevailing Wage

In public works projects, contractors are required to pay their employees, at a minimum, the local prevailing wage. A common wage theft scheme in this context occurs when employers pay their employees less than the prevailing wage and keep the difference from the government funds for themselves.

Third-Party Actors

Prosecutors should know that employment agencies can play a role in wage theft. These agencies will send workers to jobs that withhold wages and tell workers that it is the responsibility of the business to pay, while the business claims it is the responsibility of the agency to pay the wages. Prosecutors should also be aware that larger contracting companies may be complicit in wage theft schemes committed by smaller subcontractors.

Practice Point

According to some prosecutors in the working group, some employers will use partial payments to dissuade victims from coming forward. An employer who owes wages may pay a portion of those wages to appease an employee while threatening to not pay any wages at all if the employee stops working. Other prosecutors have seen cases involving unequal treatment of union and undocumented workers on the same job site, in which union workers are paid their full wages and undocumented workers are not.

Working “Off the Clock”

Some employers, including more established and bigger companies, have forced people to work “off the clock” to avoid paying them overtime.

Statutes for Prosecuting Wage Theft

Prosecutors can build wage theft cases from a variety of statutes and legal authorities.⁸ Many states have enacted explicit wage or labor-related criminal laws. However, prosecutors can also use generally-applicable penal code charges in most places such as larceny, theft of services, falsifying business records, and more.

As an example of a specific wage-related criminal law, in New York State, prosecutors can charge an employer with Failure to Pay Wages (an Unclassified Misdemeanor) under New York Labor Law (NYLL) Section 198-a(1) and 191(1)(a)(1). Prosecutors may also have the opportunity to bring the following charges based on the facts of a specific case: scheme to defraud, offering false filings, and falsifying business records.

As another example, in Minnesota, there are separate criminal and regulatory avenues for wage theft cases. County attorneys can prosecute wage theft under the comprehensive theft statute, which includes specific language relating to wage theft. Alternatively, the Attorney General or the Department of Labor and Industry can enforce anti-wage theft regulations pursuant to a 2019 statute. California and Colorado also recently enacted statutes that allow prosecutors to charge wage theft as a felony in certain circumstances.

Case Intake

Many victims do not report wage theft crimes to the police. Therefore, prosecutors should partner with community-based organizations and unions to create an efficient case pipeline. Community-based organizations and unions often have pre-existing relationships with victims, have taken steps to collect evidence, and can transfer relevant information to prosecutors. Prosecutors should consider the following when constructing a case intake process.

Avoid the Case “Reset”

One of the most frequent sources of wage theft cases for prosecutors’ offices are referrals from community-based organizations. Before making these referrals, many organizations have already collected evidence and built relationships with victims. When taking a referral, prosecutors should facilitate the transfer of relevant case information from these organizations. This will help avoid the case simply “resetting” once it reaches the prosecutor’s office and will save time for the prosecutor and the victim. See Appendix C, which contains a questionnaire that a community-based organization fills out on behalf of wage theft victims and then sends to the New York County District Attorney’s Office.

While community activists advocated for this approach, some of the prosecutors in the working group noted that prosecutors must still conduct an independent investigation, and be mindful that any materials that community-based organizations provide will likely be turned over to the defense.

⁸ This section does not provide an exhaustive list of state statutes addressing wage theft. For surveys of other relevant state laws governing workplace crimes, see Gerstein, *supra* note 7, at 23.

Encourage Record Keeping

Prosecutors should clearly communicate to community-based organizations what evidence is the most helpful in building a wage theft prosecution. Such helpful information includes contact information for employers and managers, relevant work sites, who hired or fired the victim, and any paystubs. This information should be included in any outreach campaigns.

Working with Unions

Unions will also refer cases of wage theft to prosecutors' offices and will partner with community-based organizations. One benefit of working with unions during case intake is that some have significant resources to collect data, track down contractors, and gather evidence.

Practice Point

A directly impacted member of the working group detailed his experience in which a general contractor required all personnel to sign in at their job site. Because of their previous experiences with wage theft, some of his coworkers frequently photographed the sign-in sheets. He was urged by coworkers to take photos of the work he completed on the job site. When the employer claimed the worker was never present at the job site, the images of sign-in sheets and completed work verified his presence.

Other Avenues for Case Outreach

Practice Point

One prosecutor in the working group attended community meetings to inform the public that wage theft was a priority of their office, and to distribute information on how to report it. Another prosecutor organized a public forum where community members could discuss wage theft with his staff. Other working group members suggested creating informational handouts about wage theft for immigrant communities and laborers in certain industries, such as construction workers. A directly impacted member suggested posting informational flyers in locations that victims of wage theft may frequent, such as public transportation stations. Prosecutors also noted that, in their experience, prosecutors' offices in the same geographic regions typically do not collaborate on educational campaigns, preferring to independently initiate these campaigns. A more coordinated effort among neighboring prosecutors' offices would benefit efforts to educate the public about wage theft prosecutions.

Some prosecutors' offices have launched campaigns to educate the public on the prevalence of wage theft. Additionally, prosecutors can set up wage theft hotlines for members of the public to report employers directly to their offices. For example, both the New York State Department of Labor and the New York County District Attorney's Office have phone lines through which wage theft can be reported.⁹ When an office successfully prosecutes an instance of wage theft, widely publicizing that success will communicate to the community that wage theft is a priority.

⁹ Press Release, Manhattan Dist. Att'y, [New York City and State Partners Announce Joint Effort to Combat Wage Theft in the Construction Industry](#) (Dec. 4, 2017).

Intersection of Wage Theft and Immigration

One of the most salient challenges facing prosecutors combatting wage theft is that many victims of wage theft are immigrants, sometimes undocumented or working alongside undocumented workers, and may be reluctant to report these crimes. This section discusses various strategies that prosecutors can use to more effectively communicate with victims and assure them that the prosecutor's priority is the recovery of their wages.

Overcome Language Barriers

Having employees in the prosecutor's office who are multilingual is invaluable when communicating with victims who speak a language other than English. When possible, it is recommended that the same multilingual staff member be consistently paired with a specific victim, as this helps the person build rapport and gain familiarity with the intricacies of a case. While it is ideal to have a professional interpreter present to translate conversations for prosecutors who do not speak the victim's native language, prosecutors with fewer resources can also utilize translation services to quickly access live interpreters over the phone.

Emphasize That the Victim's Immigration Status is Irrelevant to the Prosecutor's Office

Many undocumented victims are reluctant to come forward and report wage theft because they fear deportation. Prosecutors should emphasize to victims and community-based organizations that the victim's immigration status is not considered when pursuing wage theft, and that the prosecutor does not report victims to immigration authorities. Prosecutors can also help some of these victims apply for U-visas if their employers commit U-visa eligible crimes such as obstruction of justice and witness tampering.

Stay in Contact with Victims

Because some immigrant workers often change phone numbers or addresses, prosecutors should obtain multiple points of contact information in the earliest stages of a case in order to stay in communication with victims. For example, prosecutors should consider asking victims for the contact information of a close friend or relative in case the victim's information changes. Prosecutors should remember that written messages, voicemails, and other information generated by contacting victims may be discoverable.

Practice Point

Leaders of community-based organizations within the working group have distributed informational materials on wage theft at meetings and community classes. This is one way to educate impacted communities about local prosecutors' offices and reaffirm that immigration status is not a focus of these offices. Prosecutors can collaborate with community-based organizations that have already established a rapport with the community to garner trust.

Interagency Cooperation

In addition to working with unions and community-based organizations, prosecutors often have the opportunity to work with other state agencies on wage theft cases. These state agencies may bring to bear different investigative practices and varying levels of experience with wage theft cases. Prosecutors may also look for opportunities to cooperate with other local prosecutors and attorneys general in their region. It is also suggested that prosecutors create a consolidated document that is accessible to all prosecutors in the region that contains a list of entities and persons convicted of wage theft, as repeat offenders are widespread.

Practice Point

New York prosecutors in the working group have collaborated with the following agencies within their state government: Department of Labor, Department of Consumer Protection, and Department of Investigation.

Interagency cooperation can present challenges in information exchange because the agency may not be aware of what evidence is most relevant in a criminal case. Prosecutors should clearly communicate what information is most relevant in advance so that they receive the most complete and informative referrals.

Internal Training

Training for Line Prosecutors

Perhaps because wage theft is a relatively new field in criminal prosecution, few training resources exist for line prosecutors. Thankfully, the Brooklyn District Attorney's Office, which has successfully prosecuted wage theft cases, created a training document that can be used to train line prosecutors about construction crimes and labor fraud (see Appendix B). The training document includes a questionnaire that prosecutors can use as a template for interviewing wage theft victims. Because wage theft is a novel concept for many prosecutors' offices, it is also suggested that training take the form of case studies, which will allow prosecutors to examine successful cases from start to finish.

The [Harvard Labor and Worklife Program State and Local Enforcement Project](#) has an active working group of over three dozen prosecutors from around the country who are bringing wage theft and other worker exploitation cases. The working group has monthly zooms with presentations of case studies and discussion of key issues. Presentations have included cases involving wage theft, prevailing wage crimes, human trafficking, workplace fatalities, and more, with speakers from within the group, as well as from federal and state labor agencies and various unions and non-profit organizations. The working group welcomes new members, including those interested, but not yet involved, in bringing wage theft and related cases. The Project has also compiled more in-depth resources about this topic, including links to reports, webinars, law review articles, databases, op-eds, and more.

[PublicRightsProject](#) also has two training programs available for prosecutors interested in building more wage theft cases. Its Affirmative Leaders Fellowship provides training and professional development for prosecutors looking to build new units or dockets on wage theft and other economic crimes,

and their new online course (to be launched in the Fall of 2022) helps prosecutors build evidence to develop an idea into a concrete investigation plan and prosecution memo.

Training for Local Law Enforcement

Ensuring that local law enforcement understands wage theft is crucial. Conducting a training is the best approach for prosecutors to ensure that local law enforcement is aware of wage theft and what evidence is crucial to pursuing these cases. In the absence of formal training, prosecutors should personally visit all law enforcement agencies in their jurisdiction to share information about the pervasiveness of wage theft.

A Note About Wage Theft Prosecutions and Criminal Justice Reform

Prosecutors should focus their efforts and resources on crimes that disproportionately harm low-income and marginalized communities. This Guide is intended to equip prosecutors with the information they need to combat the financial exploitation of workers. However, the working group members agreed that prosecutors can hold accountable those who exploit workers without always resorting to incarceration. For instance, prosecutors can require restitution in plea agreements to make victims whole, and reserve incarceratory sentences for the most egregious cases. The working group members also agreed that prosecutors must pursue those at the highest levels of organizations that commit wage theft, rather than solely low-level offenders.

Where there is wage theft, there are also often safety violations and dangerous working conditions. Investigations and prosecutions of wage theft should target these unsafe practices and refer offending companies to regulating agencies for further investigation. The primary goal of prosecuting wage theft should be to make the workplace safer and eliminate unfair working conditions, rather than to merely punish a work site manager.

Acknowledgements

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We would also like to thank Tony Palacios for his willingness to share his personal experience as a victim of wage theft and his views on how to combat these crimes. In addition, the IIP is grateful for the insights of Terri Gerstein (Director of the [Harvard Labor and Worklife Program State and Local Enforcement Project](#)) and Jill Habig (Founder and Director of [Public Rights Project](#)).

Lastly, thank you to all of the Wage Theft Working Group members, listed below, for their dedication, expertise, and contributions to this project.

Sara Feldman, *Interim Deputy Chief of Staff, New Immigrant Community Empowerment*

Reese Frederickson, *County Attorney, Pine County, MN*

Alexander Garcia, *Community Organizer*

Christina Hanophy, *Deputy Bureau Chief, Housing & Worker Protection Bureau, Queens District Attorney's Office, NY*

Bill Jorgenson, *Chief of the Housing and Worker Protection Bureau, Queens District Attorney's Office, NY*

Samantha Magnani, *Deputy Assistant State's Attorney, Connecticut Division of Criminal Justice, Hartford, CT*

Tony Palacios, *Worker & Wage Theft Advocate*

Charlie Uruchima, *Program Coordinator, New York Committee for Occupational Safety and Health (NYCOSH)*

Matthew Van Houten, *District Attorney, Tompkins County, NY*

Learn more about each working group member [here](#).

Appendix A

Anthony Damelio, Note, [Making Wage Theft Costly: District Attorneys and Attorneys General Enforcing Wage and Hour Law](#), 49 FORDHAM URB. L.J. 109 (2021).

H. Esteban Diaz et al., [Picking Empty Pockets](#), UNC IMMIGR./HUMAN RTS. POL'Y CLINIC (2019).

[Confronting Wage Theft: Barriers to Claiming Unpaid Wages in San Diego](#), CTR. FOR POL'Y INITIATIVES (July 2017).

Terri Gerstein, [How District Attorneys and State Attorneys General are Fighting Workplace Abuses: An Introduction to Criminal Prosecutions of Wage Theft and Other Employer Crimes Against Workers](#), ECON. POL'Y INST. (May 2017).

[Winning Wage Justice: An Advocate's Guide to State and City Policies to Fight Wage Theft](#), NAT'L EMP. L. PROJECT (Jan. 2011).

[Final Report](#), SAN FRANCISCO WAGE THEFT TASK FORCE (2013).

[Growing an Equitable Enforcement Practice: A Guide for Local Prosecutors to Fight Corporate Abuse](#), PUB. RTS. PROJECT (Nov. 2019).

[District Attorneys and Other Prosecutors](#), Harvard Labor and Worklife Program State and Local Enforcement Project.

Rita J. Verga, [An Advocate's Toolkit: Using Criminal "Theft of Service" Laws to Enforce Workers' Right to be Paid](#), 8 CUNY L. REV. 238 (2005).

Jenny Montoya Tansey et al., [Voices from the Corporate Enforcement Gap: Findings from the First National Survey of People Who Have Experienced Corporate Abuse](#), PUB. RTS. PROJECT (July 2019).

Appendix B

Construction Crimes Riding Protocol and Labor Fraud Training Brooklyn District Attorney's Office



Construction Crimes Riding Protocol and Labor Fraud Training

BY SAMANTHA MAGNANI

Types of Construction Crimes Cases

- CONSTRUCTION WALL COLLAPSE- BURYING WORKERS
- TRENCH COLLAPSE
- CONSTRUCTION WORKER FALL (NO HARNESS)
- ELEVATOR CRUSH
- HEAVY OBJECT FALLING ON A WORKER
- PIECE OF SCAFFOLDING OR BUILDING FALLING OR COLLAPSING ON A PEDESTRIAN
- CONSTRUCTION EQUIPMENT MALFUNCTIONING
- WALL COLLAPSE ON A PEDESTRIAN (CASE PENDING NOW WITH A 5-YEAR-OLD GIRL CRUSHED BY A STONE WALL)
- HOMES THAT WERE BEING UTILIZED AS SROS- ILLEGAL TRANSFORMATION OF THE INTERIOR WITH A LACK OF EGRESS FOR OCCUPANTS AND THEN A FIRE OCCURS AND PEOPLE CANNOT GET OUT; SEVERAL CASES WHICH RESULTED IN MANSLAUGHTER PLEAS AGAINST THE OWNERS OF THE THOSE HOMES
- SCAFFOLD FALL
- FALL FROM BUILDING WITHOUT WEARING A HARNESS AND WITH NO GUARDRAILS IN PLACE

RIDER INTAKE SHEET

In the event of a fatality/major accident at a construction site, the following contacts are

sources for information that you must gather:

Gregory Cho, Inspector General, Buildings Special Investigation Unit, NYC DOI
80 Maiden Lane
New York, NY 10038
gcho@doi.nyc.gov
212-825-3335

Mitchel Konca, Assistant Area Director, Manhattan Area (includes NYC Region)
OSHA, Department of Labor
Konca.mitchel@dol.gov
212-337-3142

Jim McElligott, Chief Investigator, DOB assigned to DOI
Jmcelligott@doi.nyc.gov
646-879-4236

Please obtain the following information:

Date, time and address of incident

Brief description of incident

Names/contact information of victim(s) and potential witnesses

Hospital where victim(s) taken, if applicable, and means of transport (ambulance, friend, etc.)

Names of law enforcement officers at scene, including NYPD, DOI, OSHA personnel (if they have assigned a case or investigation number, please get it)

Name, address and phone of victim's employer

Notifications:

Please notify Mark Feldman, Trish McNeill, Mike Spanakos, Greg Pavlides and Gavin Miles

Preliminary investigative steps:

Order 911 tape, and hospital records if applicable,

Get background info on employer and job (permits, licensing, prior complaints, violations, CLEAR, Accurint, FinCEN)

Create contact list of investigators from DOB, DOI, OSHA, NYPD, FDNY:

SUMMARY OF INCIDENT

INCIDENT OCCURRENCE

Date: _____ Time: _____ Pct.: _____

Address: _____

911 Called: Yes: ___ No: ___ Date and Time: _____

Hospital: _____

Condition: _____

Mode of transport: _____

VICTIM(S)

Name: _____ DOB: _____

Address: _____ Phone: _____

Name: _____ DOB: _____

Address: _____ Phone: _____

Name: _____ DOB: _____

Address: _____ Phone: _____

WITNESS(ES)

Name: _____ DOB: _____

Address: _____ Phone: _____

Address: _____ Phone: _____

Name: _____ DOB: _____

Address: _____ Phone: _____

INVESTIGATIVE STAFF

Pct. MOS/Detective

Name: _____ Tax: _____ Shield: _____ Command: _____

DOI Investigator

Name: _____ Phone: _____ Email: _____

OSHA Investigator

Name: _____ Phone: _____ Email: _____

DOB Investigator

Name: _____ Phone: _____ Email: _____

EMPLOYER/OWNER/MANAGER INFO

Name (Individual/Corporate): _____ DOB: _____

Address: _____ Phone: _____

Relationship: _____

Name (Individual/Corporate): _____ DOB: _____

Address: _____ Phone: _____

Relationship: _____

Name (Individual/Corporate): _____ DOB: _____

Address: _____ Phone: _____

Relationship: _____

Name (Individual/Corporate): _____ DOB: _____

Address: _____ Phone: _____

What Happens When There is a Construction Related Incident?

- Call or email will come to me usually from DOI; sometimes from DOB
- I will get a summary and then reach out to the rider to give them a brief summary
- Rider will then have to reach out to DOI Investigator and sometimes the DOB FEU Engineer
- Rider will have to complete the form (previous slides) which may take a few days
- A summary must be provided to Trish, Mike, Greg and me prior to you going to bed so Trish can update the DA that day or night

WHO IS AT THE CONSTRUCTION SITE/LOCATION OF THE INCIDENT?

NYC DEPARTMENT OF BUILDINGS-THEY ARE RESPONSIBLE FOR MAKING SURE CONTRACTORS AND ENGINEERS FOLLOW THE BUILDING CODE RULES AND REGULATIONS AND THAT BUILDINGS ARE SAFE AND WELL MAINTAINED

- **MATT MILNER, GEOFF EISELE, YEGAL SHEMASH PLUS INSPECTORS**

OSHA- OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION- THEY ENSURE THAT EMPLOYERS (CONTRACTORS) MAINTAIN A SAFE CONSTRUCTION SITE FOR THE WORKERS AND PROVIDE THEM WITH SAFETY EQUIPMENT (IF A WORKER IS NOT THE INJURED PARTY, OSHA WILL USUALLY NOT BE INVOLVED)

- **MITCH KONCA** – NORTHEAST REGIONAL DIRECTOR
- COMPLIANCE SAFETY OFFICER (CSO)

DOI-NYC DEPARTMENT OF INVESTIGATION SQUAD 3- BSIU- BUREAU OF SPECIAL INVESTIGATIONS UNIT- JIM MCGELLIGOTT IS THE CHIEF INVESTIGATOR FOR SQUAD 3- THIS IS THE UNIT THAT DEALS WITH CONSTRUCTION RELATED INCIDENTS

- **DOI INVESTIGATORS**- THEY WILL BE YOUR INVESTIGATIVE ARM

NYPD; CSU?

FDNY

OEM

ITEMS TO THINK ABOUT/WHAT DOES THE DOB AND OSHA LOOK FOR?

- IS THERE A PERMIT FOR THE JOB?
- IS THE PERMIT HOLDER THE CONTRACTOR DOING THE WORK?
- DID THE PERMIT HOLDER SUB THE JOB OUT?
 - IS THE SUB-CONTRACTOR LICENSED? IF NOT, ARE THERE PROBLEMS IN THE SUB CONTRACTOR'S BACKGROUND
 - DID THE SUB PAY THE PERMIT HOLDER TO JUST PULL THE PERMIT BECAUSE THE SUB COULD NOT PULL A PERMIT?
- ARE THE WORKERS ACTUAL EMPLOYEES OR DAY LABORERS?
- IS THERE INSURANCE COVERAGE FOR THE COMPANY THAT ACCURATELY REPRESENTS THE WORKERS AND THE TYPE OF WORK THEY DO?
- FIND THE WORKERS AND INTERVIEW THEM

ITEMS TO THINK ABOUT/WHAT DOES THE DOB AND OSHA LOOK FOR?

-
- IS THERE A CONSTRUCTION SUPERINTENDENT/SITE SAFETY COORDINATOR?
 - FIND THE FOREMAN AND SPEAK TO HIM
 - SIGN IN SHEETS FOR THE SITE
 - FIND THE ENGINEER AND SPEAK TO HIM/HER
 - IS THERE A SPECIAL INSPECTOR ON THE JOB?
 - WHAT IS THE DOB/OSHA VIOLATION HISTORY FOR THE JOB SITE AND THE CONTRACTOR?
 - ANY CIVILIANS WHO SAW ANYTHING AND CAN BE INTERVIEWED
 - VIDEO FROM ANYWHERE AND/OR CELL PHONE PICTURES

WHAT HAPPENS AFTER THE INTAKE?

VIABLE CASE □ TAKES APPROXIMATELY A YEAR OR MAYBE LONGER UNTIL ONE OF THESE CASES IS READY FOR THE GRAND JURY

TEAM INVESTIGATION □ DOI INVESTIGATORS/OSHA/DOB AND KCDA WORK CLOSELY TOGETHER ON THE INVESTIGATIONS- MUST DO A SHARING ORDER

WAITING ON THE DOB FEU REPORT- FORENSIC ENGINEERING UNIT

- WORK VERY CLOSELY WITH THE ASSIGNED ENGINEER TO UNDERSTAND AND LEARN THE NUANCES OF THE CASE AND WHAT CAUSED THE COLLAPSE- VERY TECHNICAL BUT IF YOU UNDERSTAND IT, THEN THE JURY WILL UNDERSTAND IT

OSHA CITATIONS

- BRING IN AND SPEAK WITH THE CSO AND FIND OUT WHAT THEIR CITATIONS ARE
 - 6 MONTH TIME LIMIT FROM THE DATE OF THE ACCIDENT TO FILE THEIR CITATIONS

HAVE DOI INVESTIGATORS FIND YOUR WITNESSES AND TAKE NOTES FOR THE INTERVIEWS YOU CONDUCT

WHAT HAPPENS AFTER THE INTAKE?

WHO YOU INTERVIEW?

- ARCHITECT
- SPECIAL INSPECTOR
- ENGINEER
- PERMIT HOLDER
- OWNER
- CONTRACTOR (MAY BE DIFFERENT FROM THE PERMIT HOLDER)
- WORKERS ***
- FOREMAN
- CONSTRUCTION SUPERINTENDENT OR SITE SAFETY MANAGER
- DECEASED WORKER'S FAMILY MEMBERS
- EMTS/FDNY FIRST RESPONDERS WHO ARE GREAT FIRST WITNESSES FOR THE GRAND JURY
- FIND OUT DOB AND OSHA HISTORY OF VIOLATIONS AGAINST THE PERMIT HOLDER AND CONTRACTOR
- GET ALL PHOTOS FROM DOB/OSHA/FIRE MARSHAL
- ALWAYS LOOK AT POSSIBLE NYSIF AND TAX CONSEQUENCES AND DOB PAPERWORK FILED FOR
ADDITIONAL CHARGES

TYPES OF CHARGES ON CONSTRUCTION CASES

- MANSLAUGHTER
- CRIMINALLY NEGLIGENT HOMICIDE
- RECKLESS ENDANGERMENT FELONY OR MISDEMEANOR
- RECKLESS ASSAULT
- WORKERS COMPENSATION CHARGES
- INSURANCE FRAUD
- OFFERING A FALSE INSTRUMENT FOR FILING □ DOB

39th Street Construction

Photo removed for the privacy of the deceased victims and their families.

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Photos removed for the privacy of the deceased victims and their families.

Photos removed for the privacy of the deceased victims and their families.

656 Myrtle Avenue

Photo removed for the privacy of the deceased victims and their families.

Photo removed for the privacy of the deceased victims and their families.

Photo removed for the privacy of the deceased victims and their families.

348 Court Street Building Collapse

Photo removed for the privacy of the deceased victims and their families.

**Scaffold Collapse at
243 Fourth Avenue in Park Slope**

Photo removed for the privacy of the deceased victims and their families.

Photo removed for the privacy of the deceased victims and their families.

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LABOR FRAUD CASES

- PREVAILING WAGE □ LABOR LAW 220.03
- WAGE THEFT
- NYSIF- NEW YORK STATE INSURANCE FUND
- WORKERS COMPENSATION



PREVAILING WAGE CASES

HOW WE GET THEM?

- Usually a referral from another agency
 - School Construction Authority
- A public works project such as NYCHA or public school or MTA project etc.

Example □ MSR Prevailing Wage Case

EVIDENCE:

- Worker daily journals of days and hours worked
- Certified payroll reports
- Contract
- Auditor work ups

PREVAILING WAGE CASES

CHARGES:

- GRAND LARCENY
- OFFERING A FALSE INSTRUMENT FOR FILING
- FALSIFYING BUSINESS RECORDS
- SCHEME TO DEFRAUD

WAGE THEFT

HOW WE GET THEM:

- DOL Referral
- Workers complain to the Action Center
- Referral from a community group

WHAT WE NEED TO PROSECUTE:

- The workers
- Daily logs
- Some corroboration

LABOR FRAUDS UNIT WORKER INTERVIEW TEMPLATE

Personal Information

- 1) Name:
- 2) Address:
- 3) Phone Numbers:
- 4) Email address:
- 5) Date of Birth:
- 6) SSN or Tax ID:
- 7) Country of Birth:

Employer Information

- 8) Name of Company you worked for:
- 9) Address of main office of the Company:
- 10) Phone Number of Company:
- 11) What kind of business does firm engage in?
- 12) Who owns company?
- 13) Who else works in the company's office?
- 14) Presently employed by Company? If no, when did you stop working there?
- 15) What was your position at the company?
- 16) Address where you worked

17) Who hired you?

18) Promised rate of pay?

19) Who supervised you? What is that person's position at the company?

20) If you no longer work there, what was the reason you left?

21) Were you a member of a union when you worked for the company? If yes, did you ask the union to help you?

22) For what period of time are you owed wages? Do you know how much you are owed? If so, how much?

23) Name and address of employer's bank

24) Did you request the wages you are owed? To whom? What happened? Did the employer refuse to pay? If so, why?

25) How were you paid, cash, check, etc.? What was your normal payday? How often were you paid?

26) Did any paychecks bounce?

OTHER POSSIBLE CASES

- NYSIF- NEW YORK STATE INSURANCE FUND
- WORKERS COMPENSATION CASES

Takeaway on Construction Crimes

Appendix C

**Frequently Asked Question by The Manhattan DA's Office
for Wage Theft Referrals**

(FAQ) Frequently Asked Question by The Manhattan DA's Office for Wage Theft Referrals

The following are questions frequently asked by **the Office of the Prosecutor in Manhattan** to receive and investigate cases of theft of wages of workers. *Please review and try to answer to the best of your ability:*

1. Name of the employer? _____
2. Name of the company? _____
 - a. Does the company have Worker Compensation insurance? Yes No
 - i. Check : <http://www.wcb.ny.gov/icpocinq/icpocdisclaimer.jsp>
 - b. Does the company have a DOB License? Yes No
 - i. Check: <http://a810-bisweb.nyc.gov/bisweb/LicenseTypeServlet?vfirst=Y>
 - c. Does the company have a MWBE certification? Yes No
 - i. Check: <https://ny.newnycontracts.com/>
 - d. Is this a public work site? Yes No -
 - e. Check: Affordable Housing (government projects): <http://app.coredata.nyc/>
3. Supervisor(s) and/ or Foreman: _____
4. Type of work performed: _____
5. How much money in wages is owed by this employer to workers? _____
6. How many workers are owed wages? _____
7. How was everyone paid?

Cash Check Both (If both, explain: _____)

 - a. If paid in check, can a photo be taken of the front part of the check? Yes No

***This can help disclose the name of the employer's company or personal bank account, and the name of the bank they do business with.*
8. Are workers owed overtime? Yes No
9. Do you have pictures of you or your coworkers working? Yes No
10. Photos of the worksite? Yes No
11. Do you have any **checks, pay stubs, or photos of checks**? Yes No
12. Texts sent from worksite / or texts exchanged about the work? Yes No

***This helps, if necessary, prove that you were working during the times you indicated.*
13. What was your phone number when you worked there? _____

***This information could help locate cell tower ping, thus your general location history*
14. Did any worker suffer any accident/injuries in the workplace? Yes No
 - a. Have photos? Yes No Hospital records? Yes No



(FAQ) Frequently Asked Question by The Manhattan DA’s Office for Wage Theft Referrals

b. If so, what happened? _____

15. Did your employer provide you with an OSHA training? Yes No

a. If yes, how was it? _____

i. Who was the trainer? _____

ii. Where did it take place? _____

16. If yes, would the employer provide you an OSHA card for you to keep? Yes No

a. If not, did you receive a certificate upon completing the training? Yes No

17. Were there other companies working with you on any of your worksites? Yes No

a. If yes, who were they? _____

18. What type of worksites were they? (Condos, schools etc.?) _____

19. Do you have license plate numbers- of the employer/supervisor?

a. Yes No If yes, what is it? _____

20. Worksites where you all worked? (Please list as many as you can)

21. Where was everyone paid? _____

22. Who paid everyone? _____

23. Might the company possibly have other names? Yes No

a. If so, what name(s)? _____

24. Principal of company? _____

***This name is extremely important because companies change their names all the time.*

25. What is the address of the company? _____

26. What is the home address of the employer? _____

27. Has your worksite been visited by OSHA or the Department of Buildings?

Yes No Not Sure If yes, when? _____

28. Did you ever complain to a supervisor or manager? If so, what happened? _____

29. Are you in a Union? Yes No

30. Have you ever taken action against this company? (e.g. Dep of Labor, Union complaint, lawsuit, etc.)

Yes No

Completed by: _____ Organization/Institution: _____





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