

115TH CONGRESS
1ST SESSION

S. 1652

To amend the Fair Labor Standards Act of 1938 and the Portal-to-Portal Act of 1947 to prevent wage theft and assist in the recovery of stolen wages, to authorize the Secretary of Labor to administer grants to prevent wage and hour violations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2017

Mrs. MURRAY (for herself, Mr. BROWN, Mr. FRANKEN, Mr. DURBIN, Mr. MARKEY, Mr. MERKLEY, Mr. MURPHY, Ms. WARREN, Mr. BLUMENTHAL, Mrs. GILLIBRAND, Ms. HARRIS, Ms. BALDWIN, Mr. LEAHY, Mr. BOOKER, Mr. SANDERS, Ms. HIRONO, Mr. VAN HOLLEN, Mr. CASEY, and Mr. WYDEN) introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

A BILL

To amend the Fair Labor Standards Act of 1938 and the Portal-to-Portal Act of 1947 to prevent wage theft and assist in the recovery of stolen wages, to authorize the Secretary of Labor to administer grants to prevent wage and hour violations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Wage Theft Prevention
5 and Wage Recovery Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) Wage theft occurs when an employer does
4 not pay an employee for work that the employee has
5 performed, depriving the worker of wages and earn-
6 ings to which the worker is legally entitled. This
7 theft occurs in many forms, including by employers
8 violating minimum wage requirements, failing to pay
9 overtime compensation, requiring off-the-clock work,
10 failing to provide final payments, misclassifying em-
11 ployees as being exempt from overtime compensation
12 or as independent contractors rather than as em-
13 ployees, and improperly withholding tips.

14 (2) Wage theft poses a serious and growing
15 problem across industries for working individuals of
16 the United States. Wage theft is widespread and is
17 estimated to cost workers more than
18 \$15,000,000,000 per year. In certain industries,
19 compliance with Federal wage and hour laws is less
20 than 50 percent.

21 (3) Wage theft is closely associated with em-
22 ployment discrimination, with women, immigrants,
23 and minorities being disproportionately affected.
24 Women are significantly more likely to experience
25 minimum wage violations than men, foreign-born
26 workers are nearly 2 times as likely to experience

1 minimum wage violations as their counterparts born
 2 in the United States, and African Americans are 3
 3 times more likely to experience minimum wage viola-
 4 tions than their White counterparts.

5 (4) Wage theft is closely associated with unsafe
 6 working conditions.

7 (5) Wage theft—

8 (A) depresses the wages of working fami-
 9 lies who are already struggling to make ends
 10 meet;

11 (B) strains social services funds;

12 (C) diminishes consumer spending power
 13 and hurts local economies;

14 (D) reduces vital State and Federal tax
 15 revenues;

16 (E) places law-abiding employers at a com-
 17 petitive disadvantage with noncompliant em-
 18 ployers;

19 (F) burdens commerce and the free flow of
 20 goods; and

21 (G) lowers labor standards throughout
 22 labor markets.

23 (6) Low-wage workers are at the greatest risk
 24 of suffering from wage theft. A survey of 4,387 low-
 25 wage workers in New York, Los Angeles, and Chi-

1 cago found that 68 percent of the workers surveyed
2 had experienced some form of wage theft in the
3 workweek immediately before the survey was con-
4 ducted. These workers experienced a range of wage
5 and hour violations: 26 percent of such workers were
6 not paid minimum wage; 76 percent of such workers
7 who worked more than 40 hours in the workweek
8 immediately before the survey was conducted were
9 not paid at the overtime rate; and, in the year before
10 the survey was conducted, 43 percent of the workers
11 who attempted to address such issues by filing a
12 complaint with their employer or who attempted to
13 form a labor organization experienced retaliation by
14 their employers, including by being fired, suspended,
15 or receiving threats of reductions in their hours or
16 pay.

17 (7) In 2012, State and Federal authorities as
18 well as private attorneys recovered at least
19 \$933,000,000 in wage theft enforcement actions,
20 which was nearly 3 times the value of all bank rob-
21 beries, residential robberies, convenience store and
22 gas station robberies, and street robberies in the
23 United States during that year.

24 (8) A Department of Labor study of wage theft
25 in California and New York found that wage theft

1 deprived workers of 37 percent to 49 percent of
2 their income, pushing at least 15,000 families below
3 the poverty line and driving another 50,000 to
4 100,000 families deeper into poverty.

5 (9) A study analyzing wage theft claims in the
6 State of Washington from 2009 to 2013 estimated
7 that the total economic cost of wage theft to the
8 State totaled more than \$64,000,000 resulting from
9 the lower economic activity and spending of low-
10 wage workers due to their lost wages.

11 (10) A Department of Labor study of wage vio-
12 lations in California and New York found that wage
13 theft deprived families of \$5,600,000 in possible
14 earned income tax credits and resulted in a
15 \$22,000,000 loss in State tax revenue, a
16 \$238,000,000 loss in payroll tax revenue, and a
17 \$113,000,000 loss in Federal income tax revenue.

18 (11) Barriers to addressing wage theft continue
19 to exist decades after the enactment of the Fair
20 Labor Standards Act of 1938 (29 U.S.C. 201 et
21 seq.). These barriers have resulted, in significant
22 part, because enforcement of such Act has not
23 worked as Congress originally intended and because
24 many of the provisions of such Act do not include
25 sufficient penalties to discourage violations. Improve-

1 ments to enforcement and amendments to such Act
2 are necessary to ensure that such Act provides effective
3 protection to individuals subject to wage theft.

4 (12) The lack of a Federal right for employees
5 to receive full compensation at the agreed upon wage
6 rate for all work performed by the employee has resulted
7 in workers being able to recover only the applicable
8 minimum wage, or the overtime rate if applicable,
9 when employers engage in wage theft.

10 (13) The lack of a Federal requirement to provide
11 employees with paystubs indicating how their pay is
12 calculated or to allow employees to inspect their
13 employers' payroll records significantly impedes
14 efforts to identify and challenge wage theft.

15 (14) The lack of a Federal requirement to pay
16 employees their final payments in a timely manner
17 upon termination of the employment relationship between
18 the employer and employee has led to unreasonable,
19 and sometimes indefinite, delays in compensation
20 after an employment relationship ends.

21 (15) While the Fair Labor Standards Act of
22 1938, and regulations promulgated by the Secretary
23 of Labor, as in effect on the day before the date of
24 enactment of this Act, require employers to compensate
25 employees at the minimum wage rate and to

1 provide overtime compensation when appropriate,
2 the lack of civil penalties for violations of these re-
3 quirements has dampened their effectiveness.

4 (16) While the Fair Labor Standards Act of
5 1938 and regulations promulgated by the Secretary
6 of Labor, as in effect on the day before the date of
7 enactment of this Act, provide employees who are
8 subject to wage theft with the right to unpaid min-
9 imum wages or unpaid overtime compensation plus
10 an additional equal amount as liquidated damages,
11 this low level of damages has proved insufficient to
12 deter employers from stealing the wages of their em-
13 ployees.

14 (17) While the Fair Labor Standards Act of
15 1938 and regulations promulgated by the Secretary
16 of Labor, as in effect on the day before the date of
17 enactment of this Act, require employers to keep
18 records of employees' pay, the lack of remedies for
19 this requirement diminishes the effectiveness of the
20 requirement.

21 (18) While the Fair Labor Standards Act of
22 1938 and regulations promulgated by the Secretary
23 of Labor, as in effect on the day before the date of
24 enactment of this Act, provide for limited criminal
25 penalties when employers violate the provisions of

1 such Act, the Secretary of Labor rarely resorts to
2 these penalties, causing them to serve as a hollow
3 threat.

4 (19) The statute of limitations under section 6
5 of the Portal-to-Portal Act of 1947 (29 U.S.C. 255),
6 in effect on the day before the date of enactment of
7 this Act, precludes employees from bringing claims
8 for wage theft 2 years after the cause of action ac-
9 crued, or 3 years after the cause of action accrued
10 if the claim is with respect to a willful violation by
11 the employer. Additionally, the statute of limitations
12 is not suspended while the Secretary of Labor inves-
13 tigates a complaint. These strict confines of the stat-
14 ute of limitations sometimes result in employees
15 being deprived of their ability to institute a private
16 lawsuit against their employer in order to recover
17 their stolen wages.

18 (20) Section 16(b) of the Fair Labor Standards
19 Act of 1938 (29 U.S.C. 216(b)), as in effect on the
20 day before the date of enactment of this Act, re-
21 quires employees to affirmatively “opt-in” in order
22 to be a party plaintiff in a collective action brought
23 by another aggrieved employee seeking to recover
24 stolen wages in court. This provision limits the abil-

1 ity of employees to unite and pursue private lawsuits
2 against employers.

3 (21) Under the penalty structure of the Fair
4 Labor Standards Act of 1938, as in effect on the
5 day before the date of enactment of this Act, many
6 employers who are caught violating such Act con-
7 tinue to violate the Act. A Department of Labor in-
8 vestigation found that one-third of employers who
9 had previously engaged in wage theft continued to
10 do so.

11 (22) The Government Accountability Office and
12 the Department of Labor have recognized that when
13 employers are assessed civil penalties, they are more
14 likely to comply with the law in the future and other
15 employers in the same region—regardless of indus-
16 try—are also more likely to comply with the law.

17 (23) States that have enacted legislation to ad-
18 dress wage theft by increasing the damages to which
19 employees are entitled following violations of wage
20 and hour laws have positively impacted the workers
21 in such States. However, many States have not en-
22 acted such legislation and, worse still, some States
23 do not have any laws protecting workers from wage
24 theft or even agencies to enforce workers' rights to
25 compensation for work. This discrepancy in State

1 laws has resulted in a fragmentation of workers'
2 rights across the United States, with some workers
3 having a measure of protection from wage theft and
4 other workers being left extremely vulnerable to
5 wage theft.

6 (24) Effective enforcement of wage and hour
7 laws is critical to increasing compliance. Given the
8 limited resources available for enforcement, en-
9 hanced strategic enforcement of Federal wage and
10 hour laws is crucial.

11 (25) For enhanced strategic enforcement to be
12 effective, government regulators must work with
13 community stakeholders who have direct knowledge
14 of ongoing violations of Federal wage and hour re-
15 quirements and who are in a position to prevent
16 such violations.

17 (26) Partnerships between regulators, workers,
18 nonprofit organizations, and businesses can increase
19 compliance by educating workers about their rights,
20 collecting evidence, reporting violations, identifying
21 noncompliant employers, and modeling good prac-
22 tices.

23 (27) Partnerships between regulators, workers,
24 nonprofit organizations, and businesses have been
25 successful in combating wage theft. In 2006, the Di-

1 vision of Labor Standards Enforcement of the State
2 of California created a janitorial enforcement team
3 to work closely with a local janitorial watchdog orga-
4 nization. As of 2015, the partnership had resulted in
5 countless administrative, civil, and criminal actions
6 against employers and in the collection of more than
7 \$68,000,000 in back pay for janitorial workers.

8 (28) The Comptroller General of the United
9 States has recommended that the Department of
10 Labor identify ways to leverage its resources to bet-
11 ter combat wage theft by improving services pro-
12 vided through partnerships.

13 **SEC. 3. PURPOSES.**

14 The purposes of this Act are to prevent wage theft
15 and facilitate the recovery of stolen wages by—

16 (1) strengthening the penalties for engaging in
17 wage theft;

18 (2) giving workers the right to receive, in a
19 timely manner, full compensation for the work they
20 perform, certain disclosures, regular paystubs, and
21 final payments;

22 (3) providing workers with improved tools to re-
23 cover their stolen wages in court; and

1 (4) making assistance available to enhance en-
2 forcement of and compliance with Federal wage and
3 hour laws through—

4 (A) supporting initiatives that address and
5 prevent violations of such laws and assist work-
6 ers in wage recovery;

7 (B) supporting individual entities and de-
8 veloping community partnerships that expand
9 and improve cooperative efforts between en-
10 forcement agencies and community-based orga-
11 nizations in the prevention of wage and hour
12 violations and enforcement of wage and hour
13 laws;

14 (C) expanding outreach to workers in in-
15 dustries or geographic areas identified by the
16 Secretary of Labor as highly noncompliant with
17 Federal wage and hour laws;

18 (D) improving detection of employers who
19 are not complying with such laws and aiding in
20 the identification of violations of such laws; and

21 (E) facilitating the collection of evidence to
22 assist enforcement efforts.

1 **TITLE I—AMENDMENTS TO THE**
 2 **FAIR LABOR STANDARDS ACT**
 3 **OF 1938**

4 **SEC. 101. REQUIREMENTS TO PROVIDE CERTAIN DISCLO-**
 5 **SURES, REGULAR PAYSTUBS, AND FINAL PAY-**
 6 **MENTS.**

7 The Fair Labor Standards Act of 1938 is amended
 8 by inserting after section 4 (29 U.S.C. 204) the following:

9 **“SEC. 5. REQUIREMENTS TO PROVIDE CERTAIN DISCLO-**
 10 **SURES, REGULAR PAYSTUBS, AND FINAL PAY-**
 11 **MENTS.**

12 “(a) DISCLOSURES.—

13 “(1) INITIAL DISCLOSURES.—Not later than 15
 14 days after the date on which an employer hires an
 15 employee who in any workweek is engaged in com-
 16 merce or in the production of goods for commerce,
 17 or is employed in an enterprise engaged in commerce
 18 or in the production of goods for commerce, the em-
 19 ployer of such employee shall provide such employee
 20 with an initial disclosure containing the information
 21 described in paragraph (3).

22 “(2) MODIFICATION DISCLOSURES.—Not later
 23 than 15 days after the date on which any of the in-
 24 formation described in paragraph (3) changes with
 25 respect to an employee described in paragraph (1),

1 the employer of such employee shall provide the em-
2 ployee with a modification disclosure containing all
3 the information described in paragraph (3).

4 “(3) INFORMATION.—The information de-
5 scribed in this paragraph shall include—

6 “(A) the rate of pay and whether the em-
7 ployee is paid by the hour, shift, day, week, or
8 job, or by salary, piece rate, commission, or
9 other form of compensation;

10 “(B) an indication of whether the employee
11 is being classified by the employer as an em-
12 ployee subject to the maximum hours and over-
13 time compensation requirements of section 7 or
14 as an employee exempt from such requirements
15 as provided under section 13;

16 “(C) the name of the employer and any
17 other name used by the employer to conduct
18 business; and

19 “(D) the physical address of and telephone
20 number for the employer’s main office or prin-
21 ciple place of business, and a mailing address
22 for such office or place of business if the mail-
23 ing address is different than the physical ad-
24 dress.

25 “(b) PAYSTUBS.—

1 “(1) IN GENERAL.—Every employer shall pro-
2 vide each employee of such employer who in any
3 workweek is engaged in commerce or in the produc-
4 tion of goods for commerce, or is employed in an en-
5 terprise engaged in commerce or in the production
6 of goods for commerce, a paystub that corresponds
7 to work performed by the employee during the appli-
8 cable pay period and contains the information re-
9 quired under paragraph (3) in any form provided
10 under paragraph (2).

11 “(2) FORMS.—A paystub required under this
12 subsection shall be a written statement and may be
13 provided in any of the following forms:

14 “(A) As a separate document accom-
15 panying any payment to an employee for work
16 performed during the applicable pay period.

17 “(B) In the case of an employee who re-
18 ceives paychecks from the employer, as a de-
19 tachable statement accompanying each pay-
20 check.

21 “(C) As a digital document provided
22 through electronic communication, subject to
23 the employee affirmatively consenting to receive
24 the paystubs in this form.

1 “(3) CONTENTS.—Each paystub shall contain
2 all of the following information:

3 “(A) The name of the employee.

4 “(B) In the case of an employee who is
5 paid an hourly wage, an employee who is em-
6 ployed at piece rates, or an employee who is
7 paid a salary and is not exempt from the over-
8 time requirements of section 7, the total num-
9 ber of hours worked by the employee, including
10 the number of hours worked per workweek, dur-
11 ing the applicable pay period.

12 “(C) The total gross and net wages paid,
13 and, in the case of an employee who is paid an
14 hourly wage, an employee who is employed at
15 piece rates, or an employee who is paid a salary
16 and is not exempt from the overtime require-
17 ments of section 7, the rate of pay for each
18 hour worked during the applicable pay period.

19 “(D) In the case of an employee who is
20 paid a salary in lieu of an hourly wage, the
21 amount of salary paid during the applicable pay
22 period.

23 “(E) In the case of an employee employed
24 at piece rates, the number of piece rate units
25 earned, the applicable piece rates, and the total

1 amount paid to the employee for the applicable
2 pay period in accordance with such piece rates.

3 “(F) The rate of pay of the employee dur-
4 ing the applicable pay period and an expla-
5 nation of the basis for such rate.

6 “(G) The number of overtime hours
7 worked by the employee during the applicable
8 pay period and the compensation required
9 under section 7 that is provided to the employee
10 for such hours.

11 “(H) Any additional compensation pro-
12 vided to the employee during the applicable pay
13 period, with an explanation of each type of com-
14 pensation, including any allowances or reim-
15 bursements such as amounts related to meals,
16 clothing, lodging, or any other item, and any
17 cost to the employee associated with such allow-
18 ance or reimbursements.

19 “(I) Itemized deductions from the gross in-
20 come of the employee during the applicable pay
21 period, and an explanation for each deduction.

22 “(J) The date that is the beginning of the
23 applicable pay period and the date that is the
24 end of such applicable pay period.

1 “(K) The name of the employer and any
2 other name used by the employer to conduct
3 business.

4 “(L) The name and phone number of a
5 representative of the employer for contact pur-
6 poses.

7 “(M) Any additional information that the
8 Secretary reasonably requires to be included
9 through notice and comment rulemaking.

10 “(c) FINAL PAYMENTS.—

11 “(1) IN GENERAL.—Not later than 14 days
12 after an individual described in paragraph (4) termi-
13 nates employment with an employer (by action of
14 the employer or the individual), or on the date on
15 which such employer pays other employees for the
16 pay period during which the individual so terminates
17 such employment, whichever date is earlier, the em-
18 ployer shall provide the individual with a final pay-
19 ment, by compensating such individual for any un-
20 compensated hours worked or benefits incurred by
21 the individual as an employee for the employer.

22 “(2) CONTINUING WAGES.—An employer who
23 violates the requirement under paragraph (1) shall,
24 for each day, not to exceed 30 days, of such violation
25 provide the individual described in paragraph (4)

1 with compensation at a rate that is equal to the reg-
2 ular rate of compensation to which such individual
3 was entitled when such individual was an employee
4 of such employer.

5 “(3) LIMITATION.—Notwithstanding para-
6 graphs (1) and (2), any individual described in para-
7 graph (4) who intentionally avoids receiving a final
8 payment described in paragraph (1), or who refuses
9 to receive the final payment when fully tendered, re-
10 sulting in the employer violating the requirement
11 under such paragraph, shall not be entitled to the
12 compensation provided under paragraph (2) for the
13 time during which the individual so avoids final pay-
14 ment.

15 “(4) INDIVIDUAL.—An individual described in
16 this paragraph is an individual who was employed by
17 the employer, and through such employment, in any
18 workweek, was engaged in commerce or in the pro-
19 duction of goods for commerce, or was employed in
20 an enterprise engaged in commerce or in the produc-
21 tion of goods for commerce.”.

22 **SEC. 102. RIGHT TO FULL COMPENSATION.**

23 Section 6 of the Fair Labor Standards Act of 1938
24 (29 U.S.C. 206) is amended by adding at the end the fol-
25 lowing:

1 “(h) RIGHT TO FULL COMPENSATION.—

2 “(1) IN GENERAL.—In the case of an employ-
 3 ment contract or other employment agreement, in-
 4 cluding a collective bargaining agreement, that speci-
 5 fies that an employer shall compensate an employee
 6 (who is described in paragraph (2)) at a rate that
 7 is higher than the rate provided under subsection
 8 (a), the employer shall compensate such employee at
 9 the rate specified in such contract or other employ-
 10 ment agreement.

11 “(2) EMPLOYEE ENGAGED IN COMMERCE.—The
 12 requirement under paragraph (1) shall apply with
 13 respect to any employee who in any workweek is en-
 14 gaged in commerce or in the production of goods for
 15 commerce, or is employed in an enterprise engaged
 16 in commerce or in the production of goods for com-
 17 merce.”.

18 **SEC. 103. CIVIL AND CRIMINAL ENFORCEMENT.**

19 (a) DAMAGES.—The Fair Labor Standards Act of
 20 1938 (29 U.S.C. 201 et seq.), as amended by section 102,
 21 is further amended—

22 (1) in section 4(f) (29 U.S.C. 204(f)), in the
 23 third sentence—

24 (A) by striking “minimum”; and

1 (B) by striking “and liquidated damages”
2 and inserting “damages, and interest”;

3 (2) in section 6(d)(3) (29 U.S.C. 206(d)(3)) by
4 striking “minimum”;

5 (3) in section 16 (29 U.S.C. 216)—

6 (A) in subsection (b)—

7 (i) by striking “minimum” each place
8 it appears;

9 (ii) in the first sentence, by striking
10 “and in an additional equal amount as liq-
11 uidated damages” and inserting “, an ad-
12 ditional amount as damages that is equal
13 to (subject to the second sentence of this
14 subsection) 2 times such amount of unpaid
15 wages or unpaid overtime compensation,
16 and the amount of any interest on such
17 unpaid wages or unpaid overtime com-
18 pensation accrued at the prevailing rate”;

19 (iii) in the second sentence, by strik-
20 ing “wages lost and an additional equal
21 amount as liquidated damages” and insert-
22 ing “wages lost, including any unpaid
23 wages or any unpaid overtime compensa-
24 tion, an additional amount as damages
25 that is equal to 3 times the amount of

1 such wages lost, and the amount of any in-
 2 terest on such wages lost accrued at the
 3 prevailing rate”;

4 (iv) by striking the fourth sentence;
 5 and

6 (v) by adding at the end the following:
 7 “Notwithstanding chapter 1 of title 9,
 8 United States Code (commonly known as
 9 the ‘Federal Arbitration Act’) or any other
 10 law, the right to bring an action, including
 11 a collective action, in court under this sec-
 12 tion cannot be waived by an employee as a
 13 condition of employment or in a pre-dis-
 14 pute arbitration agreement.”; and

15 (B) in subsection (c)—

16 (i) by striking “minimum” each place
 17 the term appears;

18 (ii) in the first sentence, by striking
 19 “and an additional equal amount as liq-
 20 uidated damages” and inserting “, an ad-
 21 ditional amount as damages that is equal
 22 to (subject to the third sentence of this
 23 subsection) 2 times such amount of unpaid
 24 wages or unpaid overtime compensation,
 25 and any interest on such unpaid wages or

1 unpaid overtime compensation accrued at
2 the prevailing rate”;

3 (iii) in the second sentence, by strik-
4 ing “and an equal amount as liquidated
5 damages.” and inserting “, an additional
6 amount as damages that is equal to (sub-
7 ject to the third sentence of this sub-
8 section) 2 times such amount of unpaid
9 wages or unpaid overtime compensation,
10 and any interest on such unpaid wages or
11 unpaid overtime compensation accrued at
12 the prevailing rate. In the event that the
13 employer violates section 15(a)(3), the Sec-
14 retary may bring an action in any court of
15 competent jurisdiction to recover the
16 amount of any wages lost, including any
17 unpaid wages or any unpaid overtime com-
18 pensation, an additional amount as dam-
19 ages that is equal to 3 times the amount
20 of such wages lost, and any interest on
21 such wages lost accrued at the prevailing
22 rate.”; and

23 (iv) in the fourth sentence, by striking
24 “or liquidated”; and

1 (4) in section 17 (29 U.S.C. 217), by striking
2 “minimum”.

3 (b) CIVIL FINES.—Section 16(e) of the Fair Labor
4 Standards Act of 1938 (29 U.S.C. 216(e)) is amended—

5 (1) by striking paragraph (2) and inserting the
6 following:

7 “(2)(A) Subject to subparagraph (B), any person
8 who violates section 6 or 7, relating to wages, shall be
9 subject to a civil fine that is not to exceed \$2,000 per
10 each employee affected for each initial violation of such
11 section.

12 “(B) Any person who repeatedly or willfully violates
13 section 6 or 7, relating to wages, shall be subject to a
14 civil fine that is not to exceed \$10,000 per each employee
15 affected for each such violation.”; and

16 (2) by adding at the end the following:

17 “(6) Any person who violates subsection (a) or (b)
18 of section 5 shall—

19 “(A) for the first violation of such subsection,
20 be subject to a civil fine that is not to exceed \$50
21 per each employee affected; and

22 “(B) for each subsequent violation of such sub-
23 section, be subject to a civil fine that is not to ex-
24 ceed \$100 per each employee affected.

25 “(7) Any person who violates section 11(c) shall—

1 “(A) for the first violation, be subject to a civil
2 fine that is not to exceed \$1,000 per each employee
3 affected; and

4 “(B) for each subsequent violation, be subject
5 to a civil fine that is not to exceed \$5,000 per each
6 employee affected.”.

7 (c) CRIMINAL PENALTIES.—Section 16(a) of the Fair
8 Labor Standards Act of 1938 (29 U.S.C. 216(a)) is
9 amended—

10 (1) by striking “Any person” and inserting “(1)
11 Any person”;

12 (2) in the first sentence, by striking “\$10,000”
13 and inserting “\$10,000 per each employee affected”;

14 (3) in the second sentence, by striking “No per-
15 son” and inserting “Subject to paragraph (2), no
16 person”; and

17 (4) by adding at the end the following:

18 “(2)(A) Notwithstanding any other provision of this
19 Act, the Secretary shall refer any case involving a covered
20 offender described in subparagraph (B) to the Department
21 of Justice for prosecution.

22 “(B) A covered offender described in this subpara-
23 graph is an offender who willfully violates each of the fol-
24 lowing:

1 “(i) Section 11(c) by falsifying any records de-
2 scribed in such section.

3 “(ii) Section 6 or 7, relating to wages.

4 “(iii) Section 15(a)(3).”.

5 **SEC. 104. RECORDKEEPING.**

6 Section 11(c) of the Fair Labor Standards Act of
7 1938 (29 U.S.C. 211(c)) is amended by adding at the end
8 the following: “In the event that an employee requests an
9 inspection of the records described in this subsection that
10 pertain to such employee, the employer shall provide the
11 employee with a copy of the records for a period of up
12 to 5 years prior to such request being made. Not later
13 than 21 days after an employee requests such an inspec-
14 tion, the employer shall comply with the request. In the
15 event that an employer violates this subsection, resulting
16 in a lack of a complete record of an employee’s hours
17 worked or wages owed, notwithstanding whether the em-
18 ployer or employee is responsible for maintaining the em-
19 ployer’s official records, any evidence of the hours worked
20 or wages owed set forth by the employee, including evi-
21 dence of a documentary, testimonial, representative, or
22 statistical nature, that is sufficient to establish to a finder
23 of fact a just and reasonable inference that the employee
24 was not fully compensated at the rate required by this Act,
25 including under section 6(h) as applicable, for all of the

1 work that the employee performed for the employer shall
 2 establish a rebuttable presumption that the employer vio-
 3 lated section 6 or 7 by failing to fully compensate the em-
 4 ployee at the required rate for all work performed by the
 5 employee for the employer and a rebuttable presumption
 6 that the evidence set forth by the employee regarding the
 7 specific number of hours worked by the employee for the
 8 employer for which the employee was not compensated and
 9 the wage rate for each of those hours is accurate. The
 10 employer may only overcome the rebuttable presumptions
 11 described in this subsection by providing clear and con-
 12 vincing evidence that the employee’s evidence is inac-
 13 curate.”.

14 **TITLE II—AMENDMENTS TO THE** 15 **PORTAL-TO-PORTAL ACT OF 1947**

16 **SEC. 201. INCREASING AND TOLLING STATUTE OF LIMITA-** 17 **TIONS.**

18 Section 6 of the Portal-to-Portal Act of 1947 (29
 19 U.S.C. 255) is amended—

20 (1) in the matter preceding subsection (a)—

21 (A) by striking “minimum”; and

22 (B) by striking “liquidated damages” and
 23 inserting “other damages”;

24 (2) in subsection (a)—

1 (A) by striking “may be commenced within
 2 two years” and inserting “may be commenced
 3 within 4 years”;

4 (B) by striking “unless commenced within
 5 two years” and inserting “unless commenced
 6 within 4 years”; and

7 (C) by striking “may be commenced within
 8 three years” and inserting “may be commenced
 9 within 5 years”;

10 (3) in subsection (d), by striking the period and
 11 inserting “; and”; and

12 (4) by adding at the end the following:

13 “(e) with respect to the running of any statutory pe-
 14 riod of limitation described in this section, the running
 15 of such statutory period shall be deemed suspended during
 16 the period beginning on the date on which the Secretary
 17 of Labor notifies an employer of an initiation of an inves-
 18 tigation or enforcement action and ending on the date on
 19 which the Secretary notifies the employer that the matter
 20 has been officially resolved by the Secretary.”.

21 **TITLE III—WAGE THEFT PRE-**
 22 **VENTION AND WAGE RECOV-**
 23 **ERY GRANT PROGRAM**

24 **SEC. 301. DEFINITIONS.**

25 In this title:

1 (1) ADMINISTRATOR.—The term the “Adminis-
2 trator” means the Administrator of the Wage and
3 Hour Division of the Department of Labor.

4 (2) COMMUNITY PARTNER.—The term “com-
5 munity partner” means any stakeholder with a com-
6 mitment to enforcing wage and hour laws and pre-
7 venting abuses of such laws, including any—

8 (A) State department of labor;

9 (B) attorney general of a State, or other
10 similar authorized official of a political subdivi-
11 sion thereof;

12 (C) law enforcement agency;

13 (D) consulate;

14 (E) employee or advocate of employees, in-
15 cluding a labor organization, community and
16 faith-based organization, business association,
17 or nonprofit legal aid organization;

18 (F) academic institution that plans, coordi-
19 nates, and implements programs and activities
20 to prevent wage and hour violations and recover
21 unpaid wages, damages, and penalties; or

22 (G) any municipal agency responsible for
23 the enforcement of local wage and hour laws.

1 (3) COMMUNITY PARTNERSHIP.—The term
2 “community partnership” means a partnership be-
3 tween—

4 (A) a working group consisting of commu-
5 nity partners; and

6 (B) the Department of Labor.

7 (4) ELIGIBLE ENTITY.—The term “eligible enti-
8 ty” means an entity that is any of the following:

9 (A) A nonprofit organization, including a
10 community-based organization, faith-based or-
11 ganization, or labor organization, that provides
12 services and support to employees, including as-
13 sisting such employees in recovering unpaid
14 wages.

15 (B) An employer.

16 (C) A business association.

17 (D) An institution of higher education, as
18 defined by section 101 of the Higher Education
19 Act of 1965 (20 U.S.C. 1001).

20 (E) A partnership between any of the enti-
21 ties described in subparagraphs (A) through
22 (D).

23 (5) EMPLOY; EMPLOYEE; EMPLOYER.—The
24 terms “employ”, “employee”, and “employer” have

1 the meanings given such terms in section 3 of the
2 Fair Labor Standards Act of 1938 (29 U.S.C. 203).

3 (6) SECRETARY.—The term “Secretary” means
4 the Secretary of Labor.

5 (7) STRATEGIC ENFORCEMENT.—The term
6 “strategic enforcement” means the process by which
7 the Secretary—

8 (A) targets highly noncompliant industries,
9 as identified by the Secretary, using industry-
10 specific structures to influence, and ultimately
11 reform, networks of interconnected employers;

12 (B) analyzes regulatory regimes under
13 which specific industries operate; and

14 (C) modifies the enforcement approach of
15 such regulatory regimes in order to ensure the
16 greatest impact.

17 (8) WAGE AND HOUR LAW.—The term “wage
18 and hour law” means any Federal law enforced by
19 the Wage and Hour Division of the Department of
20 Labor, including any provision of this Act enforced
21 by such division.

22 (9) WAGE AND HOUR VIOLATION.—The term
23 “wage and hour violation” refers to any violation of
24 a Federal law enforced by the Wage and Hour Divi-

1 sion of the Department of Labor, including any pro-
 2 vision of this Act enforced by such division.

3 **SEC. 302. WAGE THEFT PREVENTION AND WAGE RECOVERY**
 4 **GRANT PROGRAM.**

5 (a) IN GENERAL.—The Secretary, acting through the
 6 Administrator, shall provide grants to eligible entities to
 7 assist such entities in enhancing the enforcement of wage
 8 and hour laws, in accordance with this section and con-
 9 sistent with the purposes of this Act.

10 (b) GRANTS.—A grant provided under this section
 11 shall be designed to—

12 (1) support an eligible entity in establishing
 13 and supporting the activities described in subsection
 14 (c)(1); and

15 (2) develop community partnerships to expand
 16 and improve cooperative efforts between enforcement
 17 agencies and members of the community to—

18 (A) prevent and reduce wage and hour vio-
 19 lations; and

20 (B) assist employees in recovering back
 21 pay for any such violations.

22 (c) USE OF FUNDS.—

23 (1) PERMISSIBLE ACTIVITIES.—The grants de-
 24 scribed in this section shall assist eligible entities in
 25 establishing and supporting activities that include—

1 (A) disseminating information and con-
2 ducting outreach and training to educate em-
3 ployees about their rights under wage and hour
4 laws;

5 (B) conducting educational training for
6 employers about their obligations under wage
7 and hour laws;

8 (C) conducting orientations and trainings
9 jointly with officials of the Wage and Hour Di-
10 vision of the Department of Labor;

11 (D) providing assistance to employees in
12 filing claims of wage and hour violations;

13 (E) assisting enforcement agencies in con-
14 ducting investigations, including in the collec-
15 tion of evidence and recovering back pay;

16 (F) monitoring compliance with wage and
17 hour laws;

18 (G) performing joint visitations to work-
19 sites that violate wage and hour laws with offi-
20 cials from the Wage and Hour Division of the
21 Department of Labor;

22 (H) establishing networks for education,
23 communication, and participation in the work-
24 place and community;

1 (I) evaluating the effectiveness of pro-
 2 grams designed to prevent wage and hour viola-
 3 tions and enforce wage and hour laws;

4 (J) recruiting and hiring of staff and vol-
 5 unteers;

6 (K) production and dissemination of out-
 7 reach and training materials; and

8 (L) any other activities as the Secretary
 9 may reasonably prescribe through notice and
 10 comment rulemaking.

11 (2) PROHIBITED ACTIVITIES.—Notwithstanding
 12 paragraph (1), an eligible entity receiving a grant
 13 under this section may not use the grant funds for
 14 any purpose reasonably prohibited by the Secretary
 15 through notice and comment rulemaking.

16 (d) TERM OF GRANTS.—Each grant made under this
 17 section shall be available for expenditure for a period that
 18 is not to exceed 3 years.

19 (e) APPLICATIONS.—

20 (1) IN GENERAL.—An eligible entity seeking a
 21 grant under this section shall submit an application
 22 for such grant to the Secretary in accordance with
 23 this subsection.

24 (2) PARTNERSHIPS.—In the case of an eligible
 25 entity that is a partnership described in section

1 301(4)(E), the eligible entity may submit a joint ap-
2 plication that designates a single entity as the lead
3 entity for purposes of receiving and disbursing
4 funds.

5 (3) CONTENTS.—An application under this sub-
6 section shall include—

7 (A) a description of a plan for the program
8 that the eligible entity proposes to carry out
9 with a grant under this section, including a
10 long-term strategy and detailed implementation
11 plan that reflects expected participation of, and
12 partnership with, community partners;

13 (B) information on the prevalence of wage
14 and hour violations in each community or State
15 of the eligible entity;

16 (C) information on any industry or geo-
17 graphic area targeted by the plan for such pro-
18 gram;

19 (D) information on the type of outreach
20 and relationship building that will be conducted
21 under such program;

22 (E) information on the training and edu-
23 cation that will be provided to employees and
24 employers under such program; and

1 (F) the method by which the eligible entity
2 will measure results of such program.

3 (f) SELECTION.—

4 (1) COMPETITIVE BASIS.—In accordance with
5 this subsection, the Secretary shall, on a competitive
6 basis, select grant recipients from among eligible en-
7 tities that have submitted an application under sub-
8 section (e).

9 (2) PRIORITY.—In selecting grant recipients
10 under paragraph (1), the Secretary shall give pri-
11 ority to eligible entities that—

12 (A) serve employees in any industry or ge-
13 ographic area that is most highly at risk for
14 noncompliance with wage and hour violations,
15 as identified by the Secretary; and

16 (B) demonstrate past and ongoing work to
17 prevent wage and hour violations or to recover
18 unpaid wages.

19 (3) OTHER CONSIDERATIONS.—In selecting
20 grant recipients under paragraph (1), the Secretary
21 shall also consider—

22 (A) the prevalence of ongoing community
23 support for each eligible entity, including finan-
24 cial and other contributions; and

1 (B) the eligible entity's past and ongoing
2 partnerships with other organizations.

3 (g) MEMORANDA OF UNDERSTANDING.—

4 (1) IN GENERAL.—Not later than 60 days after
5 receiving a grant under this section, the grant recipi-
6 ent shall negotiate and finalize with the Secretary a
7 memorandum of understanding that sets forth spe-
8 cific goals, objectives, strategies, and activities that
9 will be carried out under the grant by such recipient
10 through a community partnership.

11 (2) SIGNATURES.—A representative of the
12 grant recipient (or, in the case of a grant recipient
13 that is an eligible entity described in section
14 301(4)(E), a representative of each entity that
15 composes the grant recipient) and the Secretary
16 shall sign the memorandum of understanding under
17 this subsection.

18 (3) REVISIONS.—The memorandum of under-
19 standing under this subsection shall be reviewed and
20 revised by the grant recipient and the Secretary each
21 year of the duration of the grant.

22 (h) PERFORMANCE EVALUATIONS.—

23 (1) IN GENERAL.—Each grant recipient under
24 this section shall develop procedures for reporting,
25 monitoring, measuring, and evaluating the activities

1 of each program or project funded under this sec-
2 tion.

3 (2) GUIDELINES.—The procedures required
4 under paragraph (1) shall be in accordance with
5 guidelines established by the Secretary.

6 (i) REVOCATION OR SUSPENSION OF FUNDING.—If
7 the Secretary determines that a recipient of a grant under
8 this section is not in compliance with the terms and re-
9 quirements of the memorandum of understanding under
10 subsection (g), the Secretary may revoke or suspend (in
11 whole or in part) the funding of the grant.

12 (j) USE OF COMPONENTS.—In addition to the Wage
13 and Hour Division, the Secretary (acting through the Ad-
14 ministrator) may use any division or agency of the Depart-
15 ment of Labor in carrying out this title.

16 **SEC. 303. GAO STUDY.**

17 (a) IN GENERAL.—The Comptroller General of the
18 United States shall conduct a study to identify successful
19 programs carried out by grants under section 302, and
20 the elements, policies, or procedures of such programs that
21 can be replicated by other programs carried out by grants
22 under such section.

23 (b) REPORT.—Not later than 3 years after the date
24 of enactment of this Act, the Comptroller General of the
25 United States shall submit a report to the Secretary and

1 Congress containing the results of the study conducted
 2 under subsection (a).

3 (c) USE OF INFORMATION.—The Secretary shall use
 4 information contained in the report submitted under sub-
 5 section (b)—

6 (1) to improve the quality of community part-
 7 nership programs assisted or carried out under this
 8 title that are in existence as of the publication of the
 9 report; and

10 (2) to develop models for new community part-
 11 nership programs to be assisted or carried out under
 12 this title.

13 **SEC. 304. AUTHORIZATION OF APPROPRIATIONS.**

14 There is authorized to be appropriated \$50,000,000
 15 for fiscal year 2018 and for each subsequent fiscal year
 16 through fiscal year 2021, to remain available until ex-
 17 pended, to carry out the grant program under section 302.

18 **TITLE IV—REGULATIONS AND** 19 **EFFECTIVE DATE**

20 **SEC. 401. REGULATIONS.**

21 Not later than 1 year after the date of enactment
 22 of this Act, the Secretary of Labor shall promulgate such
 23 regulations as are necessary to carry out this Act, and
 24 the amendments made by this Act.

1 **SEC. 402. EFFECTIVE DATE.**

2 The amendments made by titles I and II shall take
3 effect on the date that is the earlier of—

4 (1) the date that is 6 months after the date on
5 which the final regulations are promulgated by the
6 Secretary of Labor under section 401; and

7 (2) the date that is 18 months after the date
8 of enactment of this Act.

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