

AB 1701 IS OUR BEST WEAPON AGAINST WAGE THEFT



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What does the underground economy look like?

We all know how developers hire general contractors to commit wage theft through the buffer of unscrupulous subcontractors, sometimes four levels down, who cheat workers out of their money. They fail to pay minimum wage or overtime; sometimes they fail to pay anything at all. Meanwhile, the owners look the other way and count their profits.

To put a stop to it, the State Building and Construction Trades Council joined with the Carpenters and other labor groups to convince lawmakers to pass Assembly Bill 1701, a straightforward proposal to stop wage theft.

As the legislative debate heated up in Sacramento, events happening at the same time broke into the news—and could be labeled “Exhibits A, B and C” for our final arguments.

\$6.3 Million in Wage Theft

Just before the Legislature reconvened on Aug. 21, the state Labor Commissioner’s Office filed a \$6.3 million wage theft lawsuit against a Glendale subcontractor. In the same time frame, federal agents arrested a Hayward man on “forced labor” charges involving as many as a dozen workers. Meanwhile, dozens of other workers went to court to obtain an estimated \$500,000 in judgments against a San Diego subcontractor, again for non-payment of wages.

Those are just three examples of the underground economy in the construction industry, where wage theft is an everyday occurrence and workers are victimized by subcontractors who do the dirty work for the bosses up the ladder.

It’s a world where workers seemingly don’t even exist, except to be cheated. Unscrupulous businesses don’t pay their taxes (the state’s Little Hoover Commission says they short California somewhere between \$8.5 billion a \$10 billion a year). They don’t pay workers comp, or state disability.

You cannot have a society where workers are being paid sub-minimum wages under the table and nobody pays taxes to support schools

and build roads, airports and a High Speed Rail system. In the underground economy, only one segment profits.

Developers and general contractors get rich while subcontractors steal the wages of the workers.

One way the subs do this is to deliberately misclassify their employees as “independent contractors.” This is illegal and a convenient way to get around paying minimum wage, overtime and payroll taxes.

Another way they cheat is to close up shop in the middle of a job and go out of business, as they do by the thousands, every quarter. These disappearing acts leave workers completely unpaid, at an annual cost to the workforce of hundreds of millions of dollars. One study by the Economic Roundtable in 2014 put the loss to construction workers in that year alone at \$1.2 billion. The bulk of these lost earnings are never recovered.

We call this wage theft, and this year in the Legislature, we joined with the entire labor movement in California to hold these general contractors accountable through AB 1701. It’s a simple bill with a simple message: If you work, you should get paid, and if you get cheated, the business in charge of the operation must see to it that you are made whole.

Such simplicity, however, disturbed the building industry.

They bragged about how they were going to spend millions to defeat AB 1701. As the bill made its way to the floor of the Legislature, we documented how the opponents collected \$3.6 million from some of the biggest home builders in the state to fund a dishonest campaign to influence lawmakers.

Unfortunately for their side, the ugly truth about the underground economy broke out right in the middle of their lobbying campaign.

While they were littering the Internet with their digital ads, federal prosecutors in San Francisco announced the arrest of the Hayward subcontractor who procured undocumented workers for construction jobs and paid the men below the minimum wage.

Slavery in Hayward

The subcontractor, Job Torres Hernandez, ran his operation from July 2015 until federal agents raided him two days after the legislative session got under way. Federal authorities said that besides cheating his workers out of their wages, Hernandez stowed them at night in a warehouse that was kept locked from the outside.

The building had no running water.

The newspapers in San Francisco called it a “forced labor” operation.

I call it slavery and an extreme example of how the underground economy results in the theft of workers’ wages.

This was not the only case that blew up in the contractors’ faces while they blew smoke at the Capitol. A week before the legislators gathered for their final week of work in this year’s session, state Labor Commissioner Julie Su filed the \$6.3 million wage theft lawsuit against the Glendale subcontractor, Calcrete Construction Co., for its exploitation of 249 workers—misclassifying them as independent contractors and outright failing to pay them.

In other words, wage theft.

Not Paid for 44 Hours

Throughout the summer, and continuing even after lawmakers reconvened, more than 50 workers filed actions in San Diego Superior Court to obtain judgments against Heritage Construction. They’d already proven their cases with the state Labor Commissioner, and now they were going to court to get their money. They are workers like Victor Gonzalez, a dry-wall hanger who had not been paid for 44 hours of work because Heritage Construction “did not have the money to pay his wages.” The company didn’t even show up for the Labor Commissioner’s hearing.

Who knows if Mr. Gonzalez will ever be paid the money that is owed to him? Most workers are never able to recover it.

The housing crisis got most of the attention in Sacramento this year, and there were several bills we supported as part of the state’s effort to fund more affordable housing and to streamline the permitting process so we can start construction.

Don’t Abuse Workers

But as representatives of workers, we know that investment in housing and the creation of jobs carries no meaning if we allow the abuse and exploitation of working people in the achievement of some other social goal.

That’s why we made AB 1701 our top legislative priority this year.

The home builders put their money into the media to kill it. Our side countered with workers and union reps who rallied inside and outside the Capitol. We filled the gallery for the Senate’s vote that passed the bill, and now we wait for the governor to sign it.

We are confident he will make the right decision, on behalf of the workers locked into the warehouse in Hayward, the 249 who weren’t paid in Glendale, the dozens in San Diego and the hundreds of thousands—the millions—over the decades in California who have been victims of wage theft in the underground economy.

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