

Wage Theft in Ireland? An Assessment of Minimum Wage and Working Time Legal Complaints

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The law and precarious jobs

- O'Sullivan, M. (2023) The Expansion of Wage Theft Laws in Common Law Countries: Should Ireland be Next?, *Industrial Law Journal*, 52(2): 342-370.
- O'Sullivan M. and MacMahon, J. (2022) Migrant Workers and Wage Theft: Is Legal Action An Effective Form Of Collective Action?' *Industrial Law Journal*, 51(4): 927-954.
- MacMahon, J. & O'Sullivan, M. Are we there yet? Regulation on Zero Hours & Casual Work in Ireland, *Comparative Labor Law & Policy Journal*, forthcoming.
- O'Sullivan M. The Law, Political Contestation, and Minimum Wage Regulation in Ireland: An Historical Perspective (working paper)



Crime & Law

‘Car wash slavery’ is latest Irish trafficking problem

Gangs set up car washes on vacant lots, are paid cash, and can quickly move on

CONGRESS CALLS FOR CRIMINALISATION OF 'WAGE THEFT'

The purpose of law

- Long running debate
- Evolution in Marxist thought: from the law as a creation of capitalism to “an arena of struggle”
- “No natural legal order” (Fudge)
- Objective of law is to prevent subordination “from becoming domination” but questions of relevancy in modern labour markets (Davidov)

Wage theft internationally

- Contested term
- Forms: Pay, unpaid labour time, employment status, illegal deductions, tips
- Precarious jobs
- Legal remedies & penalties
 - ‘self-perpetuating enforcement gap’
 - Deterrence v compliance models of enforcement

Underpayments in Ireland

- NMW non-compliance
- WRC labour inspection
- SIPTU survey: Early years and childcare practitioners: 66% unpaid work; 49% did not get rest breaks, 84% work training own time
- MRCI study: 104 migrants: 44% received less than the NMW; 61% unpaid work; 82% not compensated for Sunday working.
- UNITE, Curran, & Fáilte Ireland surveys on hospitality workers

Research question & Methodology

- What is effectiveness of existing employment laws in providing remedies for workers?
- Analysis of Minimum Wage Act 2000 (NMW) and Organisation of Working Time Act 1997 (OWT)
 - Design
 - 215 decisions of Workplace Relations Commission & Labour Court

Design of the law

- Positive aspects of laws
 - Minimum rights, record keeping, onus on employers to show compliance
 - Expanded definition of an employer
 - Redress mechanism
 - Labour inspection system
- Strengthened by aggregate body of employment and company legislation

Characteristics of complainants

- NMW adjudicated complaints
 - Almost 70% from 5 sectors
 - Representation?
- OWT adjudicated complaints
 - 39% from 3 sectors
- Worker vulnerability
 - Language, employment information, multiple employment rights complaints

	Worker success	Average award	Legal Issues
NMW Act	17%	€3900 exc. outlier	Time limits Statement of pay Identifying the employer Illegal contracts Penalties
OWT Act	49%	€1500	Time limits Record keeping Sunday pay Penalties

Conclusions

- Radically new employment laws may be unnecessary
- Recommended legal changes
- Criminalisation alone is not a panacea for wage theft
- Individualistic law very limited policy measure for imbalance in power
- Age-old argument: Enforcement more important than high MW
- Mobilisation on the law reflective of deregulated industrial relations (Wilson, 2017)
- Can the law be a solution to exploitation?