

## Migrant Workers And Wage Theft

Why government and business systems are failing and what needs to change



The world's 169 million migrant workers are a critical part of the global economy.

- ▶ Migrant workers often fill the most physically demanding, dangerous and low-paid jobs in essential industries across the world. They frequently work in the shadows -- building roads, picking fruit, cleaning homes, serving food and caring for the elderly.
- ▶ In almost every country, wage theft and other forms of exploitation of migrant workers is endemic.

### Migrant Workers Make Up:

18.4%  
of Europe's  
Workers



20%  
of North  
America's  
Workers



41.4%  
of Arab  
States'  
Workers





## What is wage theft?

Wage theft generally refers to an employer's failure to pay a worker the wages they are entitled under law or an employment contract, in full and on time. There is no agreed definition of wage theft; it may be used to refer to intentional nonpayment (which could amount to a criminal offence), negligent nonpayment (taking insufficient care to ensure workers are paid correctly and on time) or failure to promptly correct a genuine payment error.



## Why do employers systemically underpay migrant workers?

Businesses are under pressure to produce ever-cheaper goods and services, especially within global supply chains. Employers underpay migrant workers because it is an easy way to reduce their costs with very little risk they will ever be detected or held to account. Employers can be confident that few migrant workers will report exploitation or try to recover their wages. They also know that government regulators generally won't proactively detect or punish wage theft due to a lack of resources and political will. Very few migrant workers are members of trade unions, and in many countries, laws prohibit their participation in a union.



## How is wage theft related to forced labour and modern slavery?

The International Labour Organisation lists the withholding of wages as one of the core indicators of forced labour. In 2021, the ILO found that migrant workers are over three times more likely to be in situations of forced labour compared with non-migrant workers, with wage nonpayment as the most common form of coercion against workers.

Migrant workers who are not paid their full wages can quickly fall into debt bondage, where they are compelled to stay with an exploitative employer in order to repay recruitment fees and other debts. Wage theft is also recognized as an indicator of modern slavery in domestic laws of countries such as Australia and the United Kingdom.

## Wage theft can take many forms, including:

- ▶ Paying the worker less than the agreed contract rate or the legal minimum wage;
- ▶ Failure to pay overtime, or for the total number of hours of work performed;
- ▶ Failure to pay other legal entitlements such as severance pay or annual and sick leave;
- ▶ Making unlawful deductions from the worker's pay (e.g. related to accommodation or recruitment).





# Why don't migrant workers report wage theft or bring wage claims against employers?

- Migrant workers risk their immigration status if they take action to recover their wages.
- No country has systems that routinely and effectively enable migrant workers to recover unpaid wages.

In a 2018 national survey, Migrant Justice Institute found that among 2,250 migrant workers who were aware they were underpaid in Australia, 91% suffered wage theft in silence.

Of the 194 individuals who pursued a claim against their employer, 67% recovered nothing from the process.

## How do migration laws prevent workers from leaving exploitative employers or pursuing labour claims?

Any worker may be subject to coercion or wage theft, but migrant workers are uniquely vulnerable because their stay in the country is dependent on their employer. For migrant workers on employer-sponsored visas, pursuing a wage claim against their employer means risking their job and consequently their visa and legal status in the country where they work. For undocumented workers and others who have breached their visa conditions, reporting abuse means risking exposure to immigration authorities and deportation. Many businesses take advantage of this vulnerability, aware that many migrant workers cannot walk away from an employer who is refusing to pay the wages owed.

As a result, most workers will not take the risk of addressing wage theft during their employment. Once their contract ends, they generally won't have time to pursue a wage claim because they are usually required to leave the country immediately.

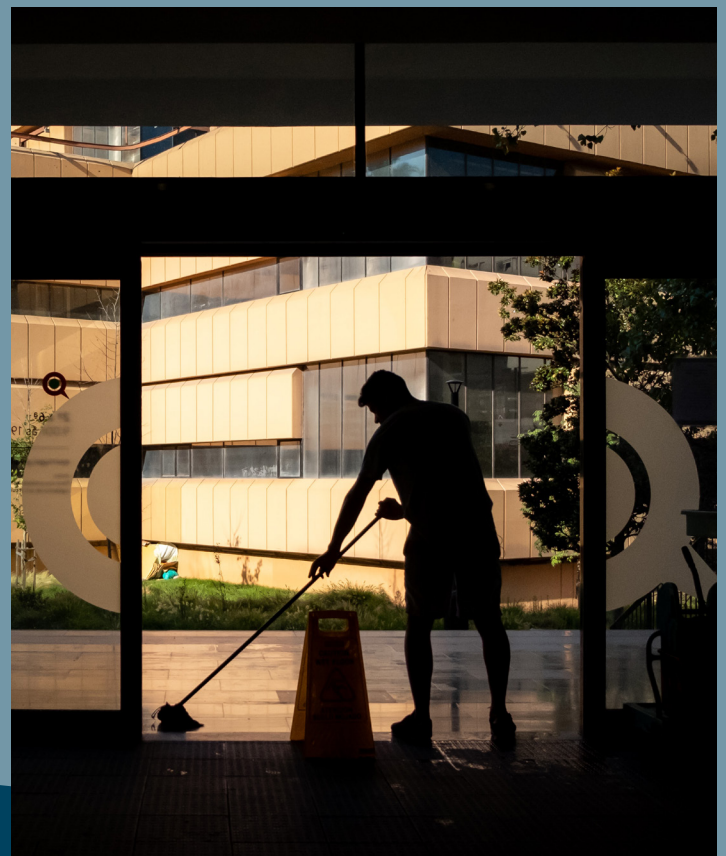
The COVID-19 pandemic exposed this injustice on a large scale when millions of migrant workers were sent home with no redress for outstanding wage payments. But this longstanding, systemic problem existed long before the pandemic.



## Why can't migrant workers just bring a claim at the end of their stay or once they are home?

In general, a legal claim can only be successfully pursued when the worker is still in the country of employment. But a case can take many months or years to be resolved, and few countries allow a migrant worker to remain and work in the country while their case is resolved. As a result, for most workers, it makes more sense to give up the claim and return home rather than incur more costs and deepen their debt while waiting for an often-unsatisfactory outcome.

Once the worker is home, their case in the country of employment will likely fail. Legal processes rarely enable a migrant worker to pursue a labour claim from their country of origin and few government or civil society entities provide assistance with transnational legal cases.



# Why don't labour claim systems work for migrant workers?

## Wage claim systems are stacked against migrant worker at every stage



### Initiating a Claim

The first obstacle is preparation and filing of a claim. Occasionally a migrant worker will have assistance from a civil society organization, union, or their own government. But, most of the time, the worker bears the burden of filing and winning a claim without assistance. It is the worker who must:

- Calculate their legal entitlements and the sum of money they are owed under the contract and local labour laws;
- Provide evidence proving the hours they worked and the amount they were not paid; and
- Prepare and lodge relevant documents with the appropriate government or court offices and serve them on the employer.



### Mediation

Government agencies generally do not allocate resources to investigate and pursue all migrant worker wage claims and may take a long time to respond or not take up cases at all.

In many countries, governments first require migrant workers to participate in mediation with the employer. Government mediators are often not trained specialists in labour law, and do not advocate for the worker. They may instead pressure the worker to settle the claim so the mediator can close the case. Migrant workers often feel compelled to accept an unsatisfactory settlement rather than walk away with nothing. In many cases, employers do not even attend the mediation or do not comply with agreed outcomes, and government agencies do not hold these employers to account.



### Administrative or Civil Court

If a claim proceeds to court or a labour tribunal, migrant workers bear the burden of proving that they weren't paid. This is the case even though it is the employer who has access to the formal records, more resources for legal advice and representation, and a better understanding of the legal and government frameworks and, for all these reasons, is more likely to be believed.

The process is regularly long and complicated – often taking many months or years.



### Enforcement of Judgement

Even if a worker successfully makes it through these hoops and a court orders an employer to pay, migrant workers often don't ever receive the money ordered in the judgment. Employers often vanish, declare bankruptcy, or simply refuse to pay. **The burden rests with the worker to initiate a new legal process to enforce the judgment**, or simply give up.

**Businesses in a supply chain are almost never held responsible for remedying wage theft if their supplier or contractor does not pay their workers.** Ultimately, migrant workers are left without recourse while businesses throughout a supply chain continue to profit from their unpaid labour.

# How can governments and business reduce risks and make wage claims work?

It is not acceptable that the debt continues to rest on the shoulders of migrant workers.

Now is the time for governments and business to implement reforms that work, learning from promising developments globally.

## For a start, governments must:

- ▶ Reform immigration laws and regulations to allow migrant workers to report wage theft and pursue claims without jeopardising their immigration status;
- ▶ Improve court and administrative wage claim processes to be more accessible to migrant workers, including facilitating remote claims for those who have returned home;
- ▶ Ensure meaningful commercial consequences for those businesses that ignore wage judgments, and hold corporations in the supply chain responsible for unpaid wages.

To hold businesses accountable for abuses and interrupt the cycle of exploitation, forced labour and modern slavery, governments must understand and address the reasons why existing institutions and policies continuously fail migrant workers.

There must also be a new expectation that businesses, rather than accepting wage theft as part of the business model, take responsibility for remedying migrant workers' unpaid labour in their supply chains.

In a recent report we identified a range of promising examples where governments are reducing the immigration risks of taking action and shifting the burden of recovering migrant workers' wages to where it morally belongs: on government and business.

For reports, videos and more information on how governments and business can improve migrant workers' access to justice for wage theft, visit [www.migrantjustice.org/wagethefta2j](http://www.migrantjustice.org/wagethefta2j)

