

Amherst Wage Theft Bylaws Summary

(Responsible Employer Bylaw, Tax Relief Agreement Bylaw, Wage & Tip Theft Bylaw)

What is Wage Theft?

Wage theft is a growing crisis in America today. Millions of workers are not being paid according to wage and hour laws. It can take many forms, including when workers are:

- Paid less than minimum wage;
- Not paid time and a half for overtime hours;
- Forced to work off the clock or having illegal fees deducted from paychecks;
- Paid cash wages;
- Not provided worker's compensation to protect them from workplace injuries;
- Misclassified as an independent contractors so that employers can avoid paying minimum wage, overtime, workman's compensation or payroll taxes.

What these Bylaws do?

Our goal is to ensure Amherst is not using public funds (through contracts or tax relief) or granting business licenses to companies with a history of wage theft abuse. Companies and contractors that "play by the rules" (pay employees properly, pay taxes, pay workers comp) should not have to compete against companies that have been known to have violated wage and hour rules. When companies steal from workers by not paying them properly they are also often engaging in taxpayer fraud because they don't pay payroll taxes or pay adequate payroll taxes if full wages are not paid. These Bylaws further protect workers across industries by linking access to a city business license with a business's track record in wage and hour claims.

Business Licenses

If an employee claims wage theft from an area business, the Human Rights Commission will investigate the claim as will the appropriate state agencies. A business could be fined and could be required to take out a wage bond to cover employees wages in the future in order to receive or renew a municipal business license. This measure has been used in other cities and towns and has been a deterrent to wage theft.

Construction contracts

Contractors and developers who receive public funds (city contracts or tax relief) would need to ensure all of their contractors and sub-contractors that perform construction work connected on the publicly supported project have to:

- Follow existing wage & hour laws, properly classify employees, provide worker's comp insurance, follow health care laws, and pay their taxes;
- Confirm they have not had a wage theft/tax fraud/insurance fraud violation over the past 5 years;
- Prioritize hiring Amherst residents;
- Create opportunities for women and people of color in the construction work. This requirement is in keeping with Massachusetts state construction goals set up to address findings of disparities in the construction industry. These projects will be required to have people of color perform *minimally* 15.3% work hours and women perform *minimally* 6.9% work hours.
- In support of and recognition of Veterans and their contributions, projects will also be required to have Veterans perform *minimally* 5% of work hours.
- If wage theft happens on one of these publicly supported projects, financial ramifications exist for the developer and contractor.

As a result of these requirements, Developers will pass on the financial ramifications in their contracts with their Construction Managers or General Contractors and those Construction Managers or General Contractors will pass on the financial ramifications in their contracts with their sub-contractors. Contractual ramifications for wage theft have been found to successfully deter contractors from engaging in it.

Why are these protections needed?

Public funds and tax relief support development in Amherst. Economic development is good for Amherst and contracts and tax relief are important tools used to create growth. Our restaurant and hospitality industry is a vital part of city life as is the development of new housing and commercial space. However, advantaging certain businesses over others or having part of their tax burden covered by all other tax-payers should have minimal standards of ensuring these businesses follow the law, create decent jobs, and create local opportunities for residents. These measures make tax relief more equitable and help to create other economic multipliers that are beneficial to the Amherst economy. These provisions make sure economic development is community development.

Why are these protections even more needed during the COVID-19 pandemic?

The COVID-19 pandemic is exposing the different dangers many low wage jobs pose for workers and the fragile economic positions they are often in. As less work is available and an increasing number of workers grow more desperate for paychecks, they are less likely to speak up about their rights and injustices on their jobs. It becomes even more important to shine a light on the problem of wage theft and to work to deter it from happening. A recent article in the *Commonwealth* magazine warns of what is coming for workers from COVID-19 “In construction, upticks in the misclassification of employees as independent contractors have historically been associated with recessionary periods.”

Wage theft is policed by the Attorney General’s office, why is municipal action necessary?

The Attorney General’s office doesn’t have enough investigators to adequately stop the problem. Cynthia Mark, Chief of the Attorney General’s Fair Labor Division, which consists of 13 lawyers and 20 investigators, testified on March 27, 2018 in favor of local ordinances addressing wage theft issues. The Lynn Ordinance requires similar wage theft protections on their TIFs. Cynthia Mark testified to Lynn’s City Council: “We welcome your partnership”, “We can’t do it alone.”

What other cities and towns in Massachusetts have taken action to address concerns about Wage Theft?

Each city and town that has taken up wage theft protections have addressed the issue in different ways, some through Executive Orders, some through Council Ordinances, some have taken up just town contracts, some have included tax relief and licensing. **Northampton, Boston, and Lynn** have all passed Ordinances and Executive Orders addressing all three issues. **Easthampton** passed the most recent Ordinance (Nov, 2019) and addressed contracts and tax relief. Other communities that have versions of Wage Theft Protections are **Springfield, Worcester, Cambridge, Chelsea, Medford, and New Bedford**.

Here is some press on the issue:

- <https://www.gazettenet.com/Letter-Lisa-Clauson-27750261>
- <https://www.gazettenet.com/City-council-to-hear-wage-theft-ordinance-27239721>
- <http://lynnjournal.com/2018/03/30/lynn-city-council-passes-wage-theft-ordinance/>
- https://www.masslive.com/news/2017/02/northampton_declared_a_fair_em.html
- <https://www.wvlp.com/news/northampton-passes-resolution-to-protect-wages-of-all-employees/>

There are numerous reports on the problem of wage theft. Two local ones are linked here:

- https://www.northamptonma.gov/DocumentCenter/View/5508/Northampton-Restaurant-Report-Final_April_12_2016?bidId=
- <http://www.massclu.org/gaming-the-system/>