

How We Regulate Wage Theft

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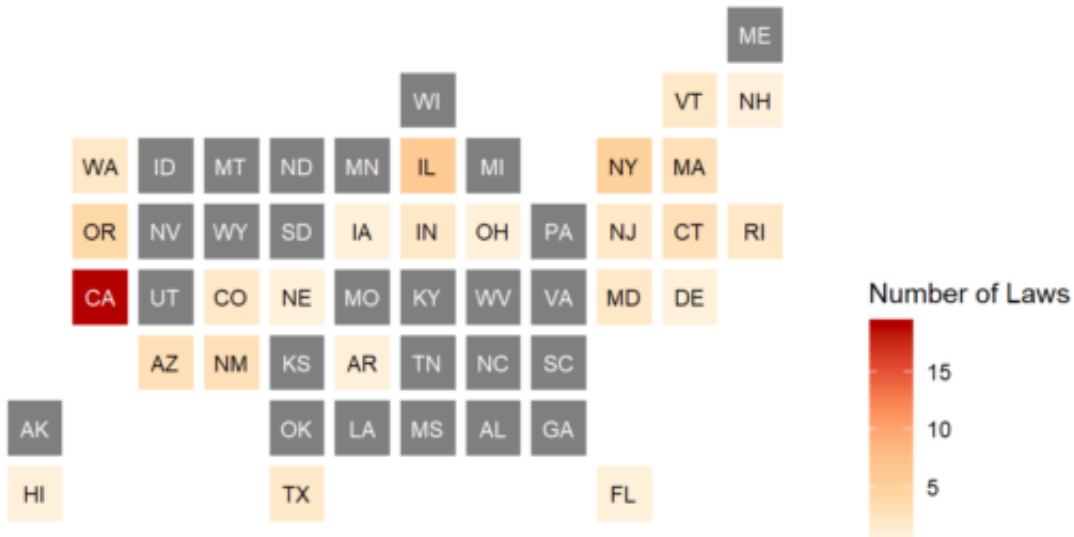
Jennifer J. Lee & Annie Smith, *Regulating Wage Theft*, 94 **Wash. U. L. Rev.** __ (forthcoming 2019), available at [SSRN](#).

How best to combat wage theft? In a new paper, *Regulating Wage Theft*, Jennifer Lee and Annie Smith join the debate with insights from an original hand-coded dataset of State and local anti-wage theft laws enacted from 2005 up through 2018. They know not only who enacted these laws and when, but also the strategies those laws use to combat wage theft. The upshot: Most such laws rely on worker complaints and other enforcement strategies that are less likely to succeed in preventing or redressing wage theft. But, in a few places here and there, the laws use strategies that may do a lot better, and thus are worth a closer look.

The paper's core: a curated census of anti-wage-theft laws. Unlike [past efforts](#), the paper covers enacted State *and local laws* over a longer time period. Lee and Smith searched generally in legal databases for laws regulating wage payment or information related to wage payment in every State, the District of Columbia, and the 30 most populous cities. They also scoured secondary sources and talked to worker centers and State departments of labor. They ignored such laws that only increased the minimum wage rate; addressed worker misclassification; required paid sick leave; made "only technical revisions" without "fundamentally" changing the enforcement regime; "would be considered pro-employer provisions"; only covered work performed pursuant to city contracts; or were "subsequently repealed, preempted by state statute, or otherwise invalidated" (Pp. 13-14).

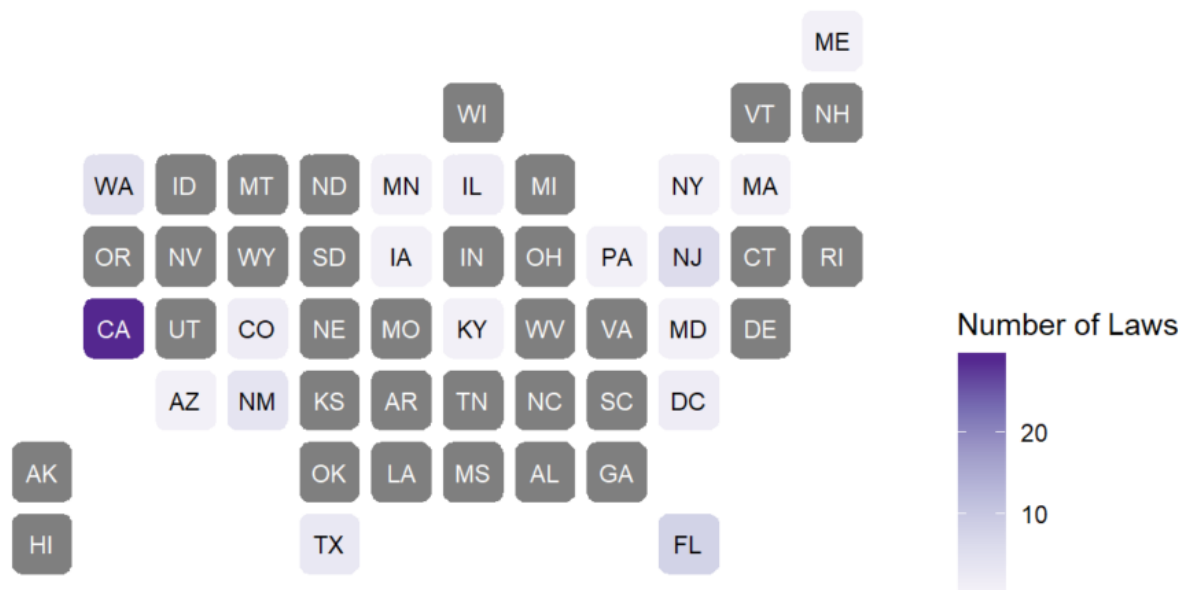
The result: 140 laws (70 State laws and 70 local laws). In absolute numbers, California's State legislature outpaced other States (19 laws). California had the most local laws, too (29 laws). And many States (the ones in grey) passed no anti-wage-theft laws at all, or at least none that have survived.

State Wage-Theft Laws Enacted, 2005-2018



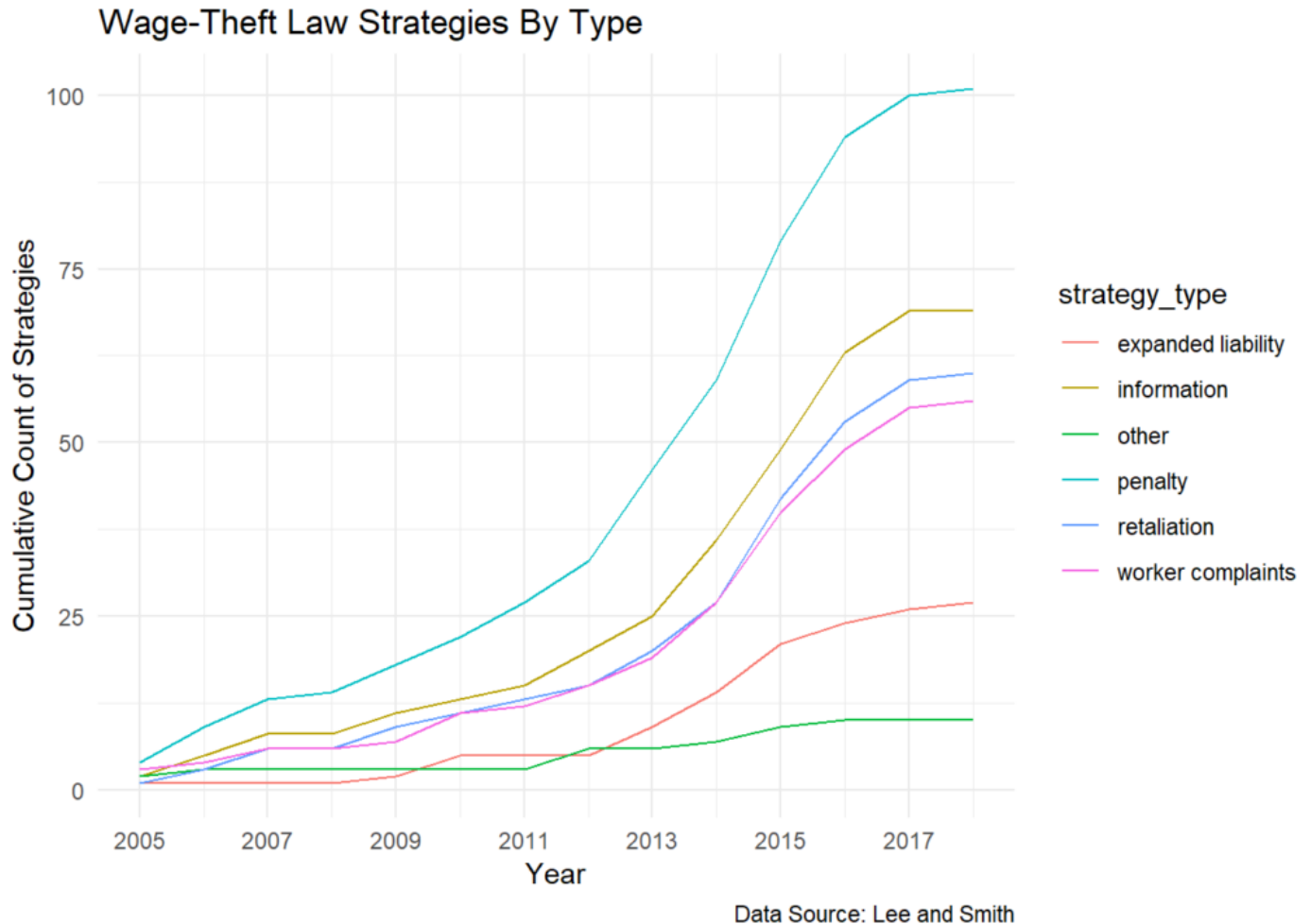
Data Source: Lee and Smith

Local Wage-Theft Laws Enacted, 2005-2018



Data Source: Lee and Smith

To figure out what these laws did, Lee and Smith coded each law based on whether it used one or more of 22 distinct legal strategies. Then, they assigned each legal strategy to one of six strategy types: (1) worker complaints; (2) anti-retaliation; (3) penalties; (4) expanded liability; (5) information requirements; and (6) other. Some jurisdictions enacted many strategies in a few pieces of legislation, while others adopted different strategies piecemeal over time.



Overall, the most common strategy type: *penalties*, that is, not only civil and criminal sanctions, but also license revocation, negative publicity, wage liens, and wage bonds. The least common strategy type: *expanded liability*, that is, provisions imposing joint and several liability, a broader definition of employer, and successor liability.

After laying out what the laws do, Lee and Smith explain their concern: “Many of the most common anti-wage theft strategies resemble popular and failed regulatory strategies in other contexts, such as rights claiming, command and control enforcement, and information disclosure,” and these strategies aren’t likely to do any better for wage theft (P. 22). Here, their analysis complements [recent papers](#) addressing [similar concerns](#).

But their story isn’t all skepticism. Lee and Smith have more hope about the less-common strategies. And here, their attention to local law really pays off.

For example, consider Florida, which effectively got rid of its State department of labor over a decade ago. There, some localities have enacted anti-wage-theft laws that let “any entity” file complaints on behalf of their members, [Broward County, Fla., Code § 20½-4\(a\)\(3\)\(b\)](#), or let the local government contract with local NGOs to aid in enforcement, including help filing complaints, recording liens, and enforcing hearing officer orders, see [St. Petersburg, Fla., Code §15-47\(a\)](#). Provisions like these let local governments [work with community groups to co-enforce labor standards](#).

Another promising strategy: burden-shifting. For example, [Los Angeles County's ordinance](#) declares “a rebuttable

presumption that an Employer violated this Chapter” if someone alleges that an employee is owed wages under that ordinance and either the employer doesn’t “maintain or retain payroll records required by” the ordinance, or doesn’t allow the county “reasonable access to such records.” Even for the strategy of imposing penalties, a few places go further and require surety bonds for licenses for certain kinds of businesses, such as farm labor contractors in [Oregon](#) and [New York City car washes](#).

So, how much do these legal strategies actually reduce wage theft (individually or combined)? And why? To answer those questions, there’s a lot more to learn. Still, thanks to this paper, we now have a better map of where to go to figure that out.

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