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**TO: Senate Committee on Labor and Regulatory Reform**

**FROM: Deedee Peterson, Executive Director, Legal Action of Wisconsin**

**DATE: September 25, 2019**

**RE: Effects of Senate Bill 40**

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Thank you for the opportunity to comment on the ways in which Senate Bill 40 (“SB 40”), if passed, would impact Legal Action of Wisconsin’s clients.

Legal Action of Wisconsin (“LAW”) is the largest provider of free, high-quality, civil legal aid to low-income individuals in Wisconsin. LAW’s practice areas are varied and include: housing, family law, consumer rights, elder rights, public benefits, and representation of Wisconsin’s agricultural workers. Wage theft affects clients in each of these practice areas. For Wisconsin’s working low-income families, unpaid paychecks or missing overtime pay can make the difference between paying rent on time or becoming a client of LAW’s Eviction Defense Project. For a survivor of domestic violence, getting paid for every hour worked can mean the difference between a bus ticket to safety or another night spent in an unsafe home. For a working family trying to enter Wisconsin’s middle class, an unpaid paycheck may mean the difference between opening an emergency fund savings account or a 200%-400% interest loan from a predatory lender that the family struggles to pay back.

SB 40 would make changes to the law that would discourage employers from illegally withholding employees’ wages, encourage faster resolution of wage claims actions, and strengthen protections for workers.

### **Current law insufficiently protects victims of wage theft.**

Our clients work very hard at their jobs, but they don’t always get paid on time, and even then, they may find that their pay does not reflect their hours worked. Current law does not sufficiently deter employers from illegally engaging in wage theft. Additionally, the Department of Workforce Development (“DWD”) investigations can be lengthy. Even if an employer pays at the end of investigation, the worker’s unpaid wages provided a 0% interest loan to a bad actor employer, while the wage theft experienced by our clients has lasting negative impacts. For example, even after workers receive their missing pay, this pay does not account for the time the worker waited to receive their missing pay, during which they weren’t able to pay their bills. Stretches of missed pay—including even one paycheck—can leave workers and their families in financial straits, vulnerable to serious consequences like eviction and homelessness.

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Our Farmworker Project attorneys have extensive experience representing clients in the DWD administrative complaint process. We are, quite frequently able to get DWD judgements in our clients' favor. These judgements have ranged from under \$300 to over \$3,000. It is a good day when a worker wins their wage theft case and we get a call from one of our clients to say, "the check cleared." As celebratory a moment as that is, it is often bittersweet because we are "celebrating" a paycheck for hard work that one of our clients performed months, or, in some cases, years ago.

**SB 40 would create more incentives for employers to pay workers accurately and resolve pay disputes quickly.**

By requiring employers to pay a 2% interest rate on back wages, as well as raising the percentage of wages due and unpaid that the employer must pay to an employee, and establishing surcharges for violations, SB 40 disincentivizes wage theft and promotes quick resolutions of wage theft cases.

SB 40 would amend the law to require employers to pay interest on the amount of wages due and unpaid at the rate of 2% per month for each month that the wages were due and unpaid. Forcing employers to pay interest on unpaid wages due would benefit our clients by incentivizing quick resolutions of wage theft claims. Knowing that they will be paying interest on wages due may also discourage employers from practicing wage theft in the first place. Requiring employers to pay interest would also acknowledge the real-life consequences faced by wage theft victims.

SB 40 also proposes to increase the percent of the amount of wages due and unpaid. Under current law, employers are required to pay the amount of wages unpaid, and additionally, must pay increased wages of not more than 50% when wage claim actions are brought in court *before* DWD has completed its investigation. SB 40 would change that additional amount in increased wages to 100% of the amount of wages unpaid. Under current law, when a claim is brought in court *after* DWD has completed its investigation, an employer is required to pay the amount of wages unpaid, and additionally, must pay increased wages of not more than 100%. SB 40 would change the additional amount in increased wages to 200%. These positive changes would, again, acknowledge the consequences of wage theft and more appropriately compensate wage theft victims for the violation of their rights, while discouraging wage theft in the first place.

Lastly, SB 40 would require employers to pay DWD or the circuit court a surcharge of \$500 for a first wage theft violation, \$750 for a second violation, and \$1,000 for a third or subsequent violation. These surcharges discourage the practice of widespread wage theft, as employers will be responsible not just for unpaid wages with interest, but would also be required to pay additional money each time they violate the law by unlawfully withholding employees' pay. The surcharges, which would be deposited into the general fund, also have the potential to increase state resources for preventing and combating wage theft in Wisconsin.

Together, these three alterations to the law would create stronger protections for our clients by instituting more serious financial consequences for wage theft. SB 40's proposed changes would

discourage wage theft in the first place, and encourage a faster resolution of wage claims so that our clients can get back on track with their lives.

**SB 40's proposal to increase statute of limitations would protect working families who face barriers to enforcing their legal rights.**

By increasing the statute of limitations for filing a wage theft claim from two years to four years after the date the wages were due, SB 40 more realistically reflects how long it may take for workers to acknowledge and address wage theft. Our Farmworker Project travels across Wisconsin to give presentations on workers' rights. At almost every presentation, our advocates hear, "I wish I would have known this information five years ago." Many workers may not have been aware of their rights at the time the wage theft occurred, workers may have felt intimidated to raise their concerns or confusion to the employer, or workers may still not even be aware that their employer unlawfully withheld wages or denied them overtime pay. Due to the very real fear of retaliatory discharge, many workers decide to wait to secure new employment before reporting wage theft. An increase in the statute of limitations for filing a wage theft claim, as SB 40 proposes, would provide additional protections and opportunities for workers to enforce their rights.

**SB 40's proposal to increase disclosure requirements would prevent misunderstandings and discourage wage theft.**

SB 40 would make an important change to the law by requiring that employers provide workers with a written statement disclosing the terms of employment when an employee is hired, as well as annually, and within a week of any change in the terms of employment. Such disclosures empower workers with the information they need to confirm that their pay reflects the terms of their employment. Contrarily, many low-wage workers—particularly agricultural workers not covered by Wisconsin's migrant worker laws—currently have no idea what to expect when they begin a new job because they never receive a disclosure statement outlining the terms and conditions of the position. Many of our clients do not know much they should expect to earn per hour, and, even though workers should receive this information on each check stub, do not know their rate of pay. Additionally, many agricultural worker clients live in employer-provided housing, but it is unclear if the housing is provided without a cost or if some sort of rent will be deducted from the paycheck. Requiring a disclosure statement would provide many workers, particularly our clients of limited English proficiency, with a clearer understanding of what to expect each pay period. This knowledge empowers workers and their families to raise misunderstandings or discrepancies to an employer's attention – protecting both workers and employers.

**SB 40 would make wage theft less palatable to employers and would empower and protect workers and victims of wage theft.**

Low-wage workers are critical participants in Wisconsin's workforce and are valued members of our communities. But wage theft is a serious issue that can upend the lives of Wisconsin workers and their families. SB 40's proposed changes would strengthen worker protections and offer improved remedies to discourage wage theft in the first place and encourage a faster resolution

of claims when wage theft occurs. LAW is committed to serving low-wage workers and we are encouraged by the positive impact that SB 40 would have on our clients. Thank you for your consideration of SB 40.

Sincerely,



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Executive Director  
Legal Action of Wisconsin



Erica Sweitzer-Beckman  
Farmworker Project Director and Attorney  
Legal Action of Wisconsin