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Wage Theft Position Sheet

Background on wage theft: Wage theft is the illegal underpayment or nonpayment of a worker's wages. Wage theft occurs when unethical employers break either federal or state laws by not paying the minimum wage, not paying the overtime premium for hours worked over 40, stealing workers' tips, not paying for all hours worked, calling workers independent contractors when they are really employees (thereby not paying the employer side of payroll taxes, workers compensation insurance, unemployment insurance and overtime), taking illegal deductions from workers' pay, and giving workers paychecks that bounce. Wage theft is common in many sectors that pay low wages, such as agriculture (farmworkers), poultry plants, restaurants, retail stores, car washes, landscaping and construction but also occurs with middle and lower wage earners.

Although there have been no comprehensive studies on wage theft in Virginia, national studies indicate that one out of four low-wage workers is not being paid the minimum wage and three-fourths of low-wage workers who work more than 40 hours a week are not being paid all their overtime premiums. Several hundred thousand workers are probably being cheated of wages by unethical employers not paying minimum wage or overtime. A Virginia Employment Commission (VEC) audit of one percent of Virginia employers found 5,639 workers were misclassified in 2010 resulting in underpayment of their wages. Based on findings in other states, Virginia could have on the order of 40,000 misclassifying employers and 214,000 misclassified workers.

Wage theft hurts workers and their families, ethical employers who are put at a competitive disadvantage by unscrupulous employers, taxpayers (who pay more because some employers aren't paying their share) and all Virginians because wage theft undermines economic growth. Wage theft is particularly bad in Virginia because so few workers are represented by unions, which ensure that workers are paid fairly. The state's Misclassification Taskforce has not functioned since put in place in 2014 after a couple of meetings. The state wage payment law is very weak. In the Virginia Department of Labor and Industry, there are only four state enforcement people to enforce the weak law. Finally, workers and most Virginians don't understand the laws protecting workers. The only positive developments have been creation of new worker centers in the state to help these workers but more are needed for a state of our size.

VICPP's position: All religions believe that "thou shalt not steal," and that employers should pay workers their wages in a timely basis. VICPP believes that Virginia should do a better job stopping and deterring wage theft. During 2017, VICPP will hold wage theft hearings around the state and draft a new payment of wages bill for consideration in 2018. VICPP will also support the expansion of worker centers and encourage the Misclassification Taskforce to function. One simple way to improve the state wage payment law is to allow a "private right of

action,” enabling an employee to take a case to court to enforce his or her rights (with or without an attorney). Most states allow this private right of action, but Virginia does not. Under the current wage payment law, an employee can only bring a claim to the Virginia Department of Labor and Industry (DOLI) and cannot go to Court or hire a lawyer to assist them at DOLI. The private right of action is particularly important when DOLI only has four enforcement staff.

Specific Bills: VICPP supports the following bill:

HB 2283 Nonpayment of wages; private action.

Introduced by Paul Krizek.

Provides that an employee has cause of action against an employer who fails to pay wages. The measure provides that if the court finds that the employer failed to pay wages, it shall award the employee the amount of wages due, plus interest at eight percent annually from the date the wages were due, reasonable attorney fees, and other costs. In addition, if the court finds that the employer's failure to pay wages was willful and with intent to defraud the employee, the court is required to award the employee an additional sum equal to the amount of wages due.