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How to stop businesses stealing from their employees

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Certification is being used to curtail exploitation for some cleaners. Shutterstock

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A Senate inquiry has revealed that wage theft and underpayment are so prevalent in some industries that they have become the norm. Around 79% of hospitality employers in Victoria, for instance, did not comply with the national award wage system between 2013 and 2016.

Regulators and unions don't have the resources to combat this issue, and so we need another method to tackle wage exploitation. One way is to introduce a multi-stakeholder certification scheme, using market forces to reward companies that have committed to fair working conditions and punish those that don't.

A version of this idea can be found in the international garment sector.

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Many well-known companies have been exposed for having underpaid or mistreated workers in their supply chains (Myer, Woolworths, Coles and Aldi) or in their franchises (7-eleven, Caltex, Domino's Pizza).

A report by Industry Super Australia released in January found that in 2013-14, almost one third of eligible Australian workers did not receive some or all of their superannuation entitlements. This totalled A$5.6 billion, or A$2,025 per person.

Problematic business models

Wage theft is directly related to the ways in which industries and companies are structured.

Industries that are characterised by strong downward price pressures are highly susceptible to wage theft - industries such as horticulture and hospitality.

This is particularly the case in supply chains that see work outsourced and then further sub-contracted. In order to be able to survive in these low-cost environments, companies often pursue strategies that are exploitative of workers.

This creates an environment in which pressure to cut labour costs becomes systemic. But companies at the bottom of these supply chains are often hidden from the public. They do not have reputations to protect as bigger, known brands and organisations do.

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In this context, workers are often deliberately misclassified as independent contractors in order for businesses to avoid paying minimum entitlements that would otherwise accrue to employees.

Another Senate report from earlier this year concluded that some franchises "operate on a business model based on underpaying workers".

Franchisees are expected to give a significant proportion of gross profits to head office, while keeping wage costs low. This creates a temptation to reduce labour costs by manipulating time sheets, not paying penalty rates, or forcing employees to pay part of their wages back in cash.

Insufficient resources

The Fair Work Ombudsman's pursuit of the companies involved in labour exploitation has resulted in payment of outstanding wages, fines and reputational damage to some big brands. In 2015-16 it recovered A$27.3 million dollars for 11,158 workers.

While this is not insignificant to the workers involved, it represents a small proportion of those likely to have been victims of wage theft (as detailed in the latest Senate report).

While trade unions have had some success in retrieving unpaid entitlements (in 2015 -16 United Voice NSW recovered A$1.8 million in unpaid wages), they too are constrained by their limited resources. Unionisation is declining and vulnerable workers are spread across thousands of small workplaces.

Certification

But where government and unions lack resources to tackle wage theft and exploitation, certification programs can create commercial reasons for companies to do the right thing.

In the context of supply chains, they harness not only the power of regulators and unions, but also of economically dominant businesses. A big supermarket or food chain can use their market power to encourage those who contract to them to comply with minimum labour standards.

A version of this, called the Cleaning Accountability Framework, has been created by stakeholders in the cleaning industry.

In the cleaning industry 21.5% of businesses were engaging in sham contracting by misclassifying employees as contractors. The industry is also characterised by high-rates of underpayment and denial of entitlements.

The new program has building owners, key tenants, facility managers and cleaning contractors verify standards concerning wages and entitlements, workplace health and safety, and working conditions are being met. This process actively involves the on site cleaning workforce, and is ensured by an independent auditor. After the required standard is verified, certification is awarded for that particular building.

Over time, as this certification becomes established, being socially responsible will become a competitive feature in the cleaning industry. Not complying with the standards will result in potential reputational risk for building owners and investors. Cleaning companies that don't comply won't be competitive when bidding for contracts.

Extending the model

Recent history shows that despite the efforts of regulators and trade unions, improvement of labour standards in industries characterised by systemic non-compliance is difficult to sustain.

For instance, Domino's Pizza signed two formal agreements with the Fair Work Ombudsman in 2011 and 2014. It committed to "creating compliant and productive workplaces" before the 2017 scandal broke.

The approach taken by the Cleaning Accountability Framework can be implemented in other sectors, for instance in security, horticulture, and aged care.

Creating an incentive for lead businesses to participate is the key, as they hold sway over the rest of the supply chain through their purchasing power. This, combined with regulatory enforcement and trade union campaigns provides a comprehensive approach to the problem of exploitation and wage theft, with the potential to generate change on the scale required.

Supply chains worker exploitation wage theft