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## Leftists Seek to Criminalize Small Businesses While Decriminalizing Actual Theft

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Left-wing "reform" prosecutors want more criminal prosecutions of businesses for red-tape violations and so-called "wage theft," and fewer felony prosecutions of criminals for stealing from businesses and homeowners (such as shoplifting, which some leftist prosecutors have essentially stopped prosecuting, resulting in an explosion of shoplifting).

Prosecuting "wage theft" was one of the campaign planks of Arlington, Va. Commonwealth's Attorney Parisa Dehghani-Tafti, a progressive Democrat who unseated a moderate Democrat incumbent in the 2019 primary election. In her campaign, she said she wanted to prioritize prosecuting "wage theft," even while complaining that Arlington prosecuted felonies at a much higher rate than neighboring jurisdictions like Alexandria. She also called for more use of "restorative justice" as a response to crimes committed by people with social or economic disadvantages.

But what does "wage theft" mean? In practice, good-faith disputes about how to classify employees, or whether to include employee lunch time as compensable, could easily end up being prosecuted as "wage theft," if state law is expanded to criminalize more instances of "wage theft," as left-wing legislators seek to do.

Walter Olson writes about leftist proposals to jail business owners for inadvertent violations of workplace regulations in Tuesday's Wall Street Journal:

The left-leaning Economic Policy Institute calls on prosecutors and state lawmakers to seek criminal punishment of employers for workplace and labor-law violations that are currently addressed through less serious legal sanctions.... These include so-called employee misclassification, in which workers are designated as independent contractors or supervisors when a court, state labor agency or similar authority thinks they shouldn't be. Another EPI priority is the sidestepping of prevailing-wage laws, which set public contractors' wages well above market value. Also on the list are miscalculations by restaurant managers about when and

how the law allows them to engage in tip pooling and conduct that an employee considers retaliation for a workplace complaint.

Among the problems with criminalizing many of these behaviors is that standards for lawful conduct can be impossibly vague, complex, changing, or opaque. Managers may have no way of knowing whether they're violating the law and infractions may be victimless or even occur at the request of the purportedly victimized party — as with independent contractors or, in the case of California labor law, letting an employee work through lunch so he can leave early.

Consider the main federal statute in the wage-and-hour field, the Fair Labor Standards Act (FLSA). It became law in 1938, but federal courts are still being asked to resolve disputes over whether service advisers at car dealerships are subject to overtime requirements, under what circumstances a union can waive the right to be paid on the clock for donning and doffing protective gear, and exactly when the FLSA clock should start running when a flight attendant arrives at the airport. States like California have their own separate and more demanding labor codes, which have been the subject of high-stakes class actions inviting courts to declare unlawful everything from the timing of meal breaks to the way apps like Uber and Lyft do business.

Imagine adding the threat of criminal prosecution to this chaos. Imagine the effect that would have on ordinary businesses.