In fall 2014, workers broke ground on one of the University of Montana’s biggest new academic offerings: the Harold and Priscilla Gilkey Building, a facility dedicated to “executive education offerings.” The three-story structure, which was funded with private donations, aimed to “partner with industry sectors, organizations and business leaders to develop their leadership capability and build organizational performance,” according to a UM press release.

One of the first construction workers hired to lay the building’s foundation was Jennifer Moen, a tanned, lanky 35-year-old. She’d never forget that job—she was homeless at the time and living in her car with her two young kids. After a long shift pouring concrete at the Gilkey site, she’d pick up her kids from a babysitter, park in a Wal-Mart lot overnight and try to keep them warm.

“It was definitely one of those rough moments in my life I never wanna experience again,” Moen says.

Since she was making more than $20 an hour, Moen didn’t question the desperately needed paychecks—until one day, when she met a union organizer who told her that, according to state law, she and everyone else hired by Northwest Concrete and Excavation deserved to get paid twice as much.

“I didn’t really know what the rate was, honestly. I thought that it was fine,” Moen says. “I didn’t really pay attention.”

Moen’s case is just one example of how disadvantaged workers can easily be misused in a construction industry that’s infrequently policed, according to Miles McCarvel, the ironworker and union organizer who approached Moen.

“If you give a little, they’ll keep on asking for more,” McCarvel says. “That’s no different with our contractors or anybody else. If somebody can make more money by screwing somebody, they often do.”

By the Montana Labor Management Alliance’s estimate, construction workers have had to fight to recover nearly $5 million in unpaid wages in the past 10 years. McCarvel and other labor advocates say that’s probably just the tip of the iceberg when it comes to worker exploitation in the state.

While observing the Gilkey site, he questioned how Northwest Concrete’s workers were tying rebar—a process where sections of reinforced steel are tied with metal wire so they stay steady while the concrete foundation is poured in.

“For one thing, there was a pile of rebar everywhere. It was a mess,” McCarvel says.

State law sets the prevailing wages for the building industries each year. Ironworkers are at the very top, making about $50 an hour, including benefits. Carpenters make about $30 an hour, general laborers make $27 an hour, and so on. People working on public projects worth more than $25,000—such as the Gilkey Building—are supposed to earn prevailing wages.

After several hours of observation, McCarvel decided he’d seen enough. He walked to the job site, introduced himself to Moen and asked what she was making.
Since Moen tied rebar, which is classified as ironwork, she ought to have been making ironworker wages. Instead, she was making about $24 an hour. When McCarvel asked to look at her pay stubs, he noticed strange discrepancies—one week, she’d be paid a salary, the next week, she’d be paid hourly.

“No one’s ever told me what it was supposed to be, until Miles stopped and pulled me aside,” Moen says.

McCarvel advised Moen to send in copies of her paycheck stubs to the state Department of Labor, and she tried to find the handful that she’d kept. In Montana, the onus is on the employee to initiate wage claims. It’s especially tough to call out wrongdoing, McCarvel says, when employees don’t want to risk losing their jobs.

“The only way you can catch [contractors] is if you have an employee that isn’t job scared, that probably just got fired or something, that kept all their paycheck stubs and knows the law,” McCarvel says. “Which almost never happens.”

In December 2014, a state wage compliance specialist visited the Gilkey project as part of a routine visit, where an investigator determined that two of Northwest’s employees were being paid incorrectly.

In January, Northwest Concrete fired Moen. The termination letter, signed by Northwest owner Mark King, says her employment ended because of “insubordination,” being frequently late to work and having a “negative” attitude. She thinks she was fired simply because she started to speak up about her pay.

By May 2015, after Moen submitted a formal wage claim, the state says investigators felt obliged to undertake an audit of every Northwest employee’s payment.

States vary widely in approaches to wage theft. Idaho, for instance, is a right-to-work state with fewer prevailing wage requirements. Others, like Utah and Washington, strenuously monitor employers. Between 2013 and 2015, the Utah Department of Labor recovered $1.7 million in pay owed to its residents. Washington keeps an online database where it’s easy to look up companies by name to see if they’ve been found guilty of shortchanging workers.

Montana is, by contrast, much less transparent when it comes to wage theft. Idaho, for instance, is a right-to-work state with fewer prevailing wage requirements. Others, like Utah and Washington, strenuously monitor employers. Between 2013 and 2015, the Utah Department of Labor recovered $1.7 million in pay owed to its residents. Washington keeps an online database where it’s easy to look up companies by name to see if they’ve been found guilty of shortchanging workers.

McDaniel says since the state encourages parties to privately resolve disputes, it’s difficult to get an idea of how often workers really are being exploited. He suspects that shady contractors are perfectly fine with the state’s minimal level of oversight.

“If they get away with it 10 times and they get caught once, and it costs ‘em 10 percent of the profits they made the other times, then way to go,” McCarvel says.

The Montana Labor Management Alliance offers a different picture of wage theft than the state’s Department of Labor. The MLMA keeps a tab on all wage theft incidents it hears about. The MLMA estimates that between 2005 and 2015, it helped workers recover $4.7 million in wages on projects ranging from elementary schools to hospitals.

John Mooney is now semi-retired, but he used to investigate labor disputes for MLA. He says many MLMA recoveries might not show up in state records, because in his experience just pointing out the problem encourages contractors to resolve the issue quietly.

“If you go to a contractor and say, ‘Take care of this,’ they’ll sometimes cough up the money right away and make everything right,” Mooney says. “But if you were to contact them they’d deny it, because there hasn’t been any official complaint. But that’s the way we do things. If
you want to get people the money they’re owed, that’s the route we take.”

Even when workers know what their rights are, it can be hard to prove an employer’s wrongdoing. Justin McEwen, a union organizer and bricklayer based out of Stevensville, is a broad-shouldered man with a direct gaze. In spring, his union leaders were incensed when they lost out on a major contract for an $18 million new Wal-Mart in Great Falls. McEwen didn’t understand how the subcontractor, J&L England Masonry from Idaho, could underbid his company by $580,000 without doing something improper.

“That’s a huge margin,” McEwen says. “To move all of your equipment up from Idaho, when I have a contractor sitting right there in Great Falls, how do you beat somebody out of a bid by that much?”

So McEwen went to work for J&L England as a “salt,” a common union practice when an organizer takes a nonunion job to investigate the working conditions. The company hired him, promising $22 an hour, plus overtime pay for anything above 40 hours a week.

“I put 56 hours in [over] four days,” McEwen says. “We were working from 6:30 a.m. to 8:30 at night, with one break, a lunch break.” (State law doesn’t mandate breaks, but McEwen says union jobs require periodic paid break time.)

Within a few days, McEwen thought he had everything he needed to show how the subcontractor was cutting corners. His pay stub—which he’s shown to the Independent—indicates he was receiving a mere $3 extra per hour, not time and a half, which is required by state law. The overtime was listed under per diem/travel pay.

“Well, you don’t have to claim taxes on travel pay, so that’s where they put all my overtime,” McEwen explains. “So there was no overtime on that check. And that rips off the men for unemployment, because not all their wages are on their check, so they’re not getting all their wages counted for unemployment.”

He sent in the documents to the Montana Department of Labor. The state’s standard procedure in cases of wage claims is to ask the employer to provide payroll data for evidence—however, it doesn’t ask for bank records. Shortly after McEwen’s claim, J&L England submitted payroll records showing the numbers as they should have originally appeared.

McEwen says he and the other bricklayers on the project, who were mostly from Idaho, received backdated checks with extra overtime pay.

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McEwen suspects J&L England just edited the payroll data in QuickBooks and mailed the sheet to the state. McEwen has all of his check stubs to prove it, but he says the state investigator was satisfied with the payroll printout.

McEwen received a letter from the Department of Labor in June denying his wage claim. Nonetheless, he says England did follow correct procedure and starting included time-and-a-half overtime on the rest of the project after the state got involved.

“Health came out is he did end up paying right,” McEwen says. “He did hurt his bottom dollar.”

When asked about the incident in a recent phone interview, J&L England owner John England says McEwen’s claim resulted from a “misunderstanding.” England adds that McEwen “hired on just to stir things up, more or less,” shortly before cutting off.

State got involved.

King says the state investigator was satisfied with the payroll printout. Says it shouldn’t matter how much money a worker is owed, though $42,000 is certainly a significant chunk of change.

“Whether or not it’s $5 or $50,000, it’s important that each wage earner gets what’s due to them,” Smith says.

Mark King, head of Northwest Concrete, doesn’t deny that his company paid incorrect wages. He attributes the mistake to a former bookkeeper and claims he hadn’t known about the state’s audit until it already began.

“I didn’t realize all this was going down,” King says. “By the time I found out it was kind of too late. I found out this had been through the process.”

State documents accuse Northwest of taking “multiple extensions” and submitting incomplete evidence, until a new bookkeeper was hired by the company in mid 2015 and helped provide additional payroll documents.

While King doesn’t dispute any of the documented wage claims on the Gilkey project, he does take issue with the state’s ruling. Part of Northwest Concrete’s $42,000 fee includes a $25 per day fine for paying the wrong wage, which King calls “ridiculous.” He says he’s contemplating suing the state over the fines.

“I just think that the state, whether we had done any due diligence or not, how can they consciously put that kind of debt onto a company?” King asks.

He adds that he thinks the prevailing wage laws are weighted too heavily in the unions’ favor. Nonetheless, King says he’s working with his new bookkeeper to keep a close eye on the prevailing wage projects they’re contracted to work on this year.

McCarvel has tried to convince Moen to join the union, which would help her find work and ensure she’s paid appropriately. Moen hesitates, though, since apprentices ironworkers often get sent out of state to work since Northwest Concrete fired her. She’ll still have to watch out for herself.

“Yeah, it’s crazy,” Moen says. “I think it should be investigated here in how the companies treat their employees. Their employees don’t go out there and bust a butt to make the money and not get paid.”

According to state law, ironworkers should earn $50 an hour, including benefits, on public projects. State investigators say iron work is the most commonly missclassified type of labor.