

Wage, Child Labor and Protected Leave Investigations

2016 Annual Report to the Governor

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Table of Contents

- Executive Summary**.....
- Introduction**.....
- 2016 Information Update**

 - Wage violations.....
 - Child labor
 - Protected leave
 - Challenges during 2016

- Conclusion**

 - Future actions

- Figures**

 - Figure 1: Wage violations.....
 - Figure 2: Child labor information
 - Figure 3: Protected leave activity.....

Executive Summary

Introduction

The Department of Labor and Industries (L&I) protects the safety, health and security of Washington's workers and citizens. Within L&I, the Employment Standards Program is charged with carrying out state laws that protect workers' wages and working conditions.

As required by RCW 49.12.180, L&I submits this report to the Governor annually to provide updated information about investigations and proceedings related to worker wages, child labor and protected leave.

2016 Information update

Worker wages

Under the Wage Payment Act, L&I has administrative authority to cite employers for unpaid wages. The majority of worker rights complaints filed with L&I are wage complaints submitted by individual workers for unpaid wages. Since 2006, L&I has collected and returned a total of about \$25 million in unpaid wages to nearly 28,000 Washington workers.

In fiscal year (FY) 2016, L&I had 17 field agents throughout the state investigating wage complaints and working with employers to return money owed to workers. During this period, the department investigated a record number of more than 5,800 complaints and collected and returned just over \$3.4 million to about 3,000 workers. About 64 percent of this money was collected from employers by seeking voluntary compliance and without issuing formal citations.

Child labor

The industrial welfare act (RCW 49.12) directs the department to write rules protecting minor workers. These rules are contained in WACs 296-125 and 296-131. The department provides education on and enforcement of these rules to protect minor workers, who are usually the most vulnerable workers.

The number of complaints regarding child labor is small (264) compared to the number of wage complaints, but this issue is of critical importance to L&I because of the vulnerability of young workers. Child labor complaints can require rapid staff response, and often require on-site visits to ensure the child's safety. In 2016, L&I approved nearly 22,000 minor work permits and issued almost 200 variances that allow the workers to exceed the normal limitations on youth working hours.

Protected leave

Protected leave laws protect an employee's job in the event of an absence from work for any of the specifically outlined purposes in the Family Leave Act, the Family Care Act, the Domestic Violence

Leave Act, leave for spouses of deploying military personnel, and leave for certain volunteer first responders (firefighters, reserve police officers and civil air patrol members).

L&I's protected leave staff investigates complaints about violations of protected leave laws and determines whether a violation has occurred. In FY 2016, L&I's staff conducted 49 investigations, which is consistent with a historical average of approximately 50 complaints per year. L&I staff also conducts public education about protected leave requirements, reaching out to nearly 400 workers and employers in FY 2016.

During FY 2016

The Employment Standards Program instituted efficiencies in standard work processes, which reduced the complaint backlog (complaints aged over 60 days) from the historical range of 30 to 50 percent to a current backlog rate of 18 percent. Reducing this backlog has been a priority for L&I since the passage of the Wage Payment Act, and this progress is significant.

Since 2013, employees have been able to file wage complaints electronically. This contributed to an eight percent increase in worker rights complaints in FY 2016. This increase is expected to continue due to easier complaint filing and the growing economy.

Introduction

The Department of Labor & Industries (L&I) protects the safety, health and security of Washington's workers and citizens. Located within the department, the Employment Standards Program supports this mission by enforcing state laws that protect workers' wages and working conditions. This includes ensuring that employers:

- Pay legally required wages
- Allow appropriate leave
- Follow rules about minor workers' ages, restrictions on work hours, equipment use and training

Each year, L&I's agents successfully investigate thousands of wage, leave and child labor complaints. This was made possible by internal process improvements including, among other things:

- Use of *Lean*¹ principles that have streamlined investigation practices
- Improved technology that enables swift tracking of complaints and smooth transition of cases through the system

These measures have helped L&I retrieve wages owed and return them to workers. At the same time, the department continues to make enforcement of child labor laws a top priority.

This report describes how L&I protected the safety, health and security of Washington's workers in fiscal year (FY) 2016 by implementing state laws on wages and working conditions. It provides information about wage, child labor and leave investigations conducted in 2016 and their results.

¹ *Lean* is a business philosophy used, along with methods and tools, to create and deliver the most value from the customer's perspective while consuming the fewest resources.

WAGE VIOLATIONS

The Wage Payment Act requires employers to properly pay wages to workers. Employer noncompliance with these laws most commonly involves failing to pay overtime or failing to pay at least minimum wage for hours worked. L&I investigates every wage complaint received to determine whether the law has been violated. If a violation has occurred, L&I makes every reasonable effort to collect and distribute delinquent wages owed.

Under the Wage Payment Act, when a worker files a complaint, L&I must issue a determination within 60 days whether or not the law has been violated. This time period may be extended for good cause, such as the volume of pending complaints or the complexity of complaints received.

Workers and employers both have the right to appeal L&I's determinations to the Office of Administrative Hearings. A worker also may opt out of the administrative process and initiate a private action; however, if the worker chooses to proceed with the administrative process through L&I, he or she may not pursue private action once the administrative process is complete.

Figure 1 shows the number of wage complaints investigated, complaints resolved, and wages returned to workers in FY 2012 to FY 2016. As shown, the number of complaints rose nearly 50 percent from FY 2014 to FY 2016. The wages returned to workers increased from \$2.1 million to \$3.4 million, roughly a 62 percent increase. Of the wage complaints investigated, nearly one-third or about 1,700 resulted in the agent collecting money for the worker without resorting to a citation and notice of assessment.

Unfortunately, not all wage complaints may be resolved through voluntary compliance. The department issued nearly 500 citations and notices of assessment (representing 14 percent of total complaints filed) for those employers who violated the law and did not pay during the investigation. Five percent of complaints were resolved with a determination of compliance (the employer did not violate the law); 12 percent were withdrawn; and 36 percent were resolved when the employer voluntarily paid the employee. The rest of the complaints were "not accepted" for a variety of reasons, most commonly because they did not contain enough information to move forward with an investigation or because the agent could not reach the complainant after the complaint was filed.

Figure 1: Worker rights complaints

Wage complaints, investigations and collections					
	FY 2012	FY 2013*	FY 2014	FY 2015	FY 2016
Number of wage complaints investigated	4,012	3,772	3,907	5,440	5,846
Collected wages owed to workers	\$2 million	\$3.27 million	\$2.1 million	\$2.8 million	\$3.4 million

Source: L&I Employment Standards Program

*Note: Due to the introduction of its new Complaint Activity Tracking System, L&I conducted a massive data conversion in 2013. The new system reflects wage collections from previous fiscal years that were not previously shown in the system. This causes the FY 2013 collections to appear higher than those for other fiscal years. L&I received nearly 50 percent more complaints in FY 2013 than in FY 2014. However, a greater number of online complaints were found to be invalid; therefore, wages collected per complaint do not reflect the increased number of complaints.

As noted in previous reports, the department implemented three major improvements - online filing, *Lean*, and help for those with limited English proficiency - that helped to drive increases in collection of unpaid wages. Online filing increased the number of total complaints received by 39 percent the first year and by an additional eight percent in FY 2016.

Lean principles continue to be used to incorporate the successes of a temporary “triage” unit used to help with the backlog of complaints. The department’s goal is to reduce the number of complaints over 60 days old. Enhanced support from customer service, along with addressing specific issues earlier in the process, helps resolve complaints faster. Complaints exceeding 60 days have been reduced to fewer than 20 percent of total complaints received.

CHILD LABOR

Enforcing child labor laws is one of L&I’s most important responsibilities. Based on a minor’s age, Washington state laws restrict both the *hours* minors can work and the *type* of work they can do. Some jobs are prohibited for minor-aged workers, such as forklift driving, working on roofs, or working in freezers or meat coolers.

L&I also enforces laws requiring employers with workers under age 18 to have a minor work permit endorsement on their master business license. During the school year, teens’ working hours are restricted; however, L&I can grant special variances for 16- and 17-year-olds with the written permission of both a legal guardian and an authorized school administrator.

Figure 2 shows the minor injury reports reviewed for evidence of prohibited duties, minor work permits issued, and minor work variances issued from FY 2012 to FY 2016. In FY2016, the department issued nearly 22,000 minor work permits and reviewed just over 1,300 minor injury reports. The number of minor injury reports reviewed more than doubled in FY 2016 from the previous year. This is most likely due to a new report that was recently made available to the child labor specialist, not additional injuries occurring. Of the minor injury reports reviewed, about 10 percent are forwarded to field agents for further investigation to determine if the work being done is prohibited. While the number of permits issued over the period shown has been gradually declining, there was a much larger drop for FY 2016.

Figure 2: Child labor information

Investigations, work permits and variances					
	FY 2012	FY 2013	FY 2014	FY 2015	FY2016
Minor injuries reports reviewed	485	369	512	647	1,303
Minor work permits issued	25,069	24,936	24,522	24,481	21,876
Minor work variances issued	102	116	117	153	191

Source: L&I Employment Standards Program

PROTECTED LEAVE

The Employment Standards Program enforces and educates the public about protected leave laws. Protected leave includes using sick leave and vacation, or taking leave without pay for certain activities where an employee’s job is protected. These laws include:

- Washington Family Leave Act,
- Washington Family Care Act,
- Domestic Violence Leave Act,
- Leave for spouses of deployed military members, or
- Leave for volunteer firefighters, reserve peace officers and civil air patrol members.

Protected leave laws also ensure that victims of domestic violence, victims of sexual assault or stalking, military spouses and volunteer firefighters are not only provided appropriate leave rights, but are protected from employer retaliation for using the leave.

In FY 2016, L&I received over 3,500 inquiries about protected leave laws, a number that has steadily increased since the protected leave unit was formed in 2009. L&I’s staff conducted 49 investigations, which is consistent with a historical average of approximately 50 complaints per year. Staff reached out to nearly 400 workers and employers in FY 2016 to educate them about their protected leave rights and responsibilities.

Figure 3: Protected leave activity

Investigations, education and outreach					
	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Investigations conducted	54	35	46	54	49
Investigations completed	54	28	52	54	48
Educational/outreach events	17	10	18	7	23
Participants attending educational/outreach events	559	646	528	158	394

Source: L&I Employment Standards Program

Conclusion

L&I has a successful history of protecting workers' wages and working conditions by enforcing wage, child labor and protected leave laws. As shown, complaints in each of these areas were higher in FY 2016 than in previous years. Some factors contributing to this increase were an improving economy with more workers employed, and online filing which made it easier to file a wage complaint. Online filing has been such a success that not only did it contribute to a 54 percent increase in the number of complaints received, but over 60 percent of the total complaints received are now filed online.

This increased wage complaint workload is expected to result in longer waits for customers to have their complaints investigated, and higher backlogs. However, L&I has made changes in technology and staffing to address these issues.

In FY 2016, L&I investigated a record 5,846 complaints, and collected and returned to workers just over \$3.4 million in wages (about 64 percent of this money was collected without formal citations). At the same time, L&I decreased backlogged complaints to a record low.

The number of child labor complaints and protected leave complaints has remained fairly static; however, due to new efficiencies, L&I staff is reviewing more than twice the number of minor injury reports for child labor violations that may have contributed to the injury. L&I continues working to provide education about protected leave laws to more workers and employers.