

# CONFRONTING WAGE THEFT



## BARRIERS TO CLAIMING UNPAID WAGES IN SAN DIEGO

What happens to San Diegans whose employers steal their wages? This report describes the experience of working people in San Diego who come forward with complaints of minimum-wage violations and other types of wage theft.

### KEY FINDINGS

- Wage theft is widespread, but complaints are rare. Employers in San Diego and Imperial counties committed one type of wage theft, failure to pay the minimum wage, an estimated 40,000 times last year. Yet only 82 workers filed minimum wage claims with the state Labor Commissioner.
- A large majority of wage theft claimants file for the most egregious wage theft violations – not being paid at all for time worked. Workers less often complain of other, more frequent violations such as employers failing to pay overtime rates or requiring work during rest and meal breaks.
- Workers seldom claim lost wages while still on the job, and many report enduring violations for months or years before coming forward. The most common obstacles to filing wage claims are fear of retaliation and lack of information.
- Pursuing wage theft claims is an often confusing and frustrating process, and usually takes longer than the legal time limit, which is particularly difficult for low-paid workers.

This report examines the process and challenges facing San Diego workers who file claims to recover wages they believe they are owed. We spent 400 hours in the Labor Commissioner's San Diego office in the spring of 2017, surveying 305 workers who were filing or had filed claims of wage theft. We followed up with in-depth interviews of 30 workers and staff of six assistance organizations, and analyzed data obtained from the Labor Commissioner's Office through Public Records Act requests as well as US Census Bureau American Community Survey data. We also conducted brief surveys with 96 workers who had not yet filed complaints but called an assistance organization about wage violations.

JULY 2017

## BACKGROUND:

# Wage theft is a multi-billion-dollar crime.

## San Diego has not enforced its minimum wage law.



### Wage theft is a multi-billion-dollar crime

Wage theft, a crime of employer against employee, is rampant across the country. The California Labor Commissioner, Julie Su, has defined wage theft as “any time a worker is paid less than she earned.”<sup>1</sup> A ground-breaking 2009 national study<sup>2</sup> documented that low-paid employees are robbed frequently, through labor law violations such as: 1) failure to pay overtime rates, 2) not paying for off-the-clock work before shifts or during meal breaks, and 3) paying less than the legal minimum wage.

That last type of wage theft alone – failure to pay the minimum wage – deprives working families in the 10 most populous states of \$8 billion a year, according to a May 2017 report by the Economic Policy Institute. That includes \$2 billion a year in California, stolen from an estimated 590,000 workers.<sup>3</sup> The average minimum-wage theft victim loses \$3,300 a year, money that many families desperately need and would circulate in the local economy.

### San Diego has not enforced its minimum-wage law

On July 11, 2016, the San Diego Earned Sick Leave and Minimum Wage Ordinance became law and established a local minimum wage applying to all work done within City limits. As of January 2017, that wage is \$11.50 per hour. The law also required the City to create an enforcement system.

A year after the law took effect, the City of San Diego has not enforced its minimum wage and has referred all wage and retaliation complaints to the state Labor Commissioner.<sup>4</sup> Until June 30, 2017, the city lacked even a form for those complaints. At that point it quietly added two checkboxes to an online form and changed instructions on the website to say workers have the option to file a complaint with the City or the Labor Commissioner. In its first year, the San Diego enforcement office has been focused instead on informing business owners about the sick leave and posting requirements, and has taken 12 complaints of denied sick leave.<sup>5</sup>

By contrast, the City of Los Angeles, which passed its first local minimum wage law at the same time as San Diego, in July 2016, has established an active enforcement office and has already recovered \$250,000 for workers who were paid less than the legal wage.<sup>6</sup> Working in collaboration with local advocacy organizations, San Francisco recovered almost \$6.6 million in the first decade of its minimum wage ordinance (2004-2013).<sup>7</sup>

Julie A. Su, who became California Labor Commissioner in 2011, urged San Diego Mayor Faulconer and the City Council in a May 2017 letter to join her office in a partnership to more effectively combat wage theft, as San Francisco and Los Angeles have done.

**“Wage theft occurs any time a worker is paid less than she earned, and it takes many, many forms.”**

– Julie Su,  
California Labor  
Commissioner

“Wage theft is a statewide crisis, and San Diego has a mandate to take the lead in addressing it,” Commissioner Su wrote. “A partnership with local minimum wage enforcement personnel in San Diego could allow us to target local industries with extraordinarily high rates of wage theft... Simply stated, my office cannot protect basic wage rights for your city without your help.”<sup>8</sup>

# WHAT HAPPENS TO SAN DIEGO WORKERS WHEN EMPLOYERS STEAL WAGES?

## Few complain or know where to turn.



If an employer pays someone in cash for a day's work and a thief grabs the money and runs off, the worker can call the police and report the crime. But if the employer refuses to pay for the day's work, at least in San Diego, the police will not help, and many workers don't know where to turn.

Employers in San Diego and Imperial counties fail to pay the legal minimum wage – which is just one type of wage theft – an estimated 40,000 times a year, based on US Department of Labor data for California.<sup>9</sup> Yet only 82 individual claims of minimum wage violations were filed in the region in 2016.<sup>10</sup> That suggests more than 39,900 local workers were paid less than minimum wage last year but didn't report the theft.

Victims of wage theft can file complaints with the California Division of Labor Standards Enforcement, also known as the Labor Commissioner's office, which attempts to resolve individual claims through a system of settlements and hearings. It also carries out a much smaller number of targeted investigations of worksites, through the Bureau of Field Enforcement (BOFE).<sup>11</sup> BOFE investigations are prioritized to impact certain industries, prevalent issues, and the greatest number of workers.

Statewide, the Labor Commissioner receives about 30,000 individual wage theft claims a year, a tiny fraction of the probable number of violations. With 480 staff positions, many not filled, the Labor Commissioner's Office is responsible for protecting more than 19 million civilian workers in the state, including 1.6 million in San Diego and Imperial counties.

The Labor Commissioner has one office serving all of San Diego County and a two-person satellite office for Imperial County. The San Diego office received a total of 2,852 individual claims in 2016. The office also received about 400 BOFE complaints and referrals, but was able to investigate fewer than half that number.<sup>12</sup>

[1] Su, Julie. 2016. "Enforcing Labor Laws: Wage Theft, the Myth of Neutrality, and Agency Transformation" Berkeley Journal of Employment and Labor Law, 37 (1), 143-156. Available at: <http://scholarship.law.berkeley.edu/bjell/vol37/iss1/4>

[2] Bernhardt, Annette, et. al. 2009. Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities. Center for Economic Development, National Employment Law Center, and UCLA Institute for Research on Labor and Employment.

[3] Cooper, David and Teresa Kroeger. 2017. Employers Steal Billions from Workers' Paychecks Each Year. Economic Policy Institute.

[4] City of San Diego Earned Sick Leave and Minimum Wage Ordinance Enforcement Process, [https://www.sandiego.gov/sites/default/files/tr\\_esl\\_mwo\\_enforcement\\_process\\_final\\_12-21-16.pdf](https://www.sandiego.gov/sites/default/files/tr_esl_mwo_enforcement_process_final_12-21-16.pdf)

[5] San Diego Office of the City Treasurer, Earned Sick Leave and Minimum Wage Program Fiscal Year 2017 Summary Report of Activities, April 2017, p. 4.

[6] Testimony of John Reamer, Director of the Bureau of Contract Administration, to the Los Angeles City Council, May 23, 2017. [http://lacity.granicus.com/MediaPlayer.php?view\\_id=130&clip\\_id=16957](http://lacity.granicus.com/MediaPlayer.php?view_id=130&clip_id=16957) at 1:45:00.

[7] San Francisco Office of Labor Standards Enforcement. 2013. Minimum Wage Ordinance Annual Report, 2012-2013. Furthermore, cooperation between the City, BOFE and the Chinese Progressive Association resulted in a \$4 million dollar settlement for restaurant workers. Fine, Janice. 2015. Co-production: Bringing Together the unique Capabilities of Government and Society for Stronger Labor Standards Enforcement. The Lift Fund.

[8] Julie Su letter, May 2017. Available: <http://cpisandiego.org/Supmat/SuMayor2017.pdf>

[9] The US DOL-funded report found minimum wage violations at 2.7% of all jobs in California (Table 6, Eastern Research Group. 2014. The Social and Economic Effects of Wage Violations: Estimates for California and New York, Final Report. <https://www.dol.gov/asp/evaluation/completed-studies/WageViolationsReportDecember2014.pdf>) We applied this rate to California Employment Development Department's data on jobs in San Diego and Imperial counties. (<http://www.labormarketinfo.edd.ca.gov/data/employment-by-industry.html>).

[10] Authors' analysis of data provided by the Labor Commissioner's office for all claims filed in 2016.

[11] Su, Julie. 2014-2015 Fiscal Year Report on the Effectiveness of the Bureau of Field Enforcement. Available at: [https://www.dir.ca.gov/dlse/BOFE\\_LegReport2015.pdf](https://www.dir.ca.gov/dlse/BOFE_LegReport2015.pdf)

[12] Individual complaint data from Labor Commissioner obtained through PRA. BOFE data from email communication with San Diego BOFE office, June 2017.

# WHO FILES WAGE COMPLAINTS IN SAN DIEGO?

**Wage theft claims come from all over the city and many types of jobs.**

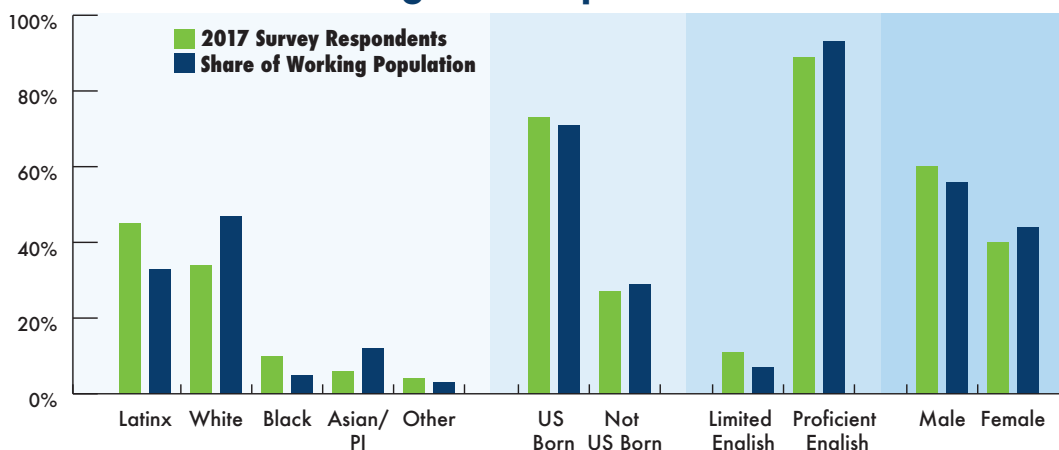


## Claims filed may not represent demographic groups most affected

This survey offers a window into who comes forward to file wage theft complaints, information not tracked by the Labor Commissioner. A large 2009 survey of more than 4,000 low-wage workers shows that unreported wage theft affects all demographic groups at high rates, with especially high rates of minimum wage violations experienced by workers who are women, foreign-born, and non-English speaking.<sup>1</sup> Our survey found more Latinx<sup>2</sup> and Black claimants, as well as those with limited English, than their share of the regional workforce, as would be expected since they are disproportionately in low-wage jobs where wage theft is much more prevalent. Women and foreign-born workers, two other disproportionately affected groups, appear to be underreporting wage theft.

Interpreter requests from 2014-2016 in the Labor Commissioner's office indicate that 14% -21% of claim-filers have limited English. Only 4-5% of interpretation requests are for languages other than Spanish, although non-Spanish speakers make up 19% of the region's workforce with limited English.<sup>3</sup>

**Claimants Surveyed and Working Population of San Diego and Imperial Counties**



The youngest and least-educated workers, as well as the most-educated and older workers, file complaints slightly less often, compared to their share of the workforce. This further demonstrates underreporting, since workers who have less than a high school education are more likely to suffer wage violations.

Based on their home and workplace ZIP codes, claimants we surveyed lived and worked throughout the City of San Diego and, to a lesser extent, the entire County, with 12 in Imperial County. (See map: <http://cpisandiego.org/Supmat/Wagetheftbyzip.pdf>)

## Claimants' pay levels and types of jobs

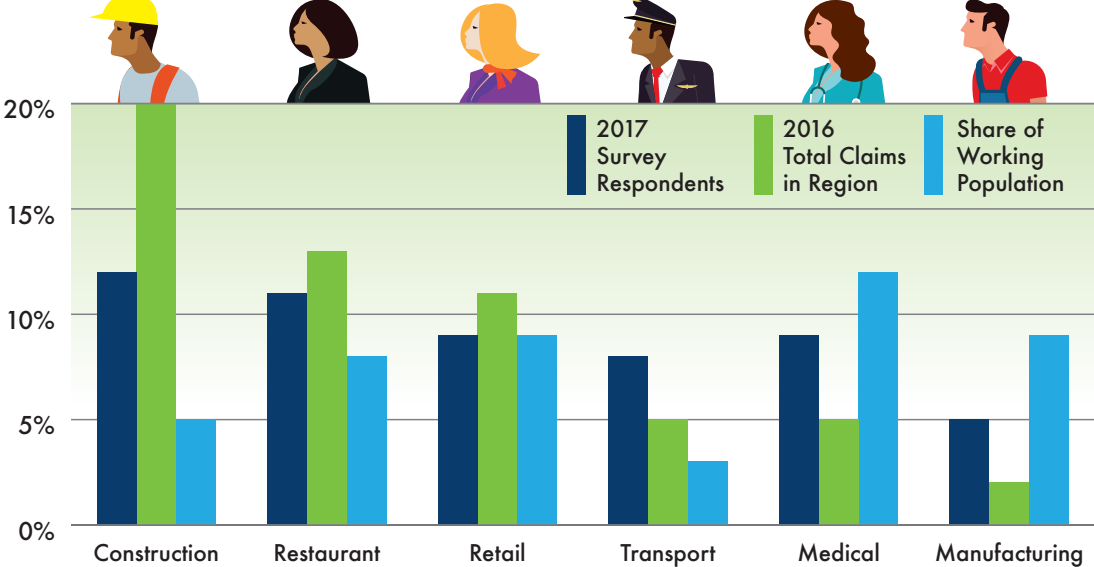
The claimants we surveyed had hourly pay ranging from \$5 to \$68 an hour, but half were paid less than \$13.65. That is roughly the wage needed for a single, full-time worker to live self-sufficiently in San Diego,<sup>5</sup> and 56% of those surveyed were supporting spouses, children and/or parents, so they had even higher costs of living and greater need of every paycheck.

Among respondents, 10.3% had managerial or supervisory positions. The next largest category was salespersons and account managers (8.3%), followed by drivers (7.6%), cooks (3.8%), cashiers and receptionists (2.8% each), and then carpenters, janitors, servers, and security guards (2.4% each). Among others, the respondents also included a nurse, an accountant, a law clerk, a therapist and a surfing instructor.

Despite the wide variety of jobs, wage complaints were concentrated in certain industries, particularly restaurants and construction. The percentage of complaints from those industries substantially exceeded the proportion of the local workforce. The Labor Commissioner’s data on total individual claims in 2016 confirms that imbalance.

National studies have documented differences among industries in both rates of violations and rates of employee wage theft complaints, and have found high rates of both violations and complaints in the construction and restaurant industries.<sup>6</sup> Several construction workers we surveyed said failure to pay wages is common in their industry, as is knowledge of the complaint process. Likewise, a restaurant employee said: “Just being in the restaurant business, I know the labor board is there.” Restaurant workers in the San Diego region, as elsewhere, are subject to a wide variety of wage violations.<sup>7</sup>

**Industries’ Share of Labor Claims and Total Workforce in San Diego and Imperial Counties**



Other industries, such as healthcare<sup>8</sup> and childcare/domestic work,<sup>9</sup> have low rates of complaints despite high non-compliance by employers. None of the employees we encountered in the claim-filing process were childcare workers, although 5,860 people are officially employed in childcare in San Diego and Imperial Counties, and many more in the informal economy.<sup>10</sup>

Workers in industries like construction and food service have more information about the labor claims process than people who work in isolation, such as nannies, maids, and janitors. Of claim-filers we surveyed, 77% said they had co-workers affected by the same issue and 48% of those had co-workers who had also filed claims.

[1] Bernhardt, et. al., 2009.  
[2] A gender-inclusive term for people of Latin American heritage  
[3] Authors’ analysis of Labor Commissioner data obtained through PRA and of US Census Bureau’s 2015 American Community Survey data  
[4] Bernhardt, et. al., 2009  
[5] Center on Policy Initiatives, March 2017. Making Ends Meet. <http://www.cpisandiego.org/reports/making-ends-meet-2>  
[6] Weil, David and Amanda Pyles. 2006. “Why Complain? Complaints, Compliance, and the Problem of Enforcement in the US Workplace,” Comparative Labor Law and Policy Journal, vol. 27, no. 1, pp. 59-92 on both violations and complaint making; Bernhardt, et. al., 2009 on violations by industry.  
[7] Esbenshade, Jill, et. al. 2015. Shorted: Wage Theft, Time Theft, and Discrimination in San Diego County Restaurant Jobs. San Diego State University and Center on Policy Initiatives.  
[8] Weil and Pyles, 2006.  
[9] Bernhardt, et. al., 2009.  
[10] Bureau of Labor Statistics (<https://www.bls.gov/oes/current/oes399011.htm#stl>)

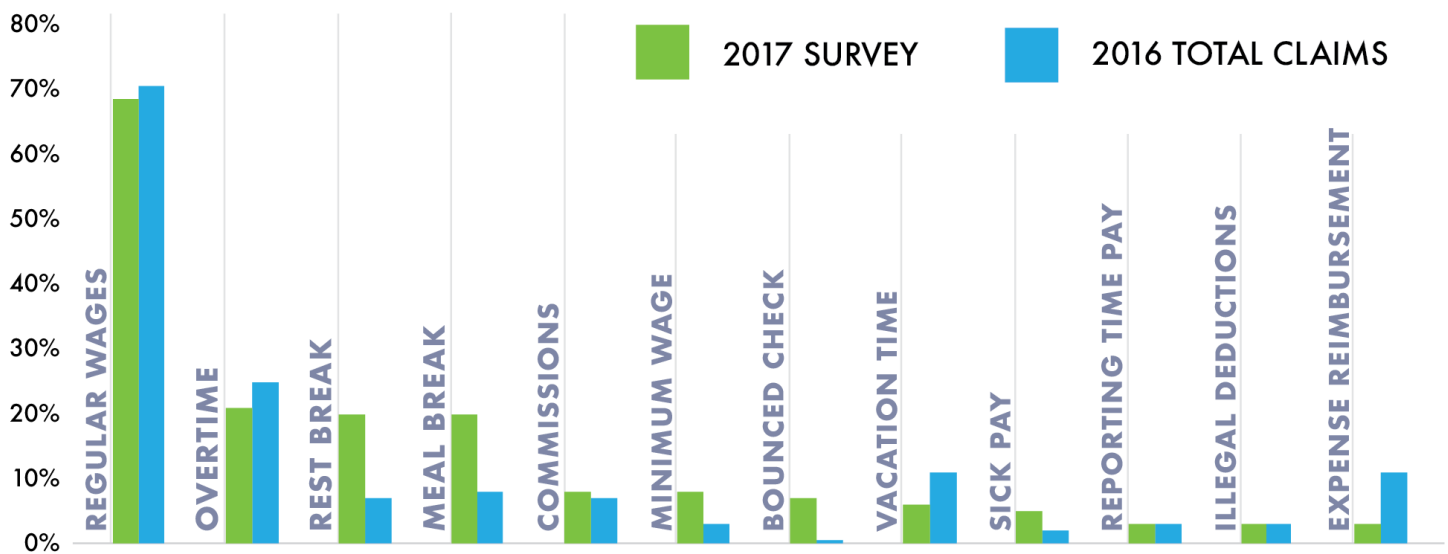
# TYPES OF CLAIMS FILED



**The worst kind of violation is most common.**  
**Workers seldom complain of wage theft while still on the job.**

Lack of payment for regular work hours – which includes off-the-clock work, not issuing a final paycheck, and failure to pay at all – accounted for 69% of the claims filed by survey participants, followed by 21% regarding failure to pay an overtime rate. An analysis of all claims filed in 2016 at the Labor Commissioner’s San Diego office corroborates our survey findings: 71% reported violations of regular wages and 25% reported overtime violations. In both our survey and the 2016 data, about half the participants filed complaints for more than one violation.

## Types of Violations in Complaints Filed at Labor Commissioner’s Office in San Diego



Our survey shows a higher proportion of meal and rest break claims than in the 2016 data, possibly because we encountered some workers at the beginning of the process. Rest and meal break violations are hard to prove and may be dropped during the process.<sup>1</sup> In the survey of 96 workers calling into the Employee Rights Center for advice before filing complaints, they reported the same pattern of violations as our survey.

The types of claims filed are not necessarily representative of the kinds of wage theft workers experience. When the Labor Commissioner has investigated workplaces, the most common violations found involve worker’s compensation, itemized paystubs, overtime, and rest and meal breaks.<sup>2</sup> Likewise, a large Los Angeles study found rest break violations were most common in low-wage jobs, followed by meal break violations, lack of paystubs, failure to pay minimum wage, overtime violations, and then off-the-clock work.<sup>3</sup>



Therefore, the fact that nonpayment for regular hours worked is the most frequent type of claim filed indicates that workers are not coming forward about other, less extreme violations. Our interviews revealed that workers are less likely to file these claims because:

- They are less familiar with the regulations, which sometimes are not clear-cut.
- Violations like denied rest breaks are hard to prove.
- Employers in their industry violate labor laws so frequently it appears standard practice.
- They fear losing more needed income if employers retaliate.

***“We don’t fully know our rights. We just know that you can’t work and not get paid.”***

***– A construction worker***

We encountered many claims for repeated or severe violations. In one in-depth interview, a hairdresser said she had to deliver bank deposits after work every day “completely off the clock.” Many respondents described not getting their final paycheck or leaving their jobs because they were not getting paid at all.

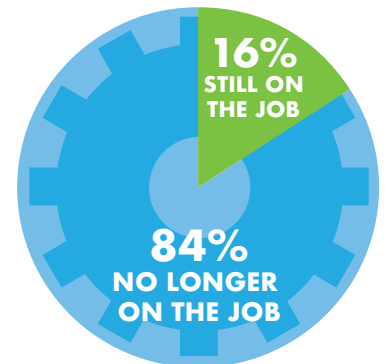
## Few workers complain of wage theft while still on the job

Our survey indicates that workers rarely file wage theft complaints while they are still on the job. Among the claimants we surveyed, 84% were no longer at that job. Of those, about half had quit and half had been fired.

We found three frequent reasons people wait until they’re off the job to file complaints:

- Employees fear retaliation from the boss while they are still employed.
- In some cases, violations may occur as part of separation from a job, for instance when the final paycheck is withheld. About a third (35%) of respondents said the violations happened within the same month their employment ended.
- Sometimes workers learn they can file complaints about various violations only when seeking redress for being fired.

**Most San Diego Wage Theft Claimants No Longer on the Job**



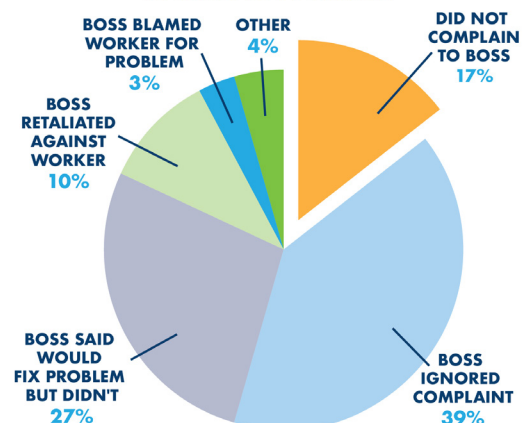
Workers typically wait months before filing complaints of wage theft violations, if they ever file. Half of our survey respondents filed complaints more than four months after they said the violation began, a quarter waited more than a year, and some waited years. Among the 44 claimants who were still on the job, half had waited for more than seven months and 25% waited more than two years.

***“If I was still there and I had filed a complaint, I know... they would fire me.”***

***– An accountant***

For those who did not file immediately, the most common reason for delay was waiting for their boss to resolve the issue. Of all claimants surveyed, 83% had first complained to their boss. Nearly a third said they were promised a solution that never happened. Others said they were ignored, dismissed, faced retaliation or were blamed for their complaint by the employer. These employees all came to the Labor Commissioner as a last resort.

**Most Claimants First Asked Boss to Resolve Problems**



[1] Lower rates of vacation time and business expense violations in our survey may reflect that many workers don't know they can file those complaints until they are further along the process.

[2] Su, Julie. 2014-2015 Fiscal Year Report on the Effectiveness of the Bureau of Field Enforcement. [https://www.dir.ca.gov/dlse/BOFE\\_LegReport2015.pdf](https://www.dir.ca.gov/dlse/BOFE_LegReport2015.pdf)

[3] Milkman, Ruth, et. al. 2010. Wage Theft and Workplace Violations in Los Angeles: The Failure of Employment and Labor Law for Low-Wage Workers. Institute for Research on Labor and Employment, UCLA.

# OBSTACLES TO FILING WAGE THEFT CLAIMS

**Fear of retaliation and lack of information are major barriers.**

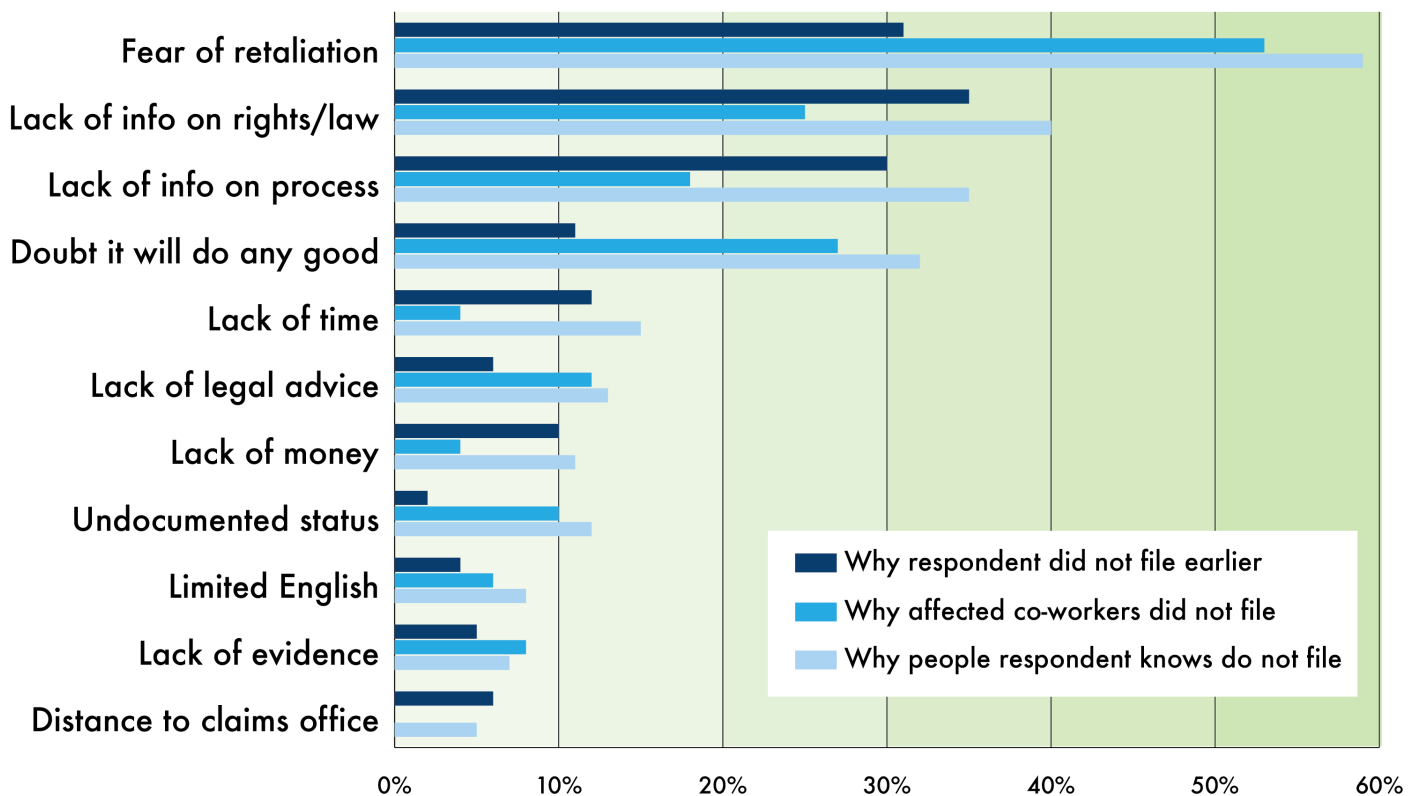
Fear of retaliation and lack of knowledge about wage law violations and about the complaint process emerged as the major barriers to filing complaints. In addition, workers believed others thought it would do no good to complain.

Our survey asked, in three ways, why many people who are owed money by their employer don't file claims to collect it. These questions were open-ended:

- Claimants who said they did not file immediately, for reasons other than awaiting resolution by their employers, were asked why they waited.
- Claimants who said their coworkers suffered the same violation without complaining were asked why the coworkers did not file.
- All respondents were asked why other people they know do not file complaints.

In addition, 96 people who called the Employee Rights Center for advice were asked a multiple-choice question about why they had not yet filed claims.

## Reasons Workers Delay or Never File Wage Claims





## Fear of retaliation

Workers are legally protected from retaliation for complaining of labor violations to their employers or a state agency, but retaliation generally is hard to prove, since employers have a broad right to fire without justification. In addition, the process to file a retaliation complaint is long and difficult.

Staff of assistance organizations interviewed said workers who do complain after being fired rarely get their jobs back, and certainly not in a reasonable timeframe.

More than a third of survey respondents said their employers had retaliated against them for complaining about wage violations, mostly by firing them. Other forms of retaliation included giving the worker fewer or worse hours, assigning different duties, and threatening to blacklist or fire the worker or call Immigration and Customs Enforcement (ICE).

***“I got in trouble for directly complaining to my boss. He would threaten to let me go and would always verbally threaten me at the workplace.”***

***— a San Diego restaurant supervisor***

The threat of retaliation has a chilling effect on co-workers who might complain themselves or act as witnesses. A roofing company foreman we interviewed had been fired after asking his boss about unpaid vacation time. He said his co-workers with the same issue refused to testify on his behalf because they feared also being fired.

In addition, retaliation complaints require a separate process, and often a subsequent court case to enforce determinations by the Labor Commissioner. The process can take years. In one case reported to us by an assistance organization, a janitor employed by a contractor at the Port of San Diego filed a retaliation complaint in October 2008. The case finally ended with a court ruling in his favor in August 2016, but he never received a dime because by then the company had dissolved.

Throughout California, 1,874 complaints of retaliation were filed and found to be within the jurisdiction of the Labor Commissioner in 2014, the latest year with public data available. In that same year, settlements were reached in only 401 cases, many filed in previous years, and employers eventually complied with judgments to pay workers in only six additional cases.<sup>1</sup>

The Labor Commissioner’s office now warns employers about the illegality of calling ICE or otherwise retaliating when workers complain, and has tried to speed up the process. At Commissioner Su’s request, larger fines and stronger legal protections were included in 2013 legislation.<sup>2</sup> However, the system is backlogged, the retaliation unit is understaffed, and fear of retaliation is still the largest barrier to filing wage theft complaints.

***“I was definitely blacklisted. I went ahead and filed my complaint and nobody from the corporate office would want to talk to me, leads were taken away from me, sales that I had put in the books and charged were sabotaged.”***

***— an accounts manager***

## Lack of knowledge

Lack of knowledge about their rights and about the complaint process were the second and third most common reasons workers gave for delaying or never filing. Most respondents (62%) found out about the claims process through word of mouth, from a friend, relative, or co-worker. Far fewer, 22%, said they learned about filing claims on the internet.

The Labor Commissioner's office launched a major public awareness campaign in 2014, called "Wage Theft is a Crime," with billboards, posters, radio spots in various languages, and bus-stop and bus advertisements. However, only 11% of our respondents had seen the campaign.

Only four people mentioned learning of the process through postings at their workplaces, although employers are legally required to visibly display numerous posters about labor regulations. In in-depth interviews, most workers said they had never seen the posters at work, and others described them as unhelpful. The official minimum wage poster has no contact phone number and provides a URL only in small print at the bottom. By contrast, the required CAL-OSHA workplace safety poster has a worker hotline in large bold print in the middle, and the addresses and phone numbers for all local offices.

When asked how the Labor Commissioner's Office could reach more workers like themselves, survey respondents most often suggested advertising, with flyers, banners, radio ads, or television spots. The second most common idea was increased information at worksites, in new-hire packets, improved workplace posters, or worksite visits. The third biggest group of suggestions involved increasing the Labor Commissioner's online presence with a better website, social media, and allowing workers to file complaints online.

## Undocumented status

All labor protections in California apply to undocumented workers. The Labor Commissioner's office has emphasized in its outreach campaigns, videos, and to its office staff that workers do not need proof of legal status or a California ID to file a claim. However, several survey respondents mentioned a fear, heightened under the new federal administration, that undocumented workers could be turned in by their employers or a state agency.

About 6% of our survey respondents were undocumented, roughly the same percentage as in the entire San Diego County population.<sup>3</sup> This indicates a low rate of complaints, given that a much larger proportion of undocumented people are working<sup>4</sup> and wage theft is much more commonly experienced by them than other workers.<sup>5</sup> Minimum wage violations, especially, are about two and a half times as likely against undocumented workers as native-born workers.<sup>6</sup>

***"They hire a lot of people that don't have the permit to work, so they are afraid to complain."***

***- a cook***

[1] Su, Julie. 2014 Retaliation Complaint Report to the California State Legislature. At: [www.dir.ca.gov/dlse/RCILegReport2014.pdf](http://www.dir.ca.gov/dlse/RCILegReport2014.pdf)

[2] California Labor Code sections 98.6 and 1102.5, which took effect in 2014.

[3] Marcelli, Enrico and Manuel Pastor. 2015. Undocumented and Uninsured. San Diego State University and University of Southern California.

[4] Zhang, S. X. 2012. Trafficking of Migrant Laborers in San Diego County: Looking for a Hidden Population. San Diego, CA: San Diego State University

[5] Bernhardt, et. al., 2009; Gleeson, Shannon. 2016. Precarious Claims: The Promise and Failure of Workplace Protections in the United States, UC Berkeley Press.

[6] Bernhardt, et. al., 2009

# WAGE THEFT COMPLAINT PROCESS

## Long delays and complex system at the backlogged Labor Commissioner's office.

### Lengthy process rarely recovers full amount of claims

When San Diego workers overcome the obstacles and decide to claim wages they are due, they can either file a complaint with the Labor Commissioner's Bureau of Field Enforcement (BOFE) or an individual claim to recover their money, or both.<sup>1</sup> The vast majority file individual claims, which leads to a long and often arduous process:

- Workers must fill out a claim form and deliver it, by mail or in person, to the Labor Commissioner's office at 7575 Metropolitan Drive, #210, San Diego.
- A conference is scheduled, in which a Deputy Labor Commissioner reviews the claim and tries to reach a settlement between the employer and employee.
- If no settlement is reached and the case is not dismissed, the case is scheduled for an administrative hearing. About 44% of claims go to hearing, according to our analysis of Labor Commissioner data. A settlement may be reached before or during the hearing.
- The hearing officer may issue an award in the employee's favor. If the award is not paid within 15 days, the Labor Commissioner's office will file in court for a judgement.

Most employees don't recover what they believe they are owed. Workers commonly accept settlements for less than their claims, often because they need money immediately for living expenses or can't miss work at a new job to pursue the process. When workers don't settle and later win awards against the employer, our analysis of Labor Commissioner data from 2010-2016 shows they collect, on average, only 15% of the amounts awarded at hearings. A UCLA and National Employment Law Project study that analyzed 2008-2011 data found the same 15% collection rate on hearing awards, and 17% collecting anything on court judgments, primarily because the companies closed during the years it takes to reach a judgment.<sup>2</sup>



***"I was owed about \$7,500 but only got like a little under \$3,000."***

***– a restaurant manager who accepted a settlement***

# Major problems encountered by claimants

The three most common challenges with the claim-making process identified by our survey respondents were: 1) the amount of time required, 2) a lack of assistance with complex forms, and 3) communication problems.

## 1. Amount of time required for the process

The California Supreme Court has ruled twice that “wages are not ordinary debts.... [B]ecause of the economic position of the average worker and, in particular, his dependence on wages for the necessities of life for himself and his family, it is essential to the public welfare that he receive his pay (promptly).”<sup>3</sup>

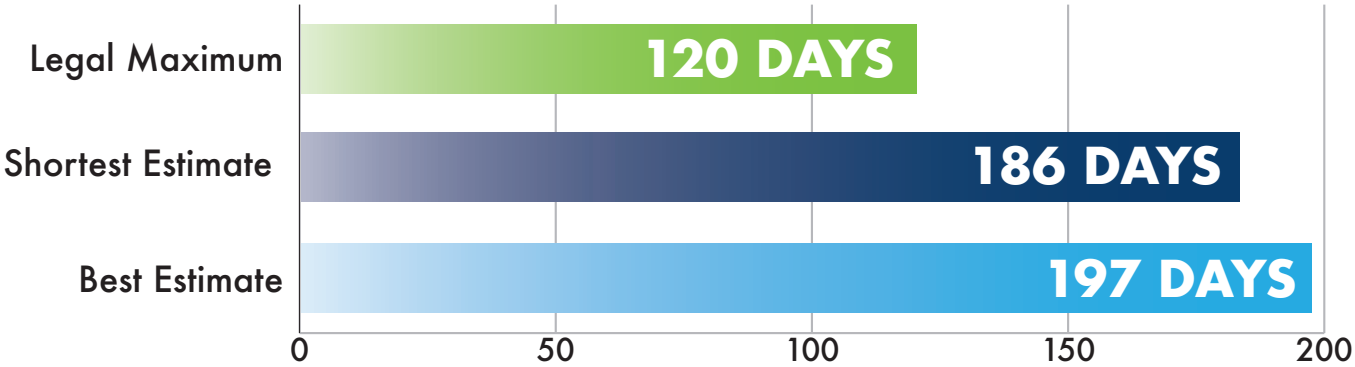
*“I’m a father of two and \$16,700 out of my pocket is a lot of money for me. And for it not to be taken care of in a timely manner is very upsetting.”*

*– an office manager*

Our data indicate that the Labor Commissioner’s office in San Diego is able to resolve cases within the legally required timeframe in only 10% of cases, or at best 14%.<sup>4</sup>

California law<sup>5</sup> gives the Labor Commissioner’s office 30 days to determine whether there will be a hearing, and in practice this determination usually happens at the conference. Most (59%) of workers we surveyed had already filed, and the median time they reported waiting for a conference was double the 30-day limit. Hearings are legally required to be within 120 days of the filing, but we found a median time lapse of at least 186 days and more likely 197 days.<sup>6</sup> These delays can create extreme hardship for people in low-wage jobs who are hovering near poverty.

## Time Lapse from Claim Filing to Required Hearing



Besides the lengthy delays, wage theft claimants expressed distress at the amount of time they had to spend pursuing a claim. The office is not open weekends or evenings, so many claimants must miss work to file, and to attend the conferences and hearings, which means more lost wages and possibly putting a new job in jeopardy.

## 2. Complexity of the forms and lack of assistance

Many workers found the complaint forms and instructions confusing, although they have been simplified in recent years. Different forms are required for individual claims, requesting a worksite investigation, retaliation complaints, and complaints related to public works jobs, with additional forms if claims involve commission pay, vacation wages, or work hours that vary week to week. Many workers said even the initial individual claim and the accompanying grid that asks for daily hours and meal breaks are confusing. The form assumes workers understand various violations and asks

them to calculate the wages owed, although Labor Commissioner staff are trained to calculate wages from the forms submitted.

Very few workers surveyed received any assistance in filling out the forms, although many said they needed it. Only 9% said they had assistance from lawyers or legal assistance organizations, 11% got help from friends, family or co-workers, and 78% had no help. In interviews, workers who had legal assistance said they were better informed of what was owed to them, how to fill out the forms, and how to substantiate their cases.

*“I only discovered about the (overtime) violations after I was fired and talked to a lawyer.”*

*– a customer service representative*

Some workers praised the Labor Commissioner’s office staff for offering assistance and others said the staff provided no help or was rude. Our student researchers spent a combined 400 hours in the office, and rarely observed the office staff assist workers who sat at tables filling out the complicated forms. The researchers observed that many workers seemed confused and frustrated by the forms, and that inconsistent staffing at the front desk caused claimants to receive conflicting and misleading information.

## 3. Communication problems

Our researchers encountered a number of workers who had come to the office to check on their cases because they had heard nothing and could not contact the staff, or because their cases had been lost. One worker described leaving nine voicemail messages and then coming to the office from the South Bay, only to have the Deputy Commissioner tell him to write a letter because she was too busy to see him.

The communication problems are compounded by translation issues for non-English speakers. While the main claim form (DLSE 1) is available in seven languages, other forms are only available in English and Spanish. Also, assistance organizations reported that interpreters in The Labor Commissioner proceedings often were not certified or competent. In interviews, lawyers who attend conferences and hearings said interpreters commonly leave out information or mistranslate questions or answers. We witnessed one worker pressured into a conference without an interpreter present.

[1] For a comparison of the two processes see: <http://wagetheftisacrime.com/Report-Laborlaw-Violation.html>

[2] Cho, Eunice Hyunhye, Tia Koonse, and Anthony Mischel. 2013. Hollow Victories. National Employment Law Project and UCLA Labor Center.

[3] In re Trombley (1948) 31 Cal. 2d 801, 809-810 [193 Cal. Rptr. 734]. (In Pressler v. Donald L. Bren Co. (1982) 32 Cal.3d 831, 837). Supreme Court of California

[4] Estimated using the method described in footnote 6.

[5] California Labor Code Section 98(a)

[6] Most respondents gave specific dates of their filings, conferences, and hearings. For those who provided only a month we assigned the 15th of the month as the best estimate. To calculate the best case scenario, or shortest possible time elapsed, we used the last day of the month as the filing date and the 1st of the month for conference and hearing dates. The chart shows shortest and best estimate for the median time to hearings; there also was little difference between the shortest and best estimate medians for conferences: 59 days and 61 days.

# CASE STUDY: HERITAGE CONSTRUCTION

## Payroll checks bounced, the company closed, many workers still unpaid a year later.

In May and June 2016, about 150 workers walked off the job at 10 building sites in San Diego – including UCSD Medical Center, the San Diego Children’s Museum, and Navy Federal Credit Union – saying they had been working without pay for two to five weeks. Their employer, a subcontractor called Heritage Construction, issued checks that bounced and stopped answering the phone, workers reported. Heritage closed and then lost its state contractor’s license in February 2017.

About 65 Heritage workers, including supervisors, filed claims with the Labor Commissioner’s office. Our researchers encountered several groups of Heritage workers in the office, surveyed 12 of the workers, and interviewed three of them. We also interviewed staff of Carpenters/Contractors Cooperation Committee (Quad C), an advocacy organization that helped the workers navigate the process: filling out paperwork, explaining how to present their cases, informing them of additional violations, and facilitating communication with the Labor Commissioner’s office.

The Heritage case illustrates a number of common issues covered in this report:

- The workers waited to complain until they had missed weeks of regular pay, although some reported being denied overtime pay and rest breaks for much longer.
- They filed after leaving their jobs and unsuccessfully trying to recover wages from the employer.
- When they did complain, they faced long delays in the process.
- Sharing the experience with coworkers and having professional assistance made them better prepared and more confident than many other claimants who were on their own.
- Fewer than half of the 150 affected workers filed claims. They told us the main barriers keeping others from filing were: 1) fear caused by undocumented status, 2) lack of time, given the need to concentrate on finding and keeping other employment, 3) skepticism about the outcome of the process.

James and Paul, former Heritage workers, filed wage claims on the same day in June of 2016. As of April 2017, neither of them had been scheduled for a conference or hearing. Paul said he left messages for the deputy assigned to him every week for six weeks, and never got a response. He was in the office for the fourth time, trying to get an update.

Despite clear evidence of wage theft against dozens of Heritage workers, there was no comprehensive investigation, which could have helped all workers at the company, including those who lacked the time, knowledge, and confidence about their legal status to come forward. The investigative bureau, BOFE, is understaffed and its citation powers, while significantly expanded in recent years, are still limited. Relevant in this case, BOFE can only collect up to minimum wage, even for employees with higher wages.

The Heritage case also demonstrates the potential for collecting stolen wages from businesses higher up the employment chain when a subcontractor is insolvent. The Labor Commissioner’s office has recovered some workers’ wages from general contractors that hired Heritage, under a 2015 law holding companies responsible for wage theft by their subcontractors.<sup>1</sup>

[1] AB 1897 (section 2810.3 of the Labor Code), which took effect on January 1, 2015. The first case in which the Labor Commissioner held a general contractor liable for a subcontractor’s wage theft under this law was upheld on appeal in May 2017. <https://www.dir.ca.gov/DIRNews/2017/2017-55.pdf>





## Wage laws must be enforced to protect workers and law-abiding employers.

The City of San Diego and the California Labor Commissioner must collaborate to protect workers and law-abiding employers by enforcing the wage laws. Based on the findings in this report, we offer the following policy recommendations:

- 1. The City of San Diego must actively enforce its earned sick days and minimum wage law,** by conducting investigations and issuing citations against employers that fail to pay the minimum wage, fail to provide access to sick days or retaliate against workers for complaining. The enforcement office mandated in the law that took effect on July 11, 2016, should be staffed with trained investigators and other legal professionals to ensure that workers receive effective legal protection.
- 2. Increased funding for targeted, proactive investigations at worksites,** such as those done by the Bureau of Field Enforcement (BOFE), would be an effective and efficient way to provide justice for more employees, given the many problems documented here with relying on workers to come forward individually. Also, BOFE's citation powers must be further expanded.
- 3. Workers who complain about wage theft need stronger protection from retaliation by employers.** The Labor Commissioner's office must be funded to ensure the swift investigation of retaliation complaints, and should be able to cite employers for violations. The right to file complaints of wage theft is not protected if those who are fired for complaining cannot regain their jobs immediately.
- 4. Outreach to inform workers of their rights to file claims must be substantially increased and more effective.** The city and state agencies should fund outreach by organizations that know the community and can provide information in multiple languages and through diverse distribution methods like new-employee packets, school curriculum, social media, and radio ads.
- 5. Online complaint filing is needed, at both the city and state,** with a multi-lingual system that automatically leads claimants through the correct forms.
- 6. Workers need more assistance when filing claims,** including dedicated, trained customer service staff, weekend and evening hours, weekly bilingual workshops, access to certified interpreters, and sufficient investigative staffing for timely resolution of cases. Funding is needed for training and to monitor the quality of services. Claimants should be offered assistance with the forms and given referrals to legal assistance organizations.
- 7. The collection of awards and judgements must be improved through increased funding and staffing.** Internal training about and use of recently broadened tools – such as joint liability, bond requirements, and stop orders to halt work by lawbreaking companies – would create stronger claims on employers' assets and more leverage higher up the employment.<sup>1</sup>

[1] Recent changes to strengthen collections and joint employment include provisions in Labor Codes sections 558.1, 238, 238.1, and 238.5.

# CONFRONTING WAGE THEFT

## BARRIERS TO CLAIMING UNPAID WAGES IN SAN DIEGO



**A study by the San Diego State University Department of Sociology,  
the Center on Policy Initiatives, and the Employee Rights Center of San Diego.**

Principal Investigator and Lead Author: Jill Esbenshade, PhD

Co-Principal Investigators: Peter Brownell, PhD, and Alor F. Calderon

Report Editor and Manager: Susan Duerksen

Data Analyst: Amanda Hendrix

Research Project Coordinator: Elizabeta Shifrin

Research Team: Christopher Conner, Charlene Eivaz, Raquel Funches, Susan Gates, Kelly Gmeiner, Ian Larson, Leandra Lococo, Amina Mohamed, Thuan Nguyen, Lauren Pon, Arely Sanchez, Alicia Salinas, and Brady Stanton

Report Design by Anoki Casey

Translation by Julio Delgado

### Acknowledgments

We would like to thank Dr. Audrey Beck for assistance with data analysis, Emily Howe for assistance on City of San Diego research, and Anjeleena Sahni for data mapping. We also thank the following students who assisted with the survey: Gustavo Barraza, Patricia Bessetti, Natalie Carter, Angela Griffin, Gavin Grommes, Jacqueline Madrigal Alcantar, Gilberto Sarabia, and Christine Tran.

We gratefully acknowledge the San Diego State University Service Learning and Community Engagement Program for funding this research, and The California Wellness Foundation, Marguerite Casey Foundation, Open Society Foundations, Public Welfare Foundation, Satterberg Foundation, and Unitarian Universalist Veatch Program at Shelter Rock for funding this research and other CPI programs.

### Methods

A research team of 22 SDSU graduate and undergraduate students conducted surveys in the lobby of the Labor Commissioner's Office in San Diego over a nine-week period from February through April of 2017. Collectively, these students were present in the Labor Commissioner's Office for more than 400 hours. Researchers approached people in the lobby and asked them to participate in the survey if they were workers there about a claim and were over 18 years old. We conducted surveys with 305 workers. Most surveys, which included many open-ended questions, took from 15 to 45 minutes. A few surveys were interrupted by the respondent being called into a meeting about their claim, and we then attempted to complete the survey over the phone. We asked respondents to participate in in-depth interviews at a later date, and conducted 30 of these interviews. We also interviewed staff of six non-profit organizations that assist workers with reporting violations and/or recovering wages. In addition, we conducted brief phone surveys of 96 workers who contacted the Employee Rights Center about violations but had not yet filed claims.

Additional research included analyzing data from the most recent available U.S. Census Bureau American Community Survey (2015), in order to compare our survey data to the working population of San Diego and Imperial counties. Through Public Records Act requests, we received data directly from the Labor Commissioner's Office on zip codes, language, employment industry, and type of claim for all claimants in the San Diego office, as well as numbers of staff, claims, hearings and judgements for California.

**Report available online: [www.cpisandiego.org/reports/confrontingwagetheft](http://www.cpisandiego.org/reports/confrontingwagetheft)**

**Versión en español: [www.cpisandiego.org/reports/enfrentandoelrobodesueldo](http://www.cpisandiego.org/reports/enfrentandoelrobodesueldo)**