

# **Wage, Child Labor and Protected Leave Investigations**

*2015 Annual Report to the Governor*

December 2015

# Table of Contents

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<b>Executive Summary</b> .....	<b>1</b>
<b>Introduction</b> .....	<b>3</b>
<b>2015 Information Update</b> .....	<b>4</b>
Wage violations.....	4
Child labor .....	6
Protected leave .....	7
Challenges during 2015 .....	8
Accomplishments during 2015 .....	9
<b>Conclusion</b> .....	<b>10</b>
<b>Figures</b>	
Figure 1: Wage complaints.....	5
Figure 2: Child labor information .....	6
Figure 3: Protected leave activity.....	7

# Executive Summary

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## Introduction

The Department of Labor and Industries (L&I) protects the safety, health and security of Washington's workers and citizens. L&I's 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.

## 2015 Information update

### Wage violations

Washington's Legislature passed the landmark Wage Payment Act in 2006, giving L&I 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 \$21 million in unpaid wages to nearly 25,000 Washington workers.

In fiscal year (FY) 2015, L&I had 16 field agents throughout the state investigating wage complaints and working with employers to return money owed to workers. During this period, the department collected and returned just over \$2.8 million to about 2,700 workers. About 63 percent of this money was collected from employers 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.

Although the number of complaints regarding child labor is small compared to the number of wage complaints, this issue is of critical importance to L&I. Child labor complaints can require rapid staff response, and often require on-site visits to ensure the child's safety. Investigations involving allegations of prohibited job duties require significant time commitments.

### 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. L&I staff also conducts public education about protected leave requirements.

### **Challenges during FY 2015**

L&I experienced a 28 percent increase in wage complaints in FY 2015, and expects continued increases due to easier complaint filing and the growing economy. A pending court decision may also result in increased workload.

The increased volume of wage complaints is making it possible for L&I to further assess how to best meet customer needs. When complaints became backlogged during the year, the department deployed three temporary agents and three temporary customer service specialists to serve as an initial investigations unit. This unit "triaged" new cases to resolve the simple ones quickly, which reduced incoming complaints to filed agents and allowed them to work on the backlogged complaints. Over a period of eight months, this strategy helped L&I reduce a backlog of over 400 complaints more than 60 days old to 85 complaints -- a 78 percent decrease.

### **Conclusion**

L&I has a successful history of protecting workers' wages and working conditions by:

- Collecting and returning wages to Washington's workers.
- Making child labor violations a high priority.
- Investigating allegations of leave violations and educating the public about protected leave laws.
- Enabling more workers to file wage complaints faster and easier through online technology.

In FY 2015, L&I investigated a record 5,440 complaints and collected just over \$2.8 million in wages returned to workers (about 63 percent of this money was collected without formal citations).

The department also made improvements to complaint tracking, collections data and wage complaint filing technologies to help reduce delays and improve service to customers. For the first time, employees can file a wage complaint with L&I electronically.

# Introduction

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The Department of Labor & Industries (L&I) protects the safety, health and security of Washington's workers and citizens. Located within the Fraud Prevention and Employment Standards (FPLS) division, 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.
- Provide safe working conditions.
- Assure rest and meal breaks.
- 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. In FY 2015, L&I collected and returned just over \$2.8 million in unpaid wages to about 2,700 workers. This was made possible by internal process improvements including, among other things:

- Use of *Lean*<sup>1</sup> principles that have streamlined investigation practices.
- Improved technology that has influenced collection efforts by allowing the 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.

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<sup>1</sup> *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.

# 2015 Information Update

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This report describes how L&I protected the safety, health and security of Washington's workers in fiscal year (FY) 2015 by implementing state laws on wages and working conditions. It provides information about wage, child labor and leave investigations conducted in 2015 and their results.

## WAGE VIOLATIONS

The Wage Payment Act was enacted in 2006 and amended in 2010. It 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 has 60 days to issue a decision about whether the law has been violated. This time period may be extended for good cause. It is not always possible to complete every investigation within 60 days due to the sheer volume of complaints or their complexity. The department's goal is to reduce the number of complaints over 60 days old.

Workers and employers both have the right to appeal L&I's decision about a complaint to the Office of Administrative Hearings. A worker has the right to 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 cannot pursue private action once that process is completed.

Figure 1 shows wage complaints investigated, complaints resolved and wages returned to workers in fiscal years 2012 to 2015. As shown, the number of complaints rose nearly 39 percent from FY 2014 to FY 2015. The wages returned to workers increased from \$2.1 million to \$2.8 million. Of the wage complaints investigated, 1,784 resulted in the agent collecting money for the worker without resorting to a citation and notice of assessment. The department issued 715 citations and notices of assessment for those employers who violated the law and did not pay during the investigation.

**Figure 1: Wage complaints**

<b>Wage complaints, investigations and collections</b>				
	<b>FY 2012</b>	<b>FY 2013*</b>	<b>FY 2014</b>	<b>FY 2015</b>
Number of wage complaints investigated	4,012	3,772	3,907	5,440
Collected wages owed to workers	\$2 million	\$3.27 million	\$2.1million	\$2.8 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. Even though L&I had a 39 percent increase in complaints, a greater number of online complaints were not accepted as valid complaints, so this does not reflect a significant reduction in wages collected per complaint.

L&I collected about \$2.8 million in unpaid wages in FY 2015, returning the money directly to Washington’s workers.

During FY 2015, the department implemented three major improvements that helped to drive increases in and will assist in future collection of unpaid wages:

- **Online filing:** L&I launched a new system that allows employees to file worker rights complaints online for the first time. The new system is faster and more streamlined than using the paper process, which requires re-keying data from hard-copy complaints. Paper complaints are still accepted. Online filing increased the number of total complaints received by 39 percent. This increase in complaints required more agent effort to investigate, but also resulted in a much higher rate of complaints that were not accepted after being screened. This is likely because the public is now able to fill out a complaint form without screening of the complaint beforehand, making the investigating agent responsible for screening each complaint.
- **Lean efficiencies:** The Employment Standards Program created standardized procedures for processing and investigating complaints two years ago. Now, a standard work process clearly outlines investigative procedures that are used to handle incoming cases and conduct investigations. The department is currently in the process of improving standard work process to incorporate some of the successes of a temporary “triage” unit, which led to efficiencies that can be used earlier in the investigation process. Enhanced support from customer service, along with having agents address specific issues earlier in the process, helps resolve complaints faster, reducing the number of complaints more than 60 days old.

- Limited English proficiency:** The electronic system and program forms and letters are now available in both Spanish and English. Field and central office staff now has guidelines for communicating with customers of limited English proficiency who want to file a Worker Rights Complaint form.

## 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 investigations completed, work permits issued, and work variances issued for minor workers from FY 2012 – FY 2015. As shown, the number of investigations increased dramatically in FY 2015. This is mostly due to creating a system to allow customers to file complaints online. Over the period shown, there was a small but steady decline in the number of permits issued, but an increase in the number of variances. This may be due to a downturn in the economy. When employers are cutting back on staff, they don’t hire as many minors. They also request more variances so they have more flexibility in using the minors more.

**Figure 2: Child labor information**

Investigations, work permits and variances				
	FY 2012	FY 2013	FY 2014	FY 2015
Minor injuries investigated and completed	485	369	512	647
Minor work permits issued	25,069	24,936	24,522	24,481
Minor work variances issued <sup>1</sup>	102	116	117	153

Source: Department of Labor & Industries

<sup>1</sup> Minor work variances are exceptions L&I can grant to the hours-of-work requirements for teen workers.

## 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.
- Laws that provide leave to spouses of deployed military members and to 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 provided appropriate leave rights. Washington workers in these circumstances may file a complaint with L&I if they feel their rights have been violated.

In FY 2015, L&I’s staff conducted 54 investigations and determined one or more violation(s) occurred in all cases.

As shown in Figure 3, more investigations were completed in FY 2015 than in the previous two years, though outreach events were fewer. The drop in outreach events reflects a change in staffing. A new protected leave specialist is now on track to exceed the FY 2014 figures in FY 2016.

**Figure 3: Protected leave activity**

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

Source: Department of Labor & Industries

## Technological improvements

In FY 2015, L&I continued making it easier to do business by investing in technological improvements to its wage, child labor and protected leave investigation processes in three major areas:

- **Complaint Activity Tracking System:** Since replacing an outdated electronic system in 2013, L&I can now efficiently store and organize all information and case activity in one place, where it can be instantly accessed by staff throughout the state. The system is designed to work in conjunction with the agency's collections data system and serves as a platform for three additional Employment Standards applications. L&I developed the system in-house using existing resources, and continues to maintain and improve it.
- **Linking the Complaint Activity Tracking System to collections data:** Connecting the case handling and collections data systems has eliminated delays and redundancies.
- **Online wage complaint filing:** The application enabling online filing of wage complaints went live in 2013. Within a month, online complaints jumped to 50 percent of all complaints filed with L&I. This level increased to 55 percent as of September 2015. Since implementing online filing, L&I has received more than 5,000 complaints online. Washington's workers can file a wage complaint at any time without having to travel to mail, fax or call an L&I office. This has resulted in a 28 percent increase in wage complaints. Employment Standards also launched a stand-alone online filing application for Spanish-speaking workers.

## CHALLENGES DURING 2015

### Case backlog

As shown previously, complaints in each area were higher in FY 2015 than in previous years. L&I staff expects this workload to continue to increase.

Wage complaints increased the most, rising 39 percent from 3,907 to 5,440. Two primary factors contributing to this increase are the ability to file a wage complaint electronically, making it easier for the public to file them, and the growing economy.

The growing economy has increased hiring, which as a result, has increased wage complaints. About 47 percent of wage complaints are from employees who have not received their final paycheck from their previous employers. Employees have up to three years to file a wage complaint, and they typically wait to file one until they have found a new job elsewhere. Increased movement in the labor force means more workers are starting new jobs and then filing complaints, which adds to the case backlog.

The increased volume of wage complaints may result in a backlog of complaints. When complaints became backlogged during FY 2015, the department deployed three temporary agents and three temporary customer service specialists to serve as an initial investigations unit. This unit "triaged" new cases to resolve the simple ones quickly, which reduced incoming complaints to field agents and allowed them to work on the backlogged complaints. Over a period of eight months, this strategy helped L&I reduce a backlog of over 400 complaints more than 60 days old to 85 complaints -- a 78 percent decrease. The same strategy may be deployed in the future if needed. L&I is requesting three

agents in the supplemental budget, as well as one citation specialist to work with the rising number of citations due to the increased caseload.

In addition, a recent Washington State Supreme Court decision regarding meal and rest breaks (*Demetrio v. Sakuma Bros. Farms, Inc.*, 183 Wn.2d 649, 355 P.3d 258 (2015)) is under review. The decision may affect payment for meal and rest breaks, which could further increase workload.

## **ACCOMPLISHMENTS DURING 2015**

### **Case backlog reduction**

L&I reduced backlogged cases from over 500 to just under 80 by adding temporary assistance in the form of a “triage unit.” This unit reviewed cases when they were first filed, quickly closing those that could not be accepted. This reduced the influx of new complaints, allowing agents to focus on resolving the older complaints.

### **Online filing**

The department continued to improve the online filing process that makes it easier for customers to work with L&I. Although the online process has increased L&I’s overall workload, the convenience for customers has outweighed the additional workload.

### **Collections information**

Linking the complaint activity tracking system to the accounts receivable software and continuing to make improvements in this connection has helped eliminate delays in getting payments to workers who are owed money.

### **Complaint activity tracking system**

L&I continued to improve the complaint activity tracking system, the electronic system agents use to produce reports and record activity. This system allows quick access to cases, which enables quicker responses to inquiries about wage complaints.

### **Limited English proficiency improvements**

L&I has begun a process to make department forms and letters available to limited-English speaking customers in their preferred language. The department will continue efforts to improve all communications with customers with limited-English proficiency.

# Conclusion

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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 2015 than in previous years. Some factors contributing to this increase were an improving economy and advances in technology that made it easier to file a wage complaint.

This increased 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 2015, L&I investigated a record 5,440 complaints and collected just over \$2.8 million in wages returned to workers (about 63 percent of this money was collected without formal citations).

The department also made improvements to its complaint tracking, collections data and wage complaint filing technologies to help reduce delays and improve service to customers. For the first time, employees can file a wage complaint with L&I electronically.

Challenges remain, including a caseload backlog resulting from increased wage complaints and pending policy issues that affect program resources.