

Wage, Child Labor and Protected Leave Investigations

2019 Annual Report to the Governor

December 2019

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Executive Summary

Introduction

The Department of Labor and Industries (L&I) protects the safety, health and security of Washington's workers. The agency's Employment Standards Program is responsible for carrying out state laws that protect workers' wages and working conditions. In the last several years, the program has responded to multiple new laws and initiatives, as well as the need to create new regulations or update outdated regulations. These new work areas have resulted in changes in staff levels and responsibilities, procedure changes, and new and expanded enforcement mandates. Simultaneously, the program has continued to meet growing demands for its administrative processes and investigation services under existing wage, child labor, protected leave, and other laws and rules.

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.

2019 Information Update

In Fiscal Year (FY) 2019, L&I continued to improve the ways in which it protects workers' wages and working conditions. The agency increased the amount of unpaid wages returned to workers and decreased backlogged wage complaints in spite of a constantly rising number of complaints. L&I has continued to educate and inform more workers and employers about complying with wage and leave laws, and now reviews more than double the amount of minor injury reports for child labor violations that may have contributed to an injury as in the past.

The agency made these improvements while simultaneously adding new workload, including updating employment rules for minimum wage, overtime pay, and paid sick leave; implementing new requirements for minimum wage and paid sick leave; coordinating with the Employment Security Department to implement the Paid Family and Medical Leave Act; and implementing changes to the Domestic Violence Leave Law.

Easier complaint filing, the growing economy, additional minimum wage and paid sick leave requirements, and other new initiatives described below continue to result in an increase in wage complaints filed. Employees have been able to file wage complaints electronically since 2013. Electronically filed complaints have increased from fewer than 1,500 in FY 2014 to over 4,100 in FY 2019, and now comprise approximately 66 percent of all complaints filed. L&I implemented a mobile-friendly version of the online complaint form in FY 2018, which has further increased the ease in which workers can file complaints. Managing these complaints continues to remain a challenge, but L&I has significantly reduced backlogs of those aged over

60 days, which has been a priority for the agency since the passage of the Wage Payment Act in 2006.

During FY 2019, L&I kept the backlog at or below 140 complaints. In previous years, this number was as high as 200.

Worker wages

In fiscal year (FY) 2019, 22 L&I agents around the state investigated wage complaints and worked with employers to return money owed to workers. These agents investigated over 6,400 complaints, and collected and returned nearly \$4 million to over 2,000 workers in FY 2019. About 57 percent of this money was collected from employers through voluntary compliance, without issuing formal citations.

Child labor

Child labor complaints can require rapid staff response and onsite visits to ensure young workers' safety. In FY 2019, L&I investigated nearly 240 child labor complaints – an increase of about 32 percent from FY 2018 – and collected nearly \$562,000 a 136 percent increase from FY 2018. The agency approved nearly 41,000 minor work permits, and issued nearly 300 variances allowing workers to exceed the normal limitations on youth working hours.

The Employment Standards Program actively participates in initiatives to increase youth registered apprenticeship opportunities and Paid Work-Based Learning in Washington, including a process for businesses to apply for student learner exemptions from some limited child labor requirements. During FY 2019, there were 45 variance exemption applications submitted; 16 active student learners and 29 registered apprentices worked in companies under these exemptions.

Protected leave

In FY 2019, L&I staff conducted 52 investigations of complaints about violations of protected leave laws. This is generally consistent with the historical average of approximately 50 complaints per year. L&I staff also educated workers and employers about protected leave requirements, reaching out to over 275 workers and employers in FY 2019.

New worker protections

Several new rights and responsibilities regarding worker protections have been added to existing requirements by legislative or initiative actions. While these new worker protections are not all included in the Industrial Welfare Act, which is the scope of this report, they expand and complement existing safeguards. They include:

Initiative 1433, Minimum Wage and Paid Sick Leave Requirements

Initiative 1433 (I-1433), approved by Washington voters in 2016, contained new requirements including mandates to raise the minimum wage and require employer-provided paid sick leave. L&I concluded rulemaking in 2017 related to these changes, which took effect in January 2018. In FY 2018, L&I implemented changes to the existing complaint management system and

increased staffing to enforce the new requirements. In FY 2019, L&I continued to fine-tune its enforcement efforts on these requirements.

Paid Family and Medical Leave Act

In the 2018 legislative session, the legislature passed the Paid Family and Medical Leave Act, which provides eligible Washington workers with up to 12 weeks of paid family leave benefits. In FY 2018, L&I continued to coordinate with the Employment Security Department, which has the main responsibility for implementing this program. As part of this transition, the legislature directed that the existing Family Leave Act, RCW 49.78, enforced by the Employment Standards program, expire on December 31, 2019. The protections contained in the Family Leave Act will be replaced by discrimination protections found in statutes implemented by ESD (see RCW 50A.40.010).

Executive, Administrative, Professional, and Outside Sales Exemptions from Minimum Wage, Overtime Pay, and Paid Sick Leave

L&I proposed updates in 2019 to employment rules that determine which workers in Washington are required by law to be paid at least minimum wage, earn overtime pay, and receive paid sick leave. These changes will affect executive, administrative, and professional (EAP) workers and outside salespeople across all industries in Washington. The rule proposal updates the required job duties and salary thresholds for a salaried worker to be considered exempt from the Minimum Wage Act, and will allow L&I to more effectively investigate and enforce worker protections. A public comment period was held during the summer of 2019 and the rule change is expected to be effective July 1, 2020.

House Bill 2661, Domestic Violence Leave Law

The legislature passed House Bill (HB) 2661 in the 2018 session, which added additional protections for employees and family members who are victims of domestic violence, sexual assault, or stalking. The new law took effect and L&I began enforcing it in June 2018. The department continued working on policy development for further enforcing these new protections in FY 2019.

Equal Pay and Opportunities Act

The legislature passed House Bill 1506 in the 2018 session, which created the Equal Pay and Opportunities Act (EPOA). This law prohibits employers from providing unequal pay or career advancement opportunities based on gender. The law also gives employees the protected right to disclose, discuss, and compare their wages or the wages of other employees. Employers are also prohibited from retaliating or discriminating against employees for exercising their protected rights under the law. The new law took effect and L&I began enforcing it in June 2018. The department continued working on policy development for further enforcing these new protections in FY 2019. During the 2019 session, the legislature passed Engrossed Substitute House Bill 1696, which amended EPOA and added additional protections for employees and job applicants. The amendments prohibit employers from requesting a job applicant's wage or salary history, except under certain circumstances, and prohibit employers from requiring an applicant's wage or salary history to meet certain criteria. Job applicants also have the right to

certain salary information if the employer has 15 or more employees. The amendments in ESHB 1696 took effect and L&I began enforcing them in July 2019.

Introduction

The Department of Labor & Industries' (L&I) Employment Standards Program supports L&I's mission to "Keep Washington Safe and Working" by enforcing state laws ensuring that employers:

- Pay legally required wages.
- Allow appropriate leave.
- Protect minor workers by appropriately restricting work hours, equipment use and providing required training.

Each year, L&I's agents investigate thousands of wage, leave and child labor complaints, including on-the-job injuries that involve workers under the age of eighteen. The success of these efforts in preventing workplace injuries, as well as in retrieving owed wages and returning them to workers, is a result of continued process improvements such as:

- Streamlined investigation practices that address complaint backlog by identifying valid complaints earlier in the process.
- Improved technology that enables swifter tracking of complaints and smoother transition of cases through the system.

In the last several years, the Employment Standards Program has responded to multiple new laws and initiatives, as well as the need to create new regulations or update outdated regulations. These new work areas have resulted in changes in staff levels and responsibilities, procedure changes, and new and expanded enforcement mandates. Simultaneously, the program has continued to meet growing demands for its administrative processes and investigation services under existing wage, child labor, protected leave, and other laws and rules.

This report describes how L&I protected the safety, health and security of Washington's workers in fiscal year (FY) 2019 by implementing state laws on wages and working conditions, including new laws and rules that create additional protections for leave, wage rates, gender pay equality, and domestic violence. The report also provides information about wage, child labor and leave investigations conducted in FY 2019 and their results.

2019 Information Update

In Fiscal Year (FY) 2019, several new laws were implemented to improve protection of workers' wages and conditions. These laws created additional protections for leave, wage rates, gender pay equality, and domestic violence. L&I continued to improve the ways in which it protects workers' wages and working conditions. The agency increased the amount of unpaid wages returned to workers and decreased backlogged wage complaints in spite of a constantly rising number of complaints. L&I has continued to educate and inform more workers and employers about complying with wage and leave laws, and now reviews more than double the amount of minor injury reports for child labor violations that may have contributed to an injury as in the past.

The agency made these improvements while simultaneously adding new workload, including implementing changes to the Domestic Violence Leave Law; implementing new requirements for minimum wage and paid sick leave; coordinating with the Employment Security Department to implement the Paid Family and Medical Leave Act; and updating employment rules for minimum wage, overtime pay, and paid sick leave.

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 delinquent wages owed and get them to workers.

When a worker files a complaint, L&I must issue a determination on whether the law was violated within 60 days. This period may be extended for good cause, such as the volume of pending complaints or the complexity of complaints received.

In FY 2019, the department received more than 6,600 wage complaints. Of those, four percent or 264 were resolved with a determination of compliance (the employer did not violate the law); and 12 percent or 830 were withdrawn by the employee. More than half of the investigations of the over 3,300 alleged wage violations (such as unpaid minimum wages, agreed wages, final pay, overtime, or unauthorized deductions) resulted in L&I collecting money for the worker without resorting to a citation and notice of assessment.

However, not all wage complaints can be resolved through voluntary compliance. L&I also issued 530 citations and notices of assessment (representing less than eight percent of total complaints filed) for employers who violated the law and did not pay during the investigation. The remaining 25 percent or 1,702 complaints were "not accepted" by the department, most

commonly because they did not contain enough information to enable an investigation or because the agent could not reach the complainant after the complaint was filed.

Figure 1 shows the number of wage complaints investigated and wages returned to workers from FY 2015 to FY 2019. The number of complaints has risen approximately 18 percent from FY 2015 to FY 2019. The wages returned to workers has increased from \$2.8 million to nearly \$4 million during this same time period – a 42 percent increase.

Figure 1: Worker rights complaints

Wage Complaints, Investigations and Collections					
	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Number of Wage Complaints Investigated	5,440	5,846	5,895	6,213	6,419
Collected Wages Owed to Workers	\$2.8 million	\$3.4 million	\$3.5 million	\$5.5 million*	\$3.98 million

*The collected wages owed to workers increased significantly in FY 2018 due to a single employer settlement that totaled over \$2.5 million.

Source: L&I Employment Standards Program

The amount of unpaid wages L&I collects has increased consistently over the years, due mostly to changes L&I has made that have increased availability of online filing, improved processes, and provided help for those with limited English proficiency.

Agency rulemaking to increase the salary threshold and make changes to the duties test for a worker to be exempt from overtime will result in more workers being eligible for overtime. In turn, this is expected to increase wage complaints once the rule takes effect.

CHILD LABOR

Young workers can be an asset to employers, bringing enthusiasm and energy to a workplace. Providing youth with opportunities to learn, contribute, and earn is beneficial to both the young workers and their employers. L&I’s Youth Employment Unit works with the Office of the Superintendent of Public Instruction and its Career and Technical Education program to provide training and education so that youth can acquire job skills and academic credit while still in high school.

Providing youth with work-based learning and apprenticeship experiences is key to Washington’s future workforce; however, safety at work is imperative. The risk of injury is often

greater for workers under 18. L&I educates employers, educators, and apprenticeship programs about their obligations to ensure safe workplaces for youth, and enforces those requirements. The agency also enforces both state and federal laws that impose additional requirements restricting hours and certain tasks for young workers.

L&I works with Washington Science, Technology, Engineering, and Mathematics (STEM) and the Aerospace Joint Apprenticeship Committee to expand work-based learning and apprenticeship opportunities for youth, and is working to streamline the exemption and variance processes for employers. During FY 2019, 45 employers applied for and received exemptions or variances for programs employing youth. Under these exemptions, 16 active student learners and 29 registered apprentices were employed.

Washington state laws restrict both the *hours* minors can work and the *type* of work they may do based on age. Some job duties are prohibited for minor-aged workers, such as forklift driving, working on roofs, or working in freezers or meat coolers. In addition, employers with workers under age 18 must have a minor work permit endorsement on their master business license. L&I enforces these child labor laws.

In FY 2019, L&I investigated nearly 240 child labor complaints – an increase of about 32 percent from FY 2018. The agency collected nearly \$562,000 in penalties for violating child labor laws – a 136 percent increase from FY 2018. L&I also approved nearly 41,000 minor work permits and reviewed over 1,500 minor injury reports in FY 2019.

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. In FY 2019, the Youth Employment unit issued 276 such variances. Additionally, the unit performed 61 outreach and training events, reaching more than 1,700 teens and employers.

Figure 2 shows fairly steady increases in L&I's child labor law enforcement activity from FY 2014 to FY 2019.

Figure 2: Child labor information

Investigations, work permits and variances					
	FY 2015	FY 2016	FY 2017	FY 2018	FY2019
Minor Injuries Reports Reviewed	647	1,303*	1,301	1,359	1,514
Minor Work Permits Issued	24,481	21,876	26,511	42,207	40,982
Minor Work Variances Issued	153	191	230	315	276
Participants Attending Educational/Outreach Events	N/A***	N/A***	N/A***	2,207	1,741

* The number of minor injury reports reviewed more than doubled in FY 2016 from the previous year, due to a new weekly report of minor injuries that enables the child labor specialist to take more timely action on these injuries. This was not indicative of more injuries occurring.

**The increase in the number of work permits issued each year since FY 2017 is due to changes in the minor work permit application that resulted in more permits being reviewed by L&I.

***This data was collected starting in FY2018.
Source: L&I Employment Standards Program

PROTECTED LEAVE

Protected leave laws ensure that workers can appropriately use sick leave and vacation leave, as well as leave without pay for certain activities. These 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.

Protected leave laws include:

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

L&I has taken action on several new initiatives that were enacted in recent years to expand workers' rights. These include:

- Changes to the Domestic Violence Leave Law.
- Implementing new requirements for minimum wage and paid sick leave.
- Coordinating with the Employment Security Department to implement the Paid Family and Medical Leave Act.
- Updating employment rules for minimum wage, overtime pay, and paid sick leave.

In addition, the department is nearing completion of a new rule to extend overtime protections to thousands of Washington workers.

Status of new initiatives

Executive, Administrative, Professional, and Outside Sales Exemptions from Minimum Wage, Overtime Pay, and Paid Sick Leave

L&I proposed updates in 2019 to employment rules that determine which workers in Washington are required by law to be paid at least minimum wage, earn overtime pay, and receive paid sick leave. These changes will affect executive, administrative, and professional workers and outside salespeople across all industries in Washington. The rule proposal updates the required job duties and salary thresholds for a salaried worker to be considered exempt from the Minimum Wage Act, and will allow L&I to more effectively investigate and enforce worker protections. A public comment period was held during the summer of 2019, and the rule change is expected to be adopted July 1, 2020.

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Initiative 1433, Minimum Wage and Paid Sick Leave Requirements

Voter-approved Initiative 1433 increased minimum wage; required employers to pay employees all tips, gratuities, and appropriate services charges; mandated employer-provided paid sick

leave; and provided employees protection from retaliation. It passed in 2016 and went into effect on January 1, 2018. The department continues to enforce these new requirements through investigations and proceedings.

Paid Family and Medical Leave Act

The 2017 Washington Legislature passed the Paid Family and Medical Leave Act to provide eligible Washington workers up to 12 weeks of paid family leave benefits annually for the birth of a child, care of a family member, or certain military assignments. The Employment Security Department (ESD) began collecting premiums in 2019, and benefits will be available beginning in 2020.

The legislature directed that the existing Family Leave Act enforced by the Employment Standards program expire on December 31, 2019. The protections contained in the Family Leave Act will be replaced by discrimination protections found in statutes implemented by ESD (see RCW 50A.40.010). L&I continues to work collaboratively with ESD to ensure workers and employers understand how these leave programs work together and how the agencies will cooperatively enforce these rights and responsibilities.

House Bill 2661, Domestic Violence Leave Law

House Bill (HB) 2661 added several additional protections to the law, making it illegal to refuse to hire an otherwise qualified individual because they are an actual or perceived victim of domestic violence, stalking, or sexual assault. In addition, the law now prohibits discharging or in any manner discriminating against a victim of actual or perceived domestic violence, stalking, or sexual assault, and prohibits employers from refusing to make reasonable safety accommodation requested by a victim. L&I began investigating complaints and enforcing the new requirements in June 2018, and continued these activities in FY 2019. L&I is currently developing policy guidance for employers regarding changes to the Domestic Violence Leave Law resulting from the 2018 passing of House Bill (HB) 2661.

Figure 3 shows L&I's protected leave enforcement activity from FY 2015 to FY 2019. In FY 2019, L&I received over 2,750 inquiries about protected leave laws and conducted 52 investigations. (Not all inquiries are complaints that require investigation.) Of the 52 investigations conducted, 20 were regarding the family leave act, 20 were for the family care act, 11 were for domestic violence leave and one was for military family leave. Staff also reached out to 275 workers and employers in FY 2019 to educate them about their protected leave rights and responsibilities.

Figure 3: Protected leave activity

Investigations, Education and Outreach					
	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019
Investigations Conducted	54	49	51	42	52
Investigations Completed*	54	48	50	42	51
Educational/Outreach Events	7	23	15	14	15
Participants Attending Educational/Outreach Events	158	394	185	107	275

*All filed complaints are eventually resolved; however, some are not resolved within the 60-day investigation timeframe due to their complexity or to reporting timeframes.

Source: L&I Employment Standards Program

Managing complaints

With increases in numbers of covered workers, protections afforded these workers through new laws and rules, and easier access to on-line complaints, the number of complaints the department received continued to grow, reaching more than 6,400 in FY2019.

L&I continued to implement efficiencies in standard work processes to reduce complaint backlogs (complaints aged over 60 days) in FY 2019. The agency’s goal is to keep the number of backlogs as low as possible. The complaint backlog has historically ranged between 150 and 500 complaints. During FY 2019, L&I kept the backlog of these complaints at or below 140. In previous years, this number was as high as 200.

Reducing this backlog has been a priority for L&I since passage of the Wage Payment Act. L&I achieved this progress by adding staff, automating investigation process, improving data management systems, consolidating some units, and improving communication with field offices.

Employees have been able to file wage complaints electronically since 2013. Complaints filed electronically increased from fewer than 1,500 in FY 2014 to nearly 4,200 in FY 2019, and now comprise approximately 66 percent of all complaints filed.

The Employment Standards Program implemented a mobile-friendly version of the online complaint form in FY 2019.

Conclusion

L&I has a successful history of protecting workers' wages and working conditions by enforcing wage, child labor and protected leave laws. In Fiscal Year (FY) 2019, several new laws were implemented to improve protection of workers' wages and conditions. These included new laws and rules that create additional protections for leave, wage rates, gender pay equality, and domestic violence. L&I will address and provide updates on these new laws and initiatives in future legislative reports.

In FY 2019, L&I also investigated a record of more than 6,400 complaints and collected and returned to workers nearly \$4 million in wages. Worker complaints remain high due to an improving economy with more workers employed, as well as to online filing which has made it easier to file wage complaints. Despite this high number of complaints, L&I continues to decrease backlogged complaints substantially, while also continuing to educate more workers and employers about protected leave laws.

Online filing has been such a success that approximately 66 percent of the total complaints received are now filed online. L&I has made changes in technology and staffing to decrease complaint backlogs and reduce waiting time for customers.

Although the number of child labor complaints and protected leave complaints remains fairly consistent, L&I staff are now reviewing more than double the amount of minor injury reports for child labor violations that may have contributed to an injury as in the past. The Employment Standards Program has also actively participated in initiatives to increase youth apprenticeship opportunities in Washington. During FY 2019, 45 active student learners and registered apprentices worked in companies under exemptions from some child labor laws allowed by these initiatives.

L&I successfully conducted rulemaking related to Initiative 1433, implemented changes to the complaint management system, and increased staffing to enforce these requirements. L&I is also working collaboratively with the Employment Security Department to transition to the new Paid Family and Medical Leave Act. L&I's proposed updates in 2019 to the rules regarding executive, administrative, professional, and outside sales worker exemptions from overtime and paid sick leave requirements will expand the number of workers eligible for these protections.