

Wage, Leave, and Youth Employment Investigations

2020 Annual Report to the Governor

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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the program has responded to multiple new laws and initiatives, as well as the need to create new regulations or update outdated regulations.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, youth employment, 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, leave, and youth employment requirements.

2020 Information Update

In Fiscal Year (FY) 2020, 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 the number of wage complaints that are not resolved during the reporting period 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, leave, and youth employment laws. The program implemented extensive operational changes to respond to the coronavirus pandemic, and coordinated with other agencies to provide clear guidance to the public on leave laws and youth employment rules.

The agency made these improvements while simultaneously adding new workload, including updating its overtime rules affecting eligibility for minimum wage, overtime pay, and paid sick leave; establishing a new Proactive Investigations and Enforcement Unit; implementing the Equal Pay and Opportunities Act; and responding to changes in agricultural employment requirements.

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 4,600 in FY 2020 -- an increase from 29 to 66 percent of all complaints filed. In the final quarter of FY 2020, over 90 percent of complaints were filed online.

L&I implemented a mobile-friendly version of the online complaint form in FY 2018, which has made it even easier for workers to file complaints. Under extraordinary work conditions resulting from COVID-19 restrictions, Employment Standards' online services substantially contributed to the high quality assistance L&I provides to its customers.

Worker wages

In FY 2020, 22 L&I agents around the state investigated wage complaints and worked with employers to return money owed to workers. These agents investigated 6,900 newly received complaints, and collected and returned more than \$4 million to nearly 1,900 workers in FY 2020. About 55 percent of this money was collected from employers through voluntary compliance, without issuing formal citations.

Youth employment

Child labor complaints can require rapid staff response and onsite visits to ensure young workers' safety. In FY 2020, L&I investigated over 200 child labor complaints and collected \$526,714 in penalties. The agency approved more than 32,800 minor work permits, and issued over 190 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 2020, employers submitted over 50 variance exemption applications, including variance applications for employers with registered apprentices and applications for employers with student learners.

Protected leave, paid sick leave, and retaliation

In FY 2020, L&I staff conducted nearly 40 investigations of complaints about violations of protected leave laws. This is somewhat below the historical average of approximately 50 complaints per year. L&I staff also educated workers and employers about protected leave requirements, reaching out to 102 workers and employers in FY 2020.

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:

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

Effective July 1, 2020, L&I updated its employment rules regarding which workers in Washington are required by law to be paid at least minimum wage, earn overtime pay, and receive paid sick leave. These rules changes affect executive, administrative, and professional (EAP) workers, as well as computer professionals and outside salespeople across all industries in Washington. The rules changes update the job duties requirements

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.

The Employment Standards Program has engaged in robust education and outreach efforts to help teach employers about the new requirements and help employees understand their rights via an e-Learning module, implementation guides, and webinar presentations. Despite travel limitations due to COVID-19, the program was able to offer eight webinars with over 750 combined registrants in FY 2020. The program also updated nine existing administrative policies and created one new policy to provide interpretive guidance on the rules updates.

- **Proactive wage investigations**

The legislature approved supplemental funding in 2019 to increase the Employment Standards Program's capacity to initiate companywide wage investigations. In FY 2020, the program created a Proactive Investigations and Enforcement Unit consisting of five investigators to increase its capacity to perform these investigations. The unit is currently hiring staff and developing and piloting procedures for recovering additional wages owed to workers.

- **Equal Pay and Opportunities Act**

The 2018 Equal Pay and Opportunities Act (EPOA) prohibits employers from providing unequal compensation or career advancement opportunities based on gender; gives employees the protected right to disclose, discuss, and compare their wages and/or the wages of other employees; and prohibits employers from retaliating or discriminating against employees for exercising their protected rights under the law. Amendments added in 2019 provide more protections for employees and job applicants by prohibiting employers from requesting a job applicant's wage or salary history except under certain circumstances, and from requiring an applicant's wage or salary history to meet certain criteria. Job applicants and employees seeking an internal promotion also have the right to certain salary information if the employer has 15 or more employees.

During FY 2020, L&I developed a claim investigation process for further enforcing these protections. The agency resolved 34 EPOA complaints in FY 2020, which is similar to the 36 complaints resolved in FY 2019. Also in FY 2020, the agency updated information for the public online and in publications to reflect the recent amendments to the law.

Other outreach and proactive enforcement efforts include public presentations such as L&I Essentials for Business; an employee rights poster; implementation of an EPOA employer consultations process; and other compliance assistance in the form of frequently asked questions and an employer's guide.

- **Agricultural employment requirements**

The Employment Standards Program updated three administrative policies pertaining to agricultural labor standards in FY 2020, in response to a recent Washington State Supreme Court ruling¹ on issues concerning agricultural piece-rate workers. These policies provide guidance to employers and employees on compensation, recordkeeping requirements, meal periods, and rest periods for agricultural workers.

In addition, the 2020 legislature passed two bills affecting agricultural employment standards: Senate Bill 6421, which renews and extends the Farm Internship pilot project to 2024; and Senate Bill 6261, which modifies certain requirements of the Farm Labor Contracting law (RCW 19.30), including repealing the nonprofit exemption under the definitions portion. L&I's upcoming implementation of these bills will include appropriate review, education, and outreach.

¹ Carranza v. Dovex Fruit Company

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 relating to workplace rights, including requirements to:

- 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 youth employment complaints, including on-the-job injuries that involve workers under the age of 18.

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 ones. 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, youth employment, 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) 2020 by implementing state laws on wages and working conditions, including new laws and rules that create additional protections regarding leave, wage rates, and gender pay equality; and provide new agricultural employment requirements. The report also provides information about wage, youth employment, and leave investigations conducted in FY 2020 and their results.

2020 Information Update

In Fiscal Year (FY) 2020, 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 provided guidance and interpretation on employment laws to the public, while also responding to operational changes prompted by COVID-19 restrictions.

The agency made these improvements while simultaneously adding workload required by new laws implemented in FY 2020 to improve protection of workers' wages and working conditions. This new workload includes implementing new overtime rules, establishing a new Proactive Investigations and Enforcement Unit, implementing the Equal Pay and Opportunities Act, and responding to changes in agricultural employment requirements

WAGE ENFORCEMENT

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 2020, the department resolved more than 6,900 wage complaints in total. Of those, nearly four percent, or 257, were resolved with a determination of compliance (the employer did not violate the law); and almost 13 percent, or 862, were withdrawn by the employee. Nearly half of the investigations, or over 3,100 alleged wage violations (such as unpaid minimum wages, agreed wages, final pay, or 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 issued nearly 600 citations and notices of assessment (representing nine percent of total complaints resolved) for employers who violated the law and did not pay during the investigation. The remaining 25 percent, more than 1,700 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.

NOTE: The total number of 6,900 wage complaints includes all WPA complaints, both wage and non-wage. The above breakdown of investigation results reflects only the most common closing

reasons, and does not include closing reasons such as bankruptcy, non-resolved wages issues, transfers out, private legal actions, or default.

Figure 1 shows the number of wage complaints investigated and wages returned to workers from FY 2016 to FY 2020. The number of complaints has risen approximately 17 percent from FY 2016 to FY 2020. The wages returned to workers has increased from \$3.4 million to over \$4 million during this same time period – a 16 percent increase.

Figure 1: Worker rights complaints

Wage Complaints, Investigations and Collections					
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Number of New Wage Complaints Investigated	5,846	5,895	6,213	6,419	6,769
Number of Wage Citations	481	770	565	527	598
Number of Wage Complaints Resolved by Agents	5,567	5,893	6,126	6,901	6,904
Collected Wages Owed to Workers	\$3.4 million	\$3.5 million	\$5.5 million*	\$3.98 million	\$4.03 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 on July 1, 2020.

Proactive wage investigations

The legislature approved supplemental funding in 2019 to increase the Employment Standards Program’s capacity to conduct companywide wage investigations. In contrast to investigations initiated in response to a complaint on behalf of an individual worker, a proactive companywide

wage investigation involves L&I seeking broader remedies for a large number of affected workers. These broader investigations allow L&I to follow up on systemic issues discovered in complaint investigations, and strategically target investigations that address areas and industries where workers may be most vulnerable to violations of workplace rights.

Prior to the 2006 Wage Payment Act, the program routinely conducted companywide investigations. In 2005, for instance, it recovered \$2.2 million for workers from these wider investigations. Priorities shifted when the Wage Payment Act went into effect, calling for individual worker complaints to be investigated within 60 days. The department received more wage complaints from workers, and had less time to conduct the more time-consuming companywide investigations that agents opened themselves.

In FY 2020, the program established a Proactive Investigations and Enforcement Unit of five investigators to increase its capacity to perform these investigations. The unit is currently hiring staff and developing and piloting procedures for recovering additional wages owed to workers.

YOUTH EMPLOYMENT

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. During FY 2020, 56 employers applied for and received exceptions or variances for programs employing youth. Thirty-five employers were granted a variance in relation to registered apprentices and 21 employers were granted a variance in relation to student learners.

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 laws.

In FY 2020, L&I investigated more than 200 child labor complaints – an increase of about 32 percent from FY 2019. The agency collected over \$522,000 in penalties for violating child labor laws, approved more than 32 minor work permits, and reviewed 1,400 minor injury reports in FY 2020. Penalties for child labor violations are deposited into the state general fund.

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 2020, the Youth Employment unit issued 194 such variances. Additionally, the unit reached more than 900 teens and employers via 26 outreach and training events to explain their rights and responsibilities.

Figure 2 shows fairly steady increases in L&I’s youth employment enforcement activity from FY 2015 to FY 2019, with reductions in 2020 that may be a result of COVID-19 slowdowns.

Figure 2: Youth employment information

Investigations, work permits and variances					
	FY 2016	FY 2017	FY 2018	FY 2019	FY2020
Minor Injuries Reports Reviewed	1,303*	1,301	1,359	1,514	1,400
Minor Work Permits Issued	21,876	26,511	42,207	40,982	32,856
Minor Work Variances Issued	191	230	315	276	194
Participants Attending Educational/Outreach Events	N/A***	N/A***	2,207	1,741	907

*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, PAID SICK LEAVE, AND RETALIATION

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.

Several new initiatives were enacted by the legislature in recent years to expand workers' rights. As a result, L&I recently took action to:

- Update employment rules for minimum wage, overtime pay, and paid sick leave.
- Implement new requirements for minimum wage and paid sick leave.
- Coordinate with the Employment Security Department to implement the Paid Family and Medical Leave Act.
- Respond to changes to the Domestic Violence Leave Law.

Minimum Wage Act

Initiative 1433 (I-1433), approved by Washington voters in 2016, contained new requirements under the Minimum Wage Act, including mandates to raise the minimum wage and require employer-provided paid sick leave. L&I implemented the changes in FY 2018, and continued to fine-tune its enforcement efforts on these requirements in FY 2020.

Also under the Minimum Wage Act, an employer cannot take adverse actions against an employee who exercises a protected right, files or intends to file a complaint, or has discussed potential violations of their rights. L&I investigates complaints of retaliation or discrimination related to these activities.

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. L&I continues 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).

Domestic Violence Leave Law

The legislature also 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. L&I continues to enforce the new protections and develop policies for further enforcing them.

Figure 3 shows L&I’s protected leave enforcement activity from FY 2016 to FY 2020 under several protected leave laws (the Domestic Violence Leave law, the Family Care Act, and laws protecting leave for military spouses and emergency services personnel.) In FY 2020, L&I received over 1,500 inquiries about protected leave laws and conducted 38 investigations (Not all inquiries are complaints that require investigation). Of the 38 investigations conducted, 10 were regarding the family leave act, 17 were for the family care act, and 11 were for domestic violence leave. Staff also reached out to more than 100 workers and employers in FY 2020 to educate them about their protected leave rights and responsibilities.

Figure 3: Protected leave activity

Investigations, Education and Outreach					
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
Investigations Conducted	49	51	42	52	38
Investigations Completed*	48	50	42	51	38
Educational/Outreach Events	23	15	14	15	7
Participants Attending Educational/Outreach Events	394	185	107	275	102

*All filed protected leave complaints are eventually resolved; however, some are not resolved within the 90-day investigation timeframe due to their complexity or to reporting timeframes.

Source: L&I Employment Standards Program

Figure 4 shows L&I’s paid sick leave and retaliation enforcement activity from FY 2019 to FY 2020 (no prior data is available). In FY 2020, Employment Standards Program staff completed more than 1,070 investigations related to paid sick leave and retaliation. Staff also reached out to over 300 workers and employers in FY 2020 to educate them about their protected leave rights and responsibilities.

Figure 4: Paid sick leave and retaliation enforcement activity

Paid Sick Leave and Retaliation Investigations, Education, and Outreach					
	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020

Violations Reported	NA	NA	NA	2,310	2,231
Investigations Completed*	NA	NA	NA	1,053	1,073
Educational/Outreach Events	NA	NA	NA	38	84
Participants Attending Educational/Outreach Events	NA	NA	NA	101	303

*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 increased numbers of covered workers, more protections afforded these workers through new laws and rules, and easier access to on-line complaints, the number of complaints the department receives continues to grow, reaching nearly 6,900 in FY 2020.

L&I continued to implement efficiencies in standard work processes to reduce complaint delays (complaints aged over 60 days) in FY 2020. The agency’s goal is to keep the number of delayed claims as low as possible to ensure workers’ rights are protected. The number of delayed complaints has historically ranged between 150 and 500 complaints. During FY 2020, L&I kept the number of these delayed complaints at or below 140. In previous years, this number has reached as high as 200.

Reducing these delays 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 over 4,600 in FY 2020 - 70 percent of all complaints filed. Under extraordinary COVID-19 work conditions, Employment Standards’ online services substantially contributed to the high quality of assistance L&I provides to its customers; 90 percent of complaints submitted during the last quarter of FY 2020 were filed online. L&I also implemented a mobile-friendly version of the online complaint form, which has further increased the ease with which Washington workers can file complaints.

Conclusion

L&I has a successful history of protecting workers' wages and working conditions by enforcing wage, youth employment, and protected leave laws. In Fiscal Year (FY) 2020, 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 agricultural employment requirements. L&I will address and provide updates on these new laws and initiatives in future reports.