

# HOLLOW VICTORIES



## THE CRISIS IN COLLECTING UNPAID WAGES FOR CALIFORNIA'S WORKERS

By Eunice Hyunhye Cho,  
Tia Koonse, Anthony Mischel

## ABOUT NELP

The National Employment Law Project (NELP) is a non-profit legal organization with over 40 years of experience advocating for the employment and labor rights of low-wage and unemployed workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the full protection of labor standards laws, and that employers are not rewarded for skirting those basic rights.

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For almost fifty years, the UCLA Labor Center has created innovative programs that offer a range of educational, research, and public service activities within the university and in the broader community, especially among low-wage and immigrant workers. The Labor Center is a vital resource for research, education, and policy development to help create jobs that are good for workers and their communities, to improve the quality of existing jobs in the low-wage economy, and to strengthen the process of immigrant integration, especially among students and youth.

National Employment Law Project  
National Office  
75 Maiden Lane, Suite 601  
New York, NY 10038  
Tel: (212) 285-3025  
[www.nelp.org](http://www.nelp.org)

National Employment Law Project  
California Office  
405 14th St. Suite 401  
Oakland, CA 94612  
Tel: 510-663-5707  
[www.nelp.org](http://www.nelp.org)

UCLA Downtown Labor Center  
675 S Park View St  
Los Angeles CA 9005  
Tel: 213-480-4155  
[www.labor.ucla.edu](http://www.labor.ucla.edu)

## AUTHORS

Eunice Hyunhye Cho, National Employment Law Project  
Tia Koonse, UCLA Labor Center  
Anthony Mischel, National Employment Law Project

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“I had high hopes after I found out that a judgment was issued in my favor, but with the news of the [employer’s] bankruptcy filing, I have to wait and see what is going to happen. I plan to continue to fight for my wages, but I am realizing that the law seems to protect the companies and individuals who have financial stability and steal wages.”

~ D.L., a construction worker. The Labor Commissioner found that he was owed \$17,000 for unpaid wages. Daniel was promised wages at a rate of \$12.50 an hour, but his employer failed to consistently pay workers. After two years, Daniel finally decided to ask his employer for his full wages, but instead of receiving his wages, was fired.

“I won the case but what was it worth if the company did not pay? I was still forced to rent out a room in order to pay rent. I fell behind on bills. I was forced to borrow money. My children had to pass up necessities during this time.”

~ E.P., a janitorial worker in California. The Labor Commissioner determined that she was owed more than \$45,000, but she has been unable to collect her unpaid wages from her employer. She was promised pay at a rate of \$8 per hour.

## I. EXECUTIVE SUMMARY

This report exposes a surprising, but unfortunately common problem facing low-wage workers in California and nationwide. Workers whose employers have failed to pay them face serious challenges in recovering their hard-earned wages — even after state authorities have found in the workers’ favor and have issued a legally binding judgment ordering employers to pay. To a worker who has lost hundreds, if not thousands of dollars in unpaid wages, winning a judgment is often at best a hollow victory. Non-payment or underpayment of wages, moreover, remains rampant nationwide. As a landmark survey of low-wage workers found in 2008, 26 percent of low-wage workers were paid less than the minimum wage in the prior week; 76 percent of those who worked more than 40 hours were not paid the legally required overtime rate. More than two-thirds of low-wage workers have experienced at least one pay-related violation in the previous work week—leading workers to lose an average of \$2,634 annually due to workplace violations.<sup>1</sup>

The inability of workers and state authorities to enforce judgments and collect payment from unscrupulous employers has widespread effects. Workers who cannot collect their unpaid wages from their employers—even after engaging in a complicated legal process—often cannot put food on the table, pay their rent, or keep up with their bills. Workers spend less, and may depend more heavily on social service programs. The failure of employers to pay wages for work that benefits them decreases tax revenue for local and state governments, creates an unfair playing field where law-abiding businesses are unable to compete, and reduces consumption in local economies. Moreover, employers’ failure to pay even in the face of a court-ordered judgment undermines faith in the basic operation of our legal system and the enforcement of our state’s labor protections. For these reasons, a number of states across the country have enacted, or are considering legislative measures to provide workers with additional tools to collect unpaid wages.<sup>2</sup>

Our study is based on a comprehensive review of records released by the California Division of Labor Standards Enforcement (DLSE), the agency that enforces California’s wage laws. Although workers may pursue wage claims through other means, such as the U.S. Department of Labor or in court, DLSE data provides the most comprehensive set of data available statewide. We review data from 2008 until 2011, the most recent available in California. We compare our

# Our findings reveal that a shocking percentage of workers are unable to recover their unpaid wages in California.

findings with data released by the Wisconsin Labor Standards Bureau, Wisconsin Department of Workforce Development, and Wisconsin Department of Justice, which enforce the state's law authorizing workers to place a lien on an employer's property to help enforce wage law protections. We examine Wisconsin data, as the state has the oldest and one of the most extensive wage lien programs in the country. In addition, the study is based on a review of California state corporate records and business registration information.

Our analysis is also informed by in-depth interviews conducted in the Spring of 2013 with fifty workers who have attempted to collect their unpaid wages through legal channels in California.

Our findings, drawn from a comprehensive and statistically significant review of DLSE data, reveal that a shocking percentage of workers are unable to recover their unpaid wages in California. It also finds that workers and state officials alike lack sufficient legal tools to enforce the law and to recover unpaid wages from employers who engage in unscrupulous business practices to avoid payment. As our interviews suggest, all workers—whether they pursue their claims through court or through agencies—face similar challenges in recovering their wages.

- Between 2008 and 2011, workers recovered only 42 percent, or \$165 million of approximately \$390 million

in total wages verified as owed by the DLSE. This figure includes amounts agreed to in settlement and after judgment.

- Only 17 percent of California workers who prevailed in their wage claims before the DLSE and received a judgment were able to recover any payment at all between 2008 and 2011.
- Although the DLSE issued awards for unpaid wages of more than \$282 million between 2008 and 2011, workers were able to collect a mere \$42 million—roughly 15 percent—of those awards from their employers.

Our research also finds that workers who try to enforce DLSE judgments for unpaid wages often find that their employers have disappeared, hidden assets, or shut down operations and reorganized as a new entity.

- Employers who did not pay their workers, refused to settle, were found by DLSE to owe wages, and then became subject to a court judgment were more likely than not to have suspended, forfeited, cancelled, or dissolved business status within a year of the wage claim.
- In 60 percent of cases where judgments were issued against business entities by the DLSE, employers who were found to owe their workers for unpaid wages were also found to be “non-active” business entities by the California Franchise

# California and other states around the country can provide more effective legal tools, such as wage liens, already available in several states, to increase efficiency in the enforcement of judgments for unpaid wages.

Tax Board or the California Secretary of State. “Non-active” businesses include those that have forfeited, cancelled, or dissolved status. In 24 percent of all cases, employers were found to be non-active before the DLSE was able to issue its finding.

The good news is that other states have enacted policy solutions that encourage prompt settlement and promote efficiency in their wage collections process. For example, states like Wisconsin that have enacted laws that authorize the worker to impose a lien on the employer’s property in cases involving unpaid wage have higher rates of collection for wage theft.

- In Wisconsin, which does not have an administrative hearing process for wage claims, 80 percent of suits to enforce the wage lien result in some payment of unpaid wages for the worker.
- In cases where wage liens are used to recover unpaid wages for a worker, workers recover 25 percent of the amount found to be owed, more than 1.5 times more than in California.

California and other states around the country can provide more effective legal tools, such as wage liens, already available in several states, to increase efficiency in the enforcement of judgments for unpaid wages. Especially during a time of limited resources, a self-help tool that empowers workers

and provides employers with strong incentives to comply with the law will only benefit the entire state. The report offers the following recommendations:

- Strengthen current wage lien provisions to allow workers to file a temporary pre-judgment hold on employer property.
- Increase resources for collections efforts by state agencies.
- Provide clear educational materials for workers who seek to collect payment upon judgment.

## II. WAGE THEFT IN CALIFORNIA: WHY IS COLLECTING UNPAID WAGES SO IMPORTANT?

### A. WAGE THEFT AND THE LENGTHY WAGE CLAIM AND COLLECTIONS PROCESS IMPOSES SIGNIFICANT COSTS ON CALIFORNIA'S WORKERS, FAMILIES, AND STATE ECONOMY

**W**age theft, or the failure to pay workers the wages owed to them, has become a defining trend of the current labor market. Wage theft includes paying workers less than the minimum wage or agreed-upon wage, requiring employees to work “off the clock” without pay, failing to pay overtime, stealing tips, illegally deducting fees from wages owed, or simply not paying a worker at all. Pay violations are shockingly high in low-wage industries across the economy, including retail, restaurant and grocery stores; domestic work and homecare; manufacturing, construction, and janitorial services; car washes, and beauty and nail salons.<sup>3</sup>

Non-payment or underpayment of wages, moreover, remains rampant in our economy. As a landmark national study found, 26 percent of low-wage workers were paid less than the minimum wage in the prior week; 76 percent of those who worked more than 40 hours were not paid the legally required overtime rate. More than two-thirds experienced at least one pay-related violation in the previous work week—leading workers to lose an average of \$2634 annually due to workplace violations.<sup>4</sup>

California's workers are no different. Despite strong protections against wage theft in California's labor code, wage theft remains a widespread problem. As the same study found, low-wage workers in Los Angeles experienced significant violations of labor and employment laws. Almost 30 percent of workers surveyed were paid less than the minimum wage in the previous week, and almost 80 percent of workers who worked more than 40 hours a week were not paid the legally required overtime rate of pay. In any given week, an estimated 654,914 workers in Los Angeles face one pay-related violation. Based on this estimate, low-wage workers in Los Angeles lose more than \$26.2 million per week as a result of employment and labor law

“I had to go and find help, asking people to lend me money to cover my rent and bills. There were even days where I had nothing to eat, and I had to go look for donations to find food for my family. This made me feel very depressed. I am disappointed because we are constantly told that workers have rights . . . but it seems that employers have the upper hand in these situations, and can get away with robbing our wages.”

~ L.C., a janitorial worker who earned \$9.00 an hour. After her employer began having financial problems, it did not regularly pay workers even though they kept working at the employer's behest. The Labor Commissioner ultimately found that L.C. was owed \$12,000 by her employer, but she has not been able to collect her unpaid wages.

“I fell behind on rent. I borrowed money. I was unable to give my kids everything they needed. I had to leave my place and rent a smaller unit. I had to get another job. I felt upset and powerless not to collect the wages I was owed.”

~ N.P., a janitorial worker who earned \$8.00 per hour. Although the Labor Commissioner found that she was owed approximately \$5,000 in unpaid wages, she has been unable to collect from her employer.



Restaurant workers in Los Angeles, CA try to collect their unpaid wages from their employer, March 4, 2013. Photo credit: Stefanie Ritoper



Workers in Los Angeles, CA march against wage theft. Photo credit: Stefanie Ritoper

violations—wages that would otherwise circulate through the local economy for the purchase of basic necessities.<sup>5</sup>

Wage theft imposes significant costs on California's economy. When employers fail to pay their workers, the state loses valuable revenue in payroll taxes. Moreover, when employers fail to pay required penalties on judgments for unpaid wages or other labor violations, the state loses critical revenue. In 2011-12, the DLSE, through its Bureau of Field Enforcement, assessed \$39,772, 344 in penalties for labor violations, but was able to collect only 20 percent of these penalties—meaning that over \$31 million that would otherwise go to the General Fund went uncollected. Only 10 percent of penalties issued for minimum wage and overtime violations were paid.<sup>6</sup> In a sense, taxpayers are subsidizing unscrupulous and law-breaking behavior by these employers.

Wage theft hurts communities and other businesses that abide by the law. Unpaid wages also means that fewer dollars circulate to local businesses, stunting economic recovery, depressing employment by small businesses, limiting local sales tax collections, and diminishing opportunities for local economic development. Even other businesses are hurt; when responsible employers must compete with unscrupulous employers, the result is a race to the bottom that threatens to bring down standards throughout the entire labor market.

During the Spring of 2013, we conducted in-depth interviews of 50 low-wage workers in California who have attempted to collect their unpaid wages through legal channels. Our interviews revealed the following concerns with the current unpaid wages collections process in California:

- **WAGE THEFT OCCURS IN MANY FORMS.** Some workers reported that employers paid them with invalid checks with insufficient funds; other employers simply stopped issuing workers their paychecks at all because the company had run out of money. Other employers would fail to pay their workers, and when pressed, would break promises to pay at a later date. Still other employers forced workers to record fewer hours than actually worked on their timesheets, or failed to pay for overtime. More often than not, workers reported that patterns of wage theft occurred over a lengthy period of time, lasting months or even years. Some workers felt “strung along” by their employers, who would provide small or partial payment over time to keep workers from leaving.

- **WORKERS CHOSE TO FILE WAGE CLAIMS OR A PRIVATE LAWSUIT OUT OF ECONOMIC DESPERATION, AND TO STOP ABUSE AND EXPLOITATIVE CONDITIONS ON THE JOB.** Workers reported that they decided to try and recover unpaid wages due to economic need, feelings of exploitation and abuse, and injury. As one worker explained, “I needed my money, and I had to pay my bills. No one wants to work for free.” Several other workers explained that wage violations were widespread in the workplace, and acted out of concern for themselves and other workers.

- **IN MANY INSTANCES, WORKERS FACED RETALIATION FROM THEIR EMPLOYERS AFTER FILING WAGE CLAIMS.** Several workers reported that their employers lowered wages, fired them, or threatened to call the police or immigration enforcement after learning that workers had filed a wage claim or lawsuit. These reports echo prior data on retaliation against low-wage workers: the same national study found that 43 percent of workers who made a complaint or attempted to form a union experienced one or more forms of retaliation.<sup>7</sup>

- **THE LENGTHY DURATION OF THE WAGE CLAIM AND COLLECTIONS PROCESS, INCLUDING THE DLSE PROCESS AND PRIVATE LAWSUITS, CAUSED SEVERE ECONOMIC DISTRESS ON WORKERS AND THEIR FAMILIES.** Workers suffered serious economic harm as a result of unpaid wages and the subsequent length of the collections process. Several workers reported going without food or medicine and difficulty in paying bills and rent as a result of unpaid and uncollected wages.

- **EVEN AFTER WORKERS HAD WON THEIR WAGE CLAIM AT THE DLSE OR IN COURT, THEY HAD FEW CLEAR METHODS TO COLLECT PAYMENT FROM THEIR EMPLOYERS. WHEN WORKERS WERE ABLE TO COLLECT PAYMENT, IT WAS FOR A FRACTION OF THEIR AWARD.** Workers reported general confusion in finding methods to collect payment from their employers after a judgment by a court or DLSE had issued. Many workers received conflicting information about collection methods. Some workers who contacted separate attorneys to aid them in collection found that their employers had transferred assets or changed business licenses or names to avoid collection. Other workers who agreed to collections in installment plans only received payments for a short time and were not fully paid. Several workers expressed regret for having invested time in the wage claim process. As one worker noted, “although I won, I ended up losing, because I spent a lot of time and money on my wage claim, but walked away with nothing.”



Workers and advocates in Los Angeles, CA, describe the difficulty of working on minimum wage, particularly as frequent victims of wage theft. Photo credit: Stefanie Ritoper

## DLSE Wage Claim Steps



## B. HOW CAN WORKERS TRY TO RECOVER WAGES IN CALIFORNIA?

There are two primary ways to recover money lost through wage theft in California, both of which require significant time and resources from workers themselves. Pursuing a claim for lost wages can require encounters with multiple state offices and the court system and patience and legal skills that may be beyond all but the most motivated of workers. First, workers can go to the Division of Labor Standards Enforcement (DLSE) (also called the Labor Commissioner) to seek recovery of unpaid wages, overtime, meal and rest breaks, and other damages.<sup>8</sup> Workers can also ask the Bureau of Field Enforcement (BoFE) of the DLSE to investigate and cite the employer. Second, workers can file smaller wage claims in the Small Claims court of the Superior Court where they live, or they can bring a lawsuit in state or federal court, either for themselves or as part of a class or collective action.

**DLSE.** Workers who take their complaint to DLSE begin the process by filling out a simple form, identifying the problem and the name of the employer.<sup>9</sup> DLSE then sets a date for an investigatory settlement conference, at which time a deputy labor commissioner tries to determine the nature of the claim, the probability of success, and the possibility of settlement. The employer may appear but is not obligated to do so.<sup>10</sup> At this stage, the DLSE will dismiss invalid claims, or try to encourage the parties to reach a settlement agreement if the claim is found to be valid. If the case does not result in a settlement agreement, it proceeds to a hearing where both parties may be present, where a Hearing Officer decides the case.<sup>11</sup> At the end of the hearing, the Hearing Officer will

issue an Order, Decision, or Award (ODA), which indicates which party prevailed and how much money is owed.<sup>12</sup> Either party may appeal the ODA to the Superior Court. After the appeal period has passed, DLSE may obtain a judgment from the court, which legally permits the holder of the judgment to seize the debtor's assets.

**BUREAU OF FIELD ENFORCEMENT.** Workers can ask the DLSE to investigate wide-spread or systemic wage theft by their employer through the Bureau of Field Enforcement (BoFE). A BoFE investigation can result in a citation against the employer for unpaid wages or a civil suit brought by DLSE on behalf of the workers. Any assessment, penalty, or successful civil suit is subject to the same collection rules described below.

**GOING TO COURT.** Workers who choose not to go to the Labor Commissioner can also try to enforce their claims in court. Claims in small claims court must be less than \$10,000.00,<sup>13</sup> and workers receive little assistance in preparing their cases. Workers are largely on their own in calculating the wages due, drafting the initial complaint, proving their case, and serving the legal papers on the employer. Workers may also hire an attorney to file a civil suit for statutory damages as well as any other claim in the appropriate federal or state Superior Court.<sup>14</sup> However, this is not typically a viable option for many low-wage workers, who may have difficulty convincing an attorney to take a case where low to no attorney fees are likely. These cases proceed like any other civil case and, if successful, could result in a judgment that is subject to the same collection rules, as described below.

## C. ONCE A JUDGMENT IS ISSUED, WHAT TOOLS ARE CURRENTLY AVAILABLE FOR WORKERS TO COLLECT UNPAID WAGES?

Once a worker is awarded a judgment for lost wages, there are a number of paths under California law by which he or she may try to collect unpaid wages. Once again, the process may be lengthy, has many barriers for low-wage workers, and all too often is ultimately unsuccessful.

- **PRE-JUDGMENT ATTACHMENTS.** Pre-judgment attachments are a special type of seizure that enables a sheriff to take control of the property of a debtor until a case is decided.<sup>15</sup> This keeps a debtor from selling, hiding, or disposing of the property until the debt is paid or the attachment is released. However, unlike a lien, an attachment can be very burdensome because the property owner may be deprived of the use and possession of the property while the case is pending. The pre-judgment attachment process is often used because the employer's assets may otherwise be dissipated, transferred, or lost.

**WHY THIS IS NOT AN EFFECTIVE TOOL:** Pre-judgment attachments are currently available only for civil cases brought in court, not for DLSE claims.<sup>16</sup> Obtaining pre-attachments in civil suits can require a substantial expenditure of attorney resources as well as sufficient funds for posting bonds.

- **POST-JUDGMENT LIEN.** Post-judgment liens are available for any recorded judgment, including DLSE wage claims.<sup>17</sup> Like a pre-judgment lien, the post-judgment lien places a hold on a debtor's property to prevent it from being hidden, sold, or disposed of until the debt is paid or the lien is released. In order to obtain a post-judgment lien, a worker needs to ensure that the DLSE records the ODA as a judgment. The worker then has to obtain an Abstract of Judgment, and must identify what real property the employer possesses, as well as the county in which the property is located. The worker can then record the Abstract in those counties and wait for the employer to attempt to sell or transfer the property. Additionally, workers can enforce the liens through, for example, bank garnishments (if the worker has the employer's banking information and if the account is still open), or marshals as keepers in a business establishment.<sup>18</sup>

**WHY THIS IS NOT AN EFFECTIVE TOOL:** If the employer does not own real property, real property judgment liens are likely useless. In ad-

“On one level, it feels good. It was really good that the truth came out, that the power of the employer could be overcome. . . On another level, it is also something negative. It's like there was no result. . . It makes me really sad. It's emotionally challenging, so I try not to think about it. I worked so long, and I still did not receive any pay for my hours . . . I will keep trying.”

~ Leandra de Souza, a domestic worker who was issued a judgment for \$72,000 for unpaid wages and penalties by the Labor Commissioner. She has been unable to collect any of her wages from her former employer, even after writing multiple letters and calling an attorney. Luz supports herself and two children, as well as a sick mother.

dition, these procedures are highly technical and potentially expensive. Whoever is collecting the judgment has to know where existing assets are located and have the legal and financial means to seize the assets. A post-judgment lien is not useful against employers who have declared bankruptcy or have hidden their assets.

- **MECHANIC’S LIEN.** Construction workers are able to use mechanics’ liens, which have proven an effective tool to collect on wage claims. A mechanic’s lien is a “hold” against your property, filed by an unpaid contractor, subcontractor, laborer, or material supplier, and is recorded with the county recorder’s office. If unpaid, it allows a foreclosure action, forcing the sale of the property in lieu of compensation.<sup>19</sup> In short, a mechanic’s lien allows a worker to record a lien on the property improved by the worker’s labor and to foreclose on that lien should the employer property owner not pay the worker. Legally, the homeowner is ultimately responsible for payment — even if it already have paid the direct contractor.<sup>20</sup>

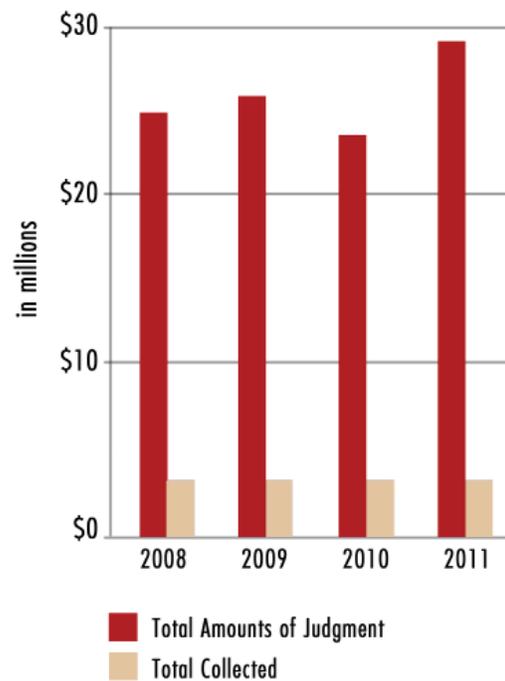
**WHY THIS IS NOT AN EFFECTIVE TOOL:** Mechanics’ liens are available only to a small subset of workers: construction workers. However, advocates who have used mechanics’ liens report a stronger willingness on the part of employers to resolve the claim because it draws the attention of a property owner, and encourages settlement.<sup>21</sup>

- **COLLECTION AGENCIES.** Collection agencies are one choice for workers who hold unpaid judgments.

**WHY THIS IS NOT AN EFFECTIVE TOOL:** Most wage theft judgments are under the minimum threshold for collection agencies.<sup>22</sup> Collection agencies work on contingency and often require a fee equal to 50 percent of the money collected.<sup>23</sup> Thus, collection firms are not a reasonable alternative for low-wage workers who are trying to survive at or near the minimum wages due them.

- **COLLECTION BY THE DLSE.** When an ODA is in the worker’s favor and there is no appeal, the DLSE asks the court to enter an Order, Decision, or Award (ODA) as a judgment against the employer. Workers who do not try to collect the judgment

**Figure 1. Total Amount Awarded v. Total Amount Collected by the Judgment Enforcement Unit of DLSE**



Source: Division of Labor Standards Enforcement Judgment Collections Data, 2008-2011

themselves may assign the judgment to the DLSE to attempt collection.

**WHY THIS IS NOT EFFECTIVE:** Between 2008 and 2011, DLSE’s collection unit collected only 12 percent of the amount awarded, likely due in large part to lack of effective wage collection tools and employer insolvency. For some period of time, DLSE had a working agreement with the California Franchise Tax Board to collect wage judgments through intercepting tax refunds from employers with outstanding judgments. This program was at best marginally successful. For example, in FY 2010-2011, FTB collected \$1.7M on wage claims referred by DLSE. This represented recovery on less than 20% of the cases referred and two percent of the total amount of money awarded in ODAs issued in that year.<sup>24</sup>

Although these avenues may appear to be a long list of options, most low-wage workers cannot effectively access these remedies.

Workers may face great difficulty finding attorneys or collections agencies to assist them in their cases, and may lack the time and resources to engage in time-consuming efforts after an already lengthy process to prove their claims before the court or administrative agencies.

This lack of effective tools also means that employers are not held accountable for failing to pay their workers. Employers are not receiving the message that failure to pay wages is not a good business practice. The incentives to comply may be so weak that rampant violations and noncompliance with basic labor standards is allowed to flourish.

## D. A STACKED DECK: CURRENT COLLECTIONS TOOLS ARE INADEQUATE FOR VICTIMS OF WAGE THEFT

California has failed to provide workers who are victims of wage theft with adequate tools to collect their unpaid wages. Although some avenues exist for some workers to collect upon a legally-binding judgment, these tools are simply ineffective and not available for most low-wage workers in the jobs where violations are rampant. Collecting unpaid wages through traditional pre- or post-judgment lien procedures is both complicated and expensive. Low-wage workers face further barriers to collection because of the nature of their employers, who often are marginally capitalized or are engaged in a business strategy that relies on obfuscating their identity and keeping costs illegally low. As several respondents in our interview study described, workers who try to enforce judgments for unpaid wages often find that their employers have disappeared, hidden assets, or have shut down operations and reorganized as a “new entity,” making it more difficult for workers to collect their pay.

### 1. MISSION IMPOSSIBLE: COLLECTING FROM DEFUNCT BUSINESSES

Our analysis of state-wide data concerning wage theft claims confirms that California employers who did not pay their workers were more likely to have been declared a forfeited, suspended, or cancelled business entity by the state. To conduct our analysis, we examined business licensing records for employers named in 2,370 individual claims in which the DLSE had found wage violations in 2011, the most recent year in which complete records are available at the time of publication. We investigated whether the employer was considered an “active” business entity at the time of the wage claim, entry of ODA,

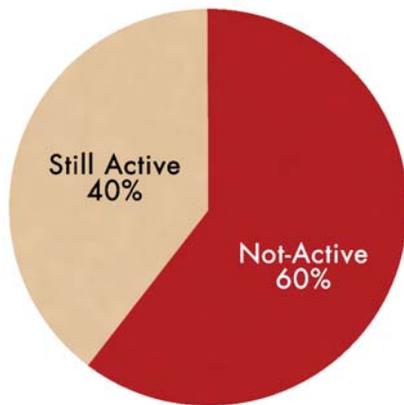
“I couldn’t collect my unpaid wages because the employer sold off the business immediately and the new owners did not know anything about the [wage] claims that were filed.

The new owners weren’t informed of any of this when they bought the business. I feel bad because it has been two years since the judgment was issued, but it doesn’t seem like the employer ever felt any pressure to comply, and still does not feel like he has to pay what is owed, and he continues to do what he wants without consequences.

I am disappointed that in a country as powerful and large as the United States, where a judge has decided a worker is owed their wages, a person can still get by without facing any consequences and that the judge’s ruling means nothing.”

~ M.S., a carwash worker, who is owed thousands of dollars in unpaid overtime pay. He was promised \$55 by his employer to work a 10-hour day without breaks.

**Figure 2. Number of Employers Found to Owe Unpaid Wages with Non-Active Business Classifications**



Source: Division of Labor Standards Enforcement Judgment Collections Data 2008-2011, California Franchise Tax Board and the California Secretary of State.

and after issuance of the ODA. We classified non-active employers as those that were listed as suspended, forfeited, cancelled, or dissolved by the California Franchise Tax Board and the California Secretary of State. Suspension, forfeiture, and dissolution result from failure to file tax returns, failure to pay filing fees, or voluntary dissolution of the entity. A non-active entity is highly likely to have stopped conducting business under its name at some point during the preceding year. Such a status correlates with the abandonment, sale, or transfer of a business, which may pose nearly insurmountable barriers to collection of a wage judgment due to unavailability of assets.

As Figure 2 shows, in 1433 cases, or over 60 percent of cases where the DLSE found that a worker was due unpaid wages, the employer was found to be a non-active business entity. In 24 percent of these cases, employers were found to be non-active before the DLSE was able to issue its finding. On average, employers who ceased operation did so within 7.7 months of a claim being filed. These statistics indicate that workers who must wait until the conclusion of the DLSE process to place a hold on employers' assets face even higher obstacles to collection. Collection problems will continue as long as employers have months, even years, to hide assets or change business formations.

## 2. PAPER TIGERS: THE CHALLENGE OF ENFORCING JUDGMENTS

Although obtaining a judgment for wage theft can be a complicated process, it is often easier than actually collecting unpaid wages from an employer. Collecting from employers who will not pay, or cannot pay is frustrating, expensive, and problematic. As one company specializing in judgment collection puts it:

Debt Collection is the more difficult practice in California, mainly because so much of the burden is shifted to the "levying officer" (aka overworked local sheriff's department) to go out and grab assets. It is easy to get a Writ, but much more difficult to get a deputy serve it, confiscate the assets, warehouse the assets until sale, and then finally sell the assets off at auction.<sup>25</sup>

Another company experienced in collections said:

Statistically about 80% of all judgments awarded never get collected as collecting the judgment is often the most difficult part of winning a lawsuit. The court has the power to award you your judgment but you hold the responsibility to enforce it. Unfortunately, this leaves you

with a piece of paper called a judgment, and the debtor is probably still refusing to pay just as they did before you sued them. This is the point where most judgment holders give up and have nowhere else to turn.<sup>26</sup>

DLSE’s experience has not been much better. Although DLSE has some collection ability not available to the public, such as the FTB tax intercept program, it must rely primarily on the same collection procedures available to any judgment creditor. Passive activities such as recording an abstract of judgment result in very low recoveries. Even with the tax intercept activities, DLSE’s collection unit has only been able to collect between 12 to 17 percent of judgments it has awarded. This is far below the 70 percent success rate collection companies report.<sup>27</sup> As the DLSE reports:

[E]ffective judgment enforcement typically requires prompt action to prevent unlawful employers from absconding, hiding assets, or otherwise evading collections . . . [T]he Division’s inability to act quickly more often than not turned judgments into nothing more than paper tigers.<sup>28</sup>

DLSE has recently contracted with a non-profit organization to collect recent unpaid judgments; the contract is too new to draw any conclusions on its effectiveness. Further, contracting judgment collection merely shifts who pays to collect judgments from employers found liable for wage violations to the state under this system; the contract does nothing for those workers who bring their claim to small claims court.

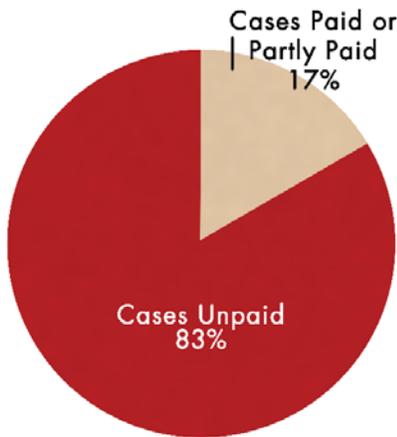
**Figure 3: Date of Employers’ Non-Active Status in Relation to Wage Claim, 2011**

Still Active	937	40%
Not-Active (Total Suspended, Forfeited, Cancelled or Dissolved)	1433	60%
Total Cases	2370	100%
Not Active (Suspended, Forfeited, Cancelled or Dissolved) After ODA	610	25%
Not Active by Date of DLSE	568	24%
Not Active (Date Unknown)	255	11%

Source: Division of Labor Standards Enforcement Judgment Collections Data, 2008-2011, California Franchise Tax Board and the California Secretary of State. Data set available upon request.

# III. A CRISIS IN COLLECTIONS: CALIFORNIA WORKERS FACE SIGNIFICANT DIFFICULTIES IN COLLECTING UNPAID WAGES

**Figure 4. Number of Cases Where Workers Recovered Any Payment After Prevailing with the DLSE, 2008-2011**



Total Cases	18,683
Cases Paid or Partly Paid	3,084 (17%)
Cases Remaining Unpaid	15,999 (83%)

Source: Division of Labor Standards Enforcement Judgment Collections Data, 2008-2011, all offices. Data set available upon request.

**W**orkers who are victims of wage theft by their employers face a virtual obstacle course when attempting to recover their unpaid wages. They must first overcome fear of retaliation and reprisal when deciding to attempt recovery of wages from their employers. They must then navigate a complicated and often lengthy legal process to prove their claim.

Most claims for wage theft filed with the DLSE are settled or dismissed, usually in favor of the worker. As our analysis of DLSE records indicate, between 2008 and 2011, approximately 31 percent of 118,739 claims scheduled for a settlement conference with DLSE resulted in settlement. Thirty percent of claims were dismissed. However, more than a third of claims, 39 percent—were referred to a DLSE Hearing Officer, the last step in the process before the DLSE makes a final determination.<sup>29</sup>

Our analysis reveals that under the current system in California, workers are left largely on their own to collect in the hardest cases. These difficult cases are commonly ones where employers refuse to settle and proceed with the lengthy process of a hearing with a DLSE Hearing Officer, and where the company has repeatedly demonstrated an unwillingness to pay. A high percentage of employers may forfeit, cancel, suspend, or dissolve their business licenses during this lengthy period of time, further complicating a worker's attempt to recover unpaid wages. According to our data, a high percentage of workers are unable to recover their unpaid wages in California, particularly for those of whom DLSE issues a final decision and obtains a judgment. As indicated below, only 17 percent of workers who completed the hearing process with the DLSE received a judgment for unpaid wages—less than one in five.

## A. LESS THAN ONE IN FIVE WORKERS WHO RECEIVED A JUDGMENT FOR UNPAID WAGES IN THEIR FAVOR RECOVERED ANY PAYMENT.

Workers who completed the entire DLSE hearings process, and who were found by the Labor Commissioner to be owed wages, are unlikely to recover any payment at all. Between 2008 and 2011, 18,683 work-

ers prevailed in their claims for unpaid wages before the DLSE. Only 3,084, or 17 percent—less than 1 in 5 recovered any money at all.

These numbers represent final judgments for unpaid wages and reflect the hardest cases to collect. Employers at this stage have refused every opportunity to settle, and many have no intention to pay. In fact, 60 percent have abandoned, transferred or sold their businesses without paying their employees’ wages, despite a judgment ordering them to pay. Fifty percent did so before workers could even complete the DLSE process.<sup>30</sup>

The threat of the seizure of assets is meaningless where employers have abandoned, transferred, or sold their businesses. The rate of appeals by employers supports this conclusion: very few employers appeal DLSE decisions against them. Between 2008 and 2011, the DLSE issued over 27,000 hearing decisions for unpaid wages and penalties totaling nearly \$300 million. Only 4 percent were appealed by the employer.<sup>31</sup>

### B. WORKERS WHO RECEIVED JUDGMENTS FOR UNPAID WAGES COLLECTED ONLY 15 PERCENT OF THE TOTAL AMOUNT FOUND DUE

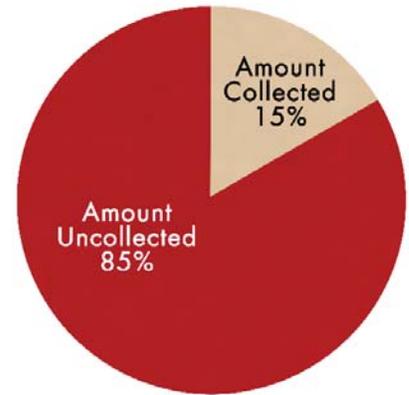
In aggregate, workers who completed the entire DLSE hearings process, and were found by the Labor Commissioner to be owed wages, also recovered a very small percentage of total wages owed. Of nearly \$300 million found to be owed by employers to workers by the DLSE, workers collected only \$42 million—just 15 percent of the total due.

Again, these low rates of recovery are likely related to the lack of effective options available for workers to collect, and the high likelihood that employers have abandoned, transferred, or sold their businesses by the time a worker attempts to collect their unpaid wages.

### C. EMPLOYERS WHO ARE WILLING TO SETTLE ARE MORE LIKELY TO PAY, ALTHOUGH THE COLLECTIONS RATE REMAINS LOW

Our analysis of the total amount of wages paid at all points in the DLSE process shows that some employers do pay, or settle, a portion of what they owe. This data includes all wage claims that result in settlement during the DLSE process, after a hearing and the issuance of an ODA,

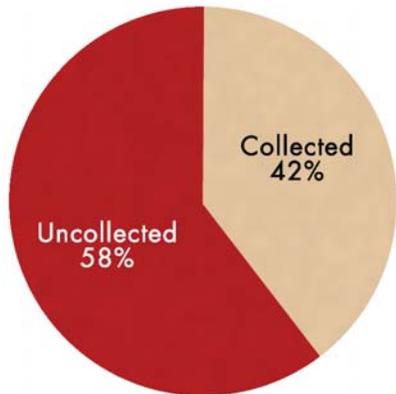
**Figure 5. Amount of Hearing Awards (Wages and Penalties) Collected After Judgment, 2008-2011**



Number of Hearing Decisions for Unpaid Wages and Penalties	27,111
Total Wages and Penalties Owed	\$282,071,969
Total Collected	\$42,436,641 (15%)
Remaining Unpaid	\$239,635,327 (85%)

Source: Division of Labor Standards Enforcement Case Data, 2008-2011, all offices. Data set available upon request.

**Figure 6. Amount of Unpaid Wages Collected, All Claims**  
 (Includes Collections After Settlement Conferences, Hearings, and Hearing Appeals)



Total Claimed Wages	\$390,045,972
Collected	\$164,687,907 (42%)
Uncollected	\$225,358,066 (58%)

Source: Division of Labor Standards Enforcement Case Data 2008-2011, all offices. Data set available upon request.

and any appeals. Although this rate is higher than the 15 percent collection rate of wages after judgment, this rate remains low. Between 2008 and 2011, California’s DLSE opened nearly 163,000 claims for unpaid wages totaling nearly \$400 million. However, workers collected only \$164 million of this total, a rate of only 42 percent.

According to our analysis, the majority of wages collected by workers resulted from settlement prior to a DLSE hearing. Of all \$165 million of wages collected in total, only \$42 million came from hearing decisions where the DLSE issued an ODA and obtained a judgment. Of the remaining \$122 million collected, or 74 percent of the total, payment to workers resulted from settlement.

Although not conclusive, this data suggests that workers receive more payment when their employers engage in the DLSE hearing process and enter into a settlement earlier. In short, employers who resist settlement may resist payment, too. This makes sense: employers who are likely to engage in a legal process and enter into a settlement are likely to be those who intend to stay in business in the long-term, and stay above the law. However, employers who fail to engage in the DLSE process and are faced with a judgment may feel little incentive to issue payment.

Under the current system in California, workers who take the difficult step of reporting wage theft, and persevere through the lengthy process of a DLSE wage claim, and receive a decision in their favor cannot expect to be made whole. In too many cases, employers who engage in unscrupulous behavior in the first place continue to refuse to pay. Without stronger tools to collect judgments, workers who have expended considerable resources in pursuing a claim can enjoy only a hollow victory.

# IV. WAGE LIENS PROVIDE A SIMPLE AND EFFECTIVE TOOL THAT ENCOURAGES EMPLOYERS TO COMPLY WITH THE LAW

Low-wage workers face many hurdles when attempting to collect unpaid wages. As described above, workers face greater challenges when trying to collect wages from employers who have disappeared, dissolved, or hidden their assets, rendering legal judgments for unpaid wages into a meaningless piece of paper.

Several states, however, have provided a helpful tool to assist workers in recovering their wages, particularly in cases where employers are likely to disappear or become insolvent. This tool, known as the wage lien, allows workers to place a temporary “hold” on the property of an employer until the employer pays the workers the wages they have earned. The wage lien is modeled on the mechanic’s lien, which covers work performed or materials furnished in construction or land improvements—and which all states, including California, have enacted.<sup>32</sup> At least six states, including Alaska, Idaho, Maryland, New Hampshire, Texas, Washington, and Wisconsin, have enacted wage lien laws, providing experience with the mechanism.<sup>33</sup>

## A. WAGE LIENS IN WISCONSIN

In order to assess the effectiveness of wage liens, our study examines data released by the Wisconsin Labor Standards Bureau, Wisconsin Department of Workforce Development, and Wisconsin Department of Justice, which enforce the state’s law authorizing workers to place a lien on the employer’s property to help enforce the wage law protections. We examine Wisconsin data because the state has the oldest and one of the most extensive wage lien programs in the country. Our analysis shows that wage liens are effective in recovering at least part of wages claimed by workers. In cases determined to be the most likely to default, the state of Wisconsin successfully recovered some payment in 80 percent of cases that it has completed to date.

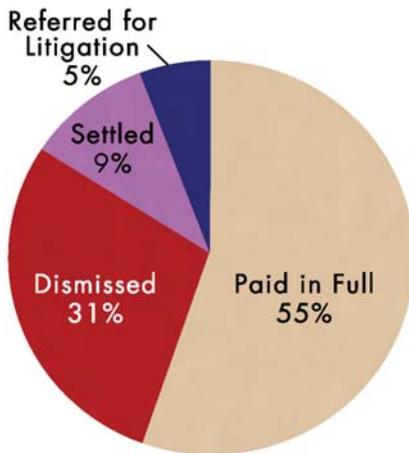
In 1993, Wisconsin passed a wage lien law designed to ensure collection of wage claims once the adjudicatory process was complete. As in California, workers have the option of filing an administrative

**Figure 7: Wisconsin Wage Claim Outcomes by Case, 2007-2012**

Paid in Full	10714	55%
Dismissed	5898	31.0%
Settled	1800	9.0%
Referred for Litigation	1016	5.0%
Total	19428	100%

Source: Wisconsin Department of Workforce Development Wage Claim Data 2007-2012, all offices. Data set available upon request.

**Figure 8. Wisconsin Wage Claim Outcomes by Case, 2007-2012**



Source: Wisconsin Department of Workforce Development Wage Claim Data 2007-2012, all offices. Data set available upon request.

claim with the Wisconsin Department of Workforce Development (DWD) or filing a private right of action. Either DWD or an employee, once they file a complaint for wages a worker can record a notice of lien in an amount sufficient to ensure payment of wages and penalties due once the litigation is over. This lien attaches prejudgment and is superior to all other liens, except for such secured interests as mortgages. Thus, Wisconsin's lien statute operates much like California's mechanic's lien statute, except that Wisconsin's law applies to all employees, not just those whose labor improves the real property of the employer, and is a less procedurally complex process.

In California, workers must wait until a final judgment is issued by the DLSE before they can file a lien to collect what they're owed. As we have seen, these employers are the most resistant to payment. As our research has shown, in 24 percent of cases where workers received a final judgment, employers have abandoned, transferred, or sold their businesses before the DLSE hearing process was even complete. Workers cannot seize assets that have long since disappeared.

By contrast, Wisconsin law allows workers to file liens for unpaid wages at the beginning of the claim process.<sup>34</sup> In Wisconsin, workers file for unpaid wages with the Department of Workforce Development (DWD). The DWD investigates and takes immediate action if an employer appears resistant to payment. If the DWD finds the employer's business is closing or closed, the employer is looking to sell the business or file for bankruptcy, or multiple employees have filed for unpaid wages, it concludes that the employer's assets are likely to disappear before the investigation is complete.<sup>35</sup> The DWD files an immediate lien on the employer's property to preserve assets during investigation and settlement. If settlement fails, the DWD refers the case to the state's Department of Justice or the District Attorney to litigate the wages owed. Those employers who were identified at investigation as resistant to payment must pay or settle in court, or a lawsuit is filed to enforce the lien.<sup>36</sup> Workers thus have access to more powerful tools to encourage employers who have not paid wages to do so.

## B. WISCONSIN'S WAGE LIEN LAW RESULTED IN EFFECTIVE RECOVERY FOR CASES OTHERWISE HIGHLY LIKELY TO RESULT IN DEFAULT

Wisconsin workers file approximately 3,300 claims for unpaid wages per year with the DWD.<sup>37</sup> According to our analysis, ninety-five percent of claims were settled, dismissed or paid in full between 2007

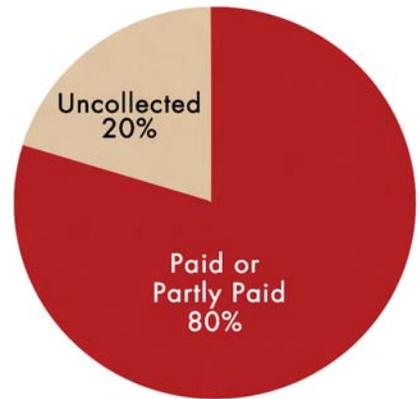
and 2012, the most recent data available. As the chart below illustrates, more than half—55 percent—of employers paid wage claims in full. Only five percent of employers refused to pay or settle, and those claims went on to litigation.

Wisconsin files very few wage liens because so many employers step up to the plate and pay in full. The DWD filed liens in just 234 cases for wages owed between 2005 and 2013, the most comprehensive data available. It brought suit to enforce the lien in 98 cases.<sup>38</sup> These cases reflect the most difficult cases in which to recover payment because these employers are determined to be at high risk of going out of business or entering bankruptcy by the state agency.<sup>39</sup> Of 98 workers with wage claims against employers who have closed, sold, entered bankruptcy or defaulted, 79 have collected full or partial payment. Thus, of cases determined to be the most likely to default, the state successfully recovered some payment in 80 percent of the cases. This rate of success stands in stark contrast to the 17 percent recovery rate for workers in California who receive a judgment after a successful DLSE hearing.

Workers who utilized wage liens in Wisconsin also received more in their attempts to recover unpaid wages than in California. Workers represented by the Wisconsin DOJ collected 25 percent of claimed wages from their employers, 1.6 times the amount that workers in similar circumstances—or cases against employers most likely to be insolvent—collected in California, where workers collected only 15 percent of wages and penalties awarded by the DLSE.

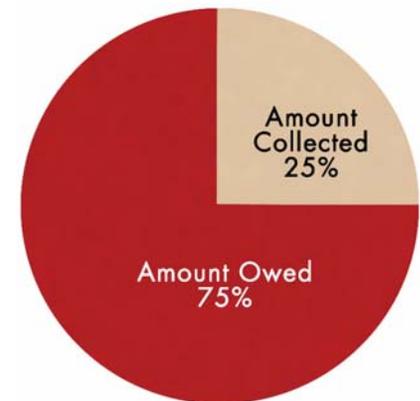
Although the actual amount of claimed wages recovered through the use of wage liens in Wisconsin remains lower than desired, pre-judgment wage liens appear to be an effective tool to ensure recovery against the most recalcitrant of employers. Our analysis suggests that pre-judgment wage liens are likely to help preserve employer assets, even in cases where the employer may be likely to default. The pre-judgment nature of the liens appears critical: unlike in California, where a lien is only available after a judgment has been issued, when employer assets may have disappeared, pre-judgment liens in Wisconsin allow workers to access these assets in order to seek recovery of wages owed to them. Wage liens, specifically pre-judgment liens, thus provide critical leverage to workers who require additional tools to recover unpaid wages.

**Figure 9. Number of Wisconsin Wage Lien Cases Resulting in Recovery, 2005-2013**



Source: Wisconsin Department of Justice, liens filed for unpaid wages 2005-2013. Data set available upon request.

**Figure 10. Amount of Wages Collected Through Wage Liens in Wisconsin 2005-2013**



Uncollected	\$22,663,914.52 (75%)
Collected	\$7,583,458.68 (25%)
<b>Total Amount of Liens for Wages</b>	<b>\$30,247,373.20 (100%)</b>

Source: Wisconsin Department of Justice, liens filed for unpaid wages 2005-2013. Data set available upon request.

## IV. RECOMMENDATIONS

Based on the data and analysis developed for this report, we recommend the following policies:

### **STRENGTHEN CURRENT WAGE LIEN PROVISIONS TO ALLOW WORKERS TO FILE A TEMPORARY PRE-JUDGMENT HOLD ON EMPLOYER PROPERTY.**

California already allows workers to file a post-judgment lien on employer property. However, for many workers, this is too late. A temporary pre-judgment hold would discourage unscrupulous employers from selling, hiding, or disposing of property while a court evaluates the wage claim or releases the lien. An employer's business could continue to operate while the validity of the lien is decided.

Many states have wage lien laws in some form, providing good experience and success with this mechanism, including Georgia, Idaho, Maryland, New Hampshire, Texas, and Wisconsin. Alaska, Pennsylvania, Washington, and Florida allow wage liens for specific industries, and Tennessee and Indiana allow wage liens for corporate or partnership employers. In Wisconsin, where pre-judgment wage liens are available to workers, 80 percent of workers are able to recover at least some of their wages.

### **INCREASE RESOURCES FOR COLLECTIONS EFFORTS BY STATE AGENCIES.**

The California DLSE has made great strides in increasing the number of adjudicated cases. However, its rate of post-judgment collections remains stagnant due to a dearth of staff and resources. Additional resources would allow the CA DLSE to engage in the time-intensive process of collections.

### **PROVIDE CLEAR, ACCESSIBLE, AND MULTI-LINGUAL EDUCATIONAL MATERIALS FOR WORKERS TO AVOID WAGE THEFT AND NAVIGATE WAGE CLAIMS AND WAGE COLLECTION PROCESSES.**

Although administrative agencies such as the DLSE have made great strides in developing accessible educational materials in recent years, few resources provide workers with clear information on methods of collection for unpaid wage judgments. Accessible materials on collections in several languages should be provided to all workers upon receipt of an ODA.

## V. CITATIONS

- 1 Annette Bernhardt, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws In America's Cities* 20, 21, 50 (2009), available at <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>.
- 2 For state wage lien laws, see, e.g. Ga. Code Ann. §§ 44-14-380,-381; Ohio Rev. Code. Ann. § 1311.34; Wis. Stat. §§ 109.03(5), 109.09. In April 2013, the Maryland General Assembly passed H.B. 1130/S.B. 758, 2013 Reg. Sess. (Md. 2013).
- 3 National Employment Law Project, *Winning Wage Justice: A Summary of Research on Wage and Hour Violations in the United States*, (2012) (compiling dozens of studies from across the country and across industries), available at <http://www.nelp.org/page/-/Justice/2012/WinningWageJusticeSummaryofResearchonWageTheft.pdf?nocdn=1>.
- 4 Bernhardt, *supra* note 1, at 20, 21, 50.
- 5 Ruth Milkman et al., *Wage Theft and Workplace Violations in Los Angeles: The Failure of Labor and Employment Law for Low-Wage Workers* 1-5 (2010), available at [http://www.ruthmilkman.info/rm/Policy\\_Reports\\_files/LAwagetheft.pdf](http://www.ruthmilkman.info/rm/Policy_Reports_files/LAwagetheft.pdf).
- 6 California Department of Industrial Relations, *2012 Annual Report on the Effectiveness of the Bureau of Field Enforcement* 3 (2013), available at [http://www.dir.ca.gov/dlse/BOFE\\_LegReport2012.pdf](http://www.dir.ca.gov/dlse/BOFE_LegReport2012.pdf).
- 7 Bernhardt, *supra* note 1 at 3.
- 8 Although workers may also file a claim with the U.S. Department of Labor's Wage and Hour Division, workers tend to recover much less through this process than with the DLSE because federal minimum wage and overtime laws provide lower wages than California statute, which fall under the jurisdiction of the DLSE. See 29 U.S.C. § 206; Cal. Lab. Code § 310.
- 9 Workers hired after January 1, 2012, should have more information about their employers, as new legislation requires that workers receive additional information about the legal entities employing them on the date of hire. Cal. Lab. Code § 2810.5.
- 10 Cal. Lab. Code § 98(a).
- 11 See *Corrales v. Bradstreet*, 153 Cal. App. 4th 33, 48-49 (2007).
- 12 Cal. Lab. Code § 98(f).
- 13 Cal. Civ. Proc. Code § 116.221. The jurisdictional amount changes with the nature of the action.

- 14 Cal. Lab. Code § 1194; *Armenta v. Osmose, Inc.* 135 Cal. App. 4th 314 (2006).
- 15 Cal. Civ. Proc. Code § 484.010 *et seq.*
- 16 Cal. Civ. Proc. Code § 482.010.
- 17 Cal. Civ. Proc. Code § 681.010
- 18 See Cal. Civ. Proc. Code §§ 699.010 *et seq.*
- 19 See Cal. Const., Art. IX, § 3; Cal. Civ. Code §§ 8000 *et seq.*
- 20 Contractors State License Board, *What is a Mechanic's Lien*, <http://www.cslb.ca.gov/consumers/legalissuesforconsumers/mechanicslien/WhatIsAMechanicsLien.asp> (last accessed May 23, 2013).
- 21 Interview with Matthew Sirolly, Wage Justice Center (Jun. 6, 2013).
- 22 See, e.g., Nationwide Asset Investigation and Judgment Recovery Specialists, <http://www.yjscollects.com/PlaceJudgement.html> (last visited June 12, 2013). The company will not accept judgments under \$3,500.00.
- 23 CA Judgment Collection, <http://cajudgmentcollections.com/faq.html> (last visited May 22, 2013).
- 24 Cal. Lab. Code § § 98.2(e),(f),(i); Franchise Tax Board's Revenue Recovery Services Bureau, *Monthly Report of Activity through June 2011* (2011), [https://www.ftb.ca.gov/aboutFTB/IHS\\_Annual\\_Report\\_for\\_0611.pdf](https://www.ftb.ca.gov/aboutFTB/IHS_Annual_Report_for_0611.pdf); DLSE statistics of claims made, awards issued, and collections, provided through Public Records Act request (on file with authors).
- 25 California Judgments Collections, <http://www.californiajudgmentscollections.com/judgment-collection-laws.php> (last visited May 22, 2013).
- 26 Judicial Revenue Service, <http://www.judicialrevenue.com/> (last visited May 22, 2013). The reported success rate without assistance from a collection service is similar to the current success rate for DLSE, see Figure 1.
- 27 *Id.*
- 28 Julie A. Su, *A Report on the State of the Division of Labor Standards Enforcement*, May 2013 37 (2013), available at [http://www.dir.ca.gov/dlse/Publications/DLSE\\_Report2013.pdf](http://www.dir.ca.gov/dlse/Publications/DLSE_Report2013.pdf).
- 29 Division of Labor Standards Enforcement Judgment Collections Data 2008-2011. Records available upon request.

- 30 See Figure 2 and 3.
- 31 Division of Labor Standards Enforcement Case Data 2008-2011, all offices. Data set available upon request.
- 32 Ala. Code §§ 35-11-210 to -234; Alaska Stat. §§ 34.35.050-.120; Ariz. Rev. Stat. §§ 33-981 to -1008; Ark. Code §§ 18-44-101 to -135; Cal. Civ. Code §§ 3109-54; Colo. Rev. Stat. §§ 38-22-101 to -133; Conn. Gen. Stat. §§ 49-33 to -92; Del. Code tit. 25, §§ 2701-37; D.C. Code §§ 40-301.01 to 303.01; Fla. Stat. §§ 713.02-.37; Ga. Code Ann. §§ 44-14-361(a) to -366; Haw. Rev. Stat. §§ 507-41 to -49; Idaho Code Ann. §§ 45-501 to -525; 770 Ill. Comp. Stat. §§ 60/0.01 to 60/39.0; Ind. Code §§ 32-28-3-1 to -18; Iowa Code §§ 572.1-.33; Kan. Stat. Ann. §§ 60-1101 to -1110; Ky. Rev. Stat. Ann. §§ 376.010-.260; La. Rev. Stat. Ann. §§ 9:4801-61, 38:2242 to 38:2247; Me. Rev. Stat. Ann. tit. 10, §§ 3251-69; Md. Code, Real Prop. §§ 9-101 to -304; Mass. Gen. Laws ch. 254, §§ 1-33; Mich. Comp. Laws §§ 570.1101 to 570.1305; Minn. Stat. Ann. §§ 514.01-.18; Miss. Code Ann. §§ 85-7-131 to -265; Mo. Rev. Stat. §§ 429.005-.360; Mont. Code Ann. §§ 71-3-521 to -523; Neb. Rev. Stat. §§ 52-110 to -159; Nev. Rev. Stat. §§ 108.221-.246; N.H. Rev. Stat. Ann. §§ 447:1-14; N.J. Stat. Ann. §§ 2A:44A-1 45-5; N.M. Stat. Ann. §§ 48-2-1 to -17, 48-2A-1 to -12; N.Y. Lien Law §§ 3-39; N.C. Gen. Stat. §§ 44A-7 to -23; N.D. Cent. Code §§ 35-27-01 to -28; Ohio Rev. Code §§ 1311.08-.38; Okla. Stat. tit. 42, §§ 141-180; Or. Rev. Stat. §§ 87.001-.093; 49 Pa. Cons. Stat. §§ 1101-1902; R.I. Gen. Laws §§ 34-28-1 to -37; S.C. Code Ann. §§ 29-5-10 to -430, 29-6-10 to -60, 26-7-10 to -30; S.D. Codified Laws §§ 44-9-1 to -53; Tenn. Code Ann. §§ 66-11-101 to -208; Tex. Prop. Code §§ 53.001-.260, 56.001-.045; Utah Code Ann. §§ 38-1-1 to -29; Vt. Stat. Ann. tit. 9, §§ 1921-28; Va. Code Ann. §§ 43-1 to 43-71; Wash. Rev. Code §§ 60.04.011-.904; W. Va. Code § 38-2-1 to -39; Wis. Stat. §§ 779.41-.485; Wyo. Stat. §§ 29-1-201 to -311, 29-2-101 to -111.
- 33 Some states already have different forms of wage lien laws. Wisconsin and Maryland have broad pre-judgment wage liens; Wisconsin is discussed below and Maryland's law is not yet in effect. Md. Code Ann., Labor & Employment, §§ 3-1101 et al.; Wis. Stat. Ann. § 109.03(5). Washington state, Ohio, and Alaska allow employees in certain industries a pre-judgment lien on an employer's property. Wash. Rev. Code Ann. § 60.34.010, Ohio Rev. Code. § 1311.34, Alaska Stat., § 35.35.440. Some states allow pre-judgment wage liens against corporate employers (Indiana) or corporate and partnership employers (Tennessee). Ind. Code, § 32-28-12-1, Tenn. Code Ann., § 66-13-101. Other states provide for liens after the state's administrative agency has issued a decision in favor of a worker's wage claim. Id. Code Ann. § 45-620; N.H. Rev. Stat. § 275:51; Tex. V.T.C.A. Lab. Code § 61-081; Wash. Rev. Code. Ann., § 49.48.086 (for all industries).
- 34 Wis. Stat. Ann. § 109.03(5).
- 35 Wis. Stat. Ann. § 109.09(2); Interview with Maria Selsor, Supervisor, Labor Standards Investigation Section, Wisconsin Department of Workforce Development (June 7, 2013).
- 36 Id.
- 37 In Fiscal Year 2012, the DWD reviewed 2,925 claims for unpaid wages. In this Fiscal Year to date, ending July 1, the DWD has reviewed 2,034 claims. Interview with Maria Selsor, Supervisor, Labor Standards Investigation Section, Wisconsin Department of Workforce Development (June 7, 2013).

- 38 Fifty-eight cases terminated without further action from the Department of Justice. (We infer from lack of data that the claimants settled or dropped their claims, or that the Department of Workforce Development investigated and found no merit.) Thirteen cases were referred to the District Attorney of Wisconsin or the state of the defendant, for which no outcomes are available. Sixty-four cases are pending investigation and await further action.
- 39 Interview with Maria Selsor, WI Department of Justice, June 7, 2013.
- 40 Wis. Stat. Ann. §§ 109.03(5), 109.09(2).
- 41 Jule A. Su, A Report on the State of the Division of Labor Standards Enforcement 37 (2013).

# APPENDIX: DATA AND METHODS

Data sets and further technical details describing methods used in this report are available upon request from the authors. With the exception of Figure 1: Total Amount Awarded v. Total Amount Collected by the Judgment Enforcement Unit of DLSE, 2008-2011, all data reflects the authors' analysis of information made available to us through the Public Records Act from California's Division of Labor Standards Enforcement and the Wisconsin Department of Justice.

We analyzed outcomes of 162,096 claims for nearly \$400,000,000 in unpaid wages filed with California's Division of Labor Standards Enforcement during the most recent time period for which data was available, from 2008 to 2011. We also analyzed 18,683 judgments for wages owed originating with the DLSE over the same four years.

Wisconsin law permits workers to file an immediate lien on the employer's property for wages claimed as soon as the claim is filed.<sup>40</sup> For this reason, we predicted claims for wages owed are likely to survive a transfer of employer assets, dissolution or bankruptcy. We analyzed 19,428 wage claims filed with the Wisconsin Department of Workforce Development from 2007 to 2012, which is all Wisconsin wage claim data available. We also analyzed outcomes of all 234 wage liens filed from 2005 through 2012, which reflects all wage lien data readily available.

## COLLECTIONS RATE METHODOLOGY

"Collections" begins when an employee first requests payment and ends when he or she receives an amount that satisfies all parties. This can occur at all points throughout the wage claim process. The great majority of wage disputes are resolved without an administrative hearing. Even fewer result in a hearing decision, and fewer still in a judgment. In order to understand what happens in all wage claims, we calculated collections at all points along the way. This report contains collections rates of:

1. All wage claims in California (including settlement conferences, hearings, and de novo review);
2. Wages and penalties determined to be due at California DLSE hearings;
3. Final judgments in California; and
4. Lawsuits filed to enforce Wisconsin wage liens.

Like many other kinds of debt, employers who owe back wages often pay their settlements or wage judgments in installments over a period of years. In evaluating the rate of collections, it is important to evaluate the amount collected as well as the proportion of claims that collect anything at all. For this reason, we used two methods of collection rates where possible. Neither method is more accurate than the other.

### A. METHOD 1: DOLLAR FOR DOLLAR, HOW MUCH OF WHAT'S OWED WAS COLLECTED?

First, we measured the total dollar amounts collected relative to the total dollar amount owed. This method tells us how much was actually returned to workers who filed for unpaid wages. It is a useful method

when only totals owing and collected are available, but individual case data is not. Its primary drawback is that it conceals the number of cases without payment of any kind.

## **B. METHOD 2: HOW MANY JUDGMENTS ACTUALLY RECOVERED ANYTHING?**

Second, we adopted the measure used by the Bureau of State Auditors in its 2004 audit of the Franchise Tax Board, which examines the proportion of claims that collect any payment. This method tells us how many employers refuse to pay at all. Its primary drawback is that it conceals differences between minimally, substantially, or fully paid claims. This method requires individual case-level data.

We received individual case-level data for wage liens filed in Wisconsin and were able to generate collections rates using both methods. Figure 9. Number of Wisconsin Wage Liens Filed Resulting in Recovery of Some Payment, 2005-2013, uses the second method. Figure 10. Amount of Wages Collected Through Wage Liens in Wisconsin, 2005-2013, draws on the first method.

As the following data set descriptions will show, incomplete data in California inhibits our ability to use both methods in all collections rates.

## **DIVISION OF LABOR STANDARDS ENFORCEMENT CASE DATA, ALL OFFICES, 2008-2011**

We received monthly summaries of total case data across all DLSE offices from 2008 to 2011. We relied upon the following indicators in this report:

- Number of cases opened, closed and pending;
- Number of settlement conferences scheduled, held, settled successfully, referred to a DLSE administrative hearing, or dismissed;
- Number of DLSE hearings scheduled, held or dismissed;
- Number of hearing decisions issued for plaintiff or defendant;
- Number of hearing decisions appealed;
- Total amount of unpaid wages claimed;
- Total amount of unpaid wages collected at all points in the DLSE process;
- Total amount of wages and penalties determined to be due at DLSE hearings;
- Total amount of wages and penalties collected; and
- Average number of days from date of filing an initial claim to the date of a hearing (available only for claims filed in 2008, 2009, and 2010).

We relied on these indicators to calculate the following figures found in this report:

- Figure 5, Amount of 98(a) Hearing Awards vs. Amount Collected, and
- Figure 6, Verified Wages Due vs. Wages Collected.

Without individual case data, we must rely solely upon amounts collected to calculate collections rates and are unable to determine how many claims have received payment.

## DIVISION OF LABOR STANDARDS ENFORCEMENT JUDGMENT COLLECTIONS DATA, ALL OFFICES, 2008-2011

We analyzed all 18,683 judgments originating with the DLSE between 2008 and 2011 for the following indicators:

- Number of judgments that have collected any payment, full or partial; and
- Status of employer businesses: "Active," "Suspended," "Dissolved," "Cancelled," or "Unknown."

We relied on the entire data set to calculate the following figures:

- Figure 2, Number of Employers Found to Owe Unpaid Wages by DLSE with Non-Active Business Classification;
- Figure 3, Date of Employers' Non-Active Status in Relation to Wage Claim, 2008-2011; and
- Figure 4, Judgments With Any Amount Collected vs. Judgments With No Amount Collected.

Unfortunately, only the number of judgments and individual amounts collected were made available to us. Because we do not know the total nor individual amount of judgments due, we are not able to generate a calculation identical to Figures 5 or 6, which calculate how much of wages and penalties due have been collected.

To analyze the status of employer businesses, we looked up the corporate status of all 1,777 judgments entered in 2011 as a subset of the data to calculate Figure 2: Number of Employers Found to Owe Unpaid Wages by DLSE with Non-Active Business Classification.

## DIVISION OF LABOR STANDARDS ENFORCEMENT JUDGMENT ENFORCEMENT UNIT DATA

In November 2006, the DLSE established its own Judgment Enforcement unit, which is responsible for collecting judgments from the Wage Claims Adjudication Unit and the Bureau of Field Enforcement.<sup>41</sup> We gathered Judgment Enforcement unit data from 2008 to 2011, to get the most comparable case information to the DLSE case data set, for the following indicators:

- Total amount of unpaid wages due in judgments obtained by the DLSE, and
- Total amount of unpaid wages collected on judgments obtained by the DLSE..

We used data provided in the DLSE's annual report to calculate Figure 1, "Total Awards vs. Total Collected by the Judgment Enforcement Unit of the DLSE, 2008-2011."

## WISCONSIN DEPARTMENT OF WORKFORCE DEVELOPMENT WAGE CLAIM DATA, 2007-2012

For Wisconsin wage claim data, we analyzed all 19,428 claims for unpaid wages filed with the Wisconsin Department of Workforce Development between 2007 and 2012, which is all the Wisconsin wage claim data available. We analyzed the case data for the following indicators:

- Number of claims filed;
- Number of claims paid in full;
- Number of claims dismissed for lack of merit;
- Number of claims settled; and
- Number of cases referred for litigation.

Unfortunately, wage claim amounts and individual case collections were not made available to us. Because we do not know the amount of unpaid wages claimed nor the number of claims that have collected any payment, we are unable to calculate the rate of collections using either method.

We relied on the data set to calculate Figures 7 and 8: “Wisconsin Wage Claim Outcomes by Case, 2007-2012.”

## Wisconsin Department of Justice Wage Liens Filed, 2005-2013

We analyzed all 234 wage liens filed by the Wisconsin Department of Justice at the request of the Department of Workforce Development between 2005 and 2013 to determine the following indicators:

- Individual and total amount of all wage liens filed;
- Number of lawsuits commenced to enforce wage liens; and
- Amounts collected.

To determine the number of lawsuits commenced to enforce wage liens, incongruous reporting required us to infer that the DOJ had commenced action where the database said “lawsuit,” “receivership,” and/or reported collections.

We relied on these indicators to calculate the following figures:

- Figure 9, Number of Wisconsin Wage Liens Filed Resulting in Recovery of Some Payment, 2005-2013; and
- Figure 10, Amount of Wages Collected Through Wage Liens in Wisconsin, 2005-2013.

## INTERVIEW PROTOCOL

We conducted in-depth interviews of 50 low-wage workers in California who have attempted to collect their unpaid wages through legal channels. Our interview questionnaire focused on the processes that workers used to try and recover their unpaid wages, and at what stages they encountered difficulty in collecting. After several drafts and pre-testing, the final interview protocol had 39 questions. The interviews lasted up to an hour each. The interviews were conducted following a structured protocol that consisted of a series of largely open-ended questions asked of each respondent.

Interviews were conducted by representatives of non-profit organizations who serve low-wage workers in enforcing their workplace rights in California. Interviews began in April 2013 and concluded in May 2013. Following standard human subjects protocol for interviews of this nature, respondents were guar-

anteed anonymity, but some respondents provided confidentiality waivers to enable use of their stories for publication. After completing the interviews, we sorted responses into a database, summarizing answers, allowing us to assess workers' experiences. This data is not available to policymakers or other researchers in order to protect interviewee confidentiality.

