

SAN FRANCISCO WAGE THEFT TASK FORCE FINAL REPORT

2013

The Wage Theft Task Force developed recommendations for understanding and addressing the crisis of wage theft in San Francisco. The report details background, challenges to combating the problem, and recommendations for preventing and remedying wage theft in San Francisco.

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EXECUTIVE SUMMARY

Executive Summary

The Wage Theft Task Force (hereinafter “Task Force”) was established pursuant to an ordinance championed by Supervisors David Campos and Eric Mar and the Progressive Workers Alliance. The ordinance passed unanimously by the Board of Supervisors on June 12, 2012. The Task Force was given the responsibility to study the issue of wage theft and generate recommendations for how the City can best marshal its resources to tackle wage theft. Wage theft is a persistent and widespread problem that occurs when employers do not pay workers the wages or other benefits required by law. Wage theft harms workers by denying earned income to many of the most vulnerable members of our community who have difficulty making ends meet. Wage theft also affects responsible employers who are effectively punished for following the law by having to unfairly compete in the marketplace. Finally, wage theft hurts the economy as those employers that violate wage laws also avoid paying their fair share of taxes.

The Task Force met between October 2012 and September 2013. The members of the Task Force included representatives from seven city departments including, the Office of Labor Standards Enforcement (hereinafter “OLSE”), City Attorney’s Office, District Attorney’s Office, Police Department, Department of Public Health, Office of the Treasurer and Tax Collector, and the Office of Small Business. The Task Force also included members appointed from the business community, community-based organizations serving low-wage workers, and a labor union.

The Task Force concluded that the City of San Francisco does not have a comprehensive strategy to address wage theft. Although San Francisco has the advantage of having local infrastructure designed to more effectively address and discourage wage theft, it does not always maximize its assets to tackle the problem.

The Task Force recommends increasing the resources available to OLSE as the best way to make an impact on wage theft. The office lacks an efficient electronic case management system and with current staffing levels, OLSE’s enforcement is limited to addressing worker-initiated complaints. The Task Force finds that, at a minimum, all vacant positions within the OLSE should be immediately filled. Currently, the OLSE does not have adequate resources to do proactive enforcement, conduct regular follow-up audits of past violators, develop specific enforcement strategies for problem industries, or work in regular collaboration with State enforcement agencies. The Task Force believes that OLSE could have a greater impact on the prevalence of wage theft in San Francisco with additional resources, especially through convening other city departments to marshal the City’s leverage over recalcitrant employers.

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In addition, the Task Force recommends the following key strategies to impact wage theft:

- The City should create a permanent Wage Theft Task Force composed of City Departments that meet on a quarterly basis to coordinate efforts to address the problem, continue ongoing education campaigns, and strategize about how to obtain compliance from the City's worst violators.
- All City Departments that interact with or issue permits to San Francisco businesses should collect the business registration number from/for the entity. Those Departments should have a mechanism to verify that the business is in compliance with other Department rules and regulations, and share data about businesses in the City.
- The City Attorney should increase the number of affirmative cases it brings against perpetrators of wage theft.
- The OLSE should increase the number of case referrals to the District Attorney for review for possible criminal prosecution and/or for the filing of a civil enforcement action pursuant to section 17200 of the Business and Professions Code.
- All City Departments should identify points of contact with workers, and especially lower wage workers, within its routine business where it can provide workers with information about workplace rights and ways to enforce those rights.
- The City should ensure that non-compliant employers cannot benefit from city recognition programs or tax incentives.
- The Board of Supervisors should pass an ordinance authorizing all Departments that issue permits to San Francisco businesses to suspend or revoke those permits based upon findings of noncompliance from decisions made by federal, state, and local labor law regulatory agencies.

INTRODUCTION

I. Introduction

A. **The San Francisco Wage Theft Task Force** (Ordinance No. 102-12; S.F. Admin. Code §§5.260 through 5.260-5)

The San Francisco Board of Supervisors created the Wage Theft Task Force on June 12, 2012, finding:

1. Wage theft occurs when employers do not pay workers the wages to which they are legally entitled. Common forms of wage theft are non-payment of overtime, failure to pay for all hours worked, under payment of the minimum wage rate, misclassification of employees as independent contractors, misclassification of type of work performed on a public works contract, illegal deductions from worker paychecks, failure to pay for “training time”, and complete non-payment of wages.

2. National and local studies report that wage theft is a pervasive problem that disproportionately affects immigrant and low-wage workers. For example, a national study of 4000 workers in Chicago, New York, and Los Angeles conducted by the National Employment Law Project (NELP) found that 26 percent of those workers had been paid less than the minimum wage in the preceding week, and 76 percent had either been underpaid or not paid at all for their overtime hours.

3. In San Francisco, a 2011 report by the Chinese Progressive Association (CPA) on workers in Chinatown restaurants found that one out of every two workers was paid less than the minimum wage. A 2006 national study of day laborers, that included hundreds of interviews with day laborers in San Francisco, conducted by University of California, Los Angeles, University of Illinois, and New School University, found that one out of every two day laborers experienced wage theft in the two months prior to being surveyed.

4. Since the San Francisco Minimum Wage Ordinance became effective in February 2004, the Office of Labor Standards Enforcement (OLSE) has recovered over \$4.8 million for 2,761 employees who were denied minimum wage and overtime pay by employers in San Francisco. Since beginning prevailing wage enforcement in 2002, OLSE has recovered over \$4.3 million for workers who were not paid prevailing wages on City & County of San Francisco public works contracts. OLSE has also recovered over \$675,000 for employees who were denied the wages and paid time off to which they were entitled under the Minimum Compensation Ordinance (since 2001) and about \$155,000 for workers who have been denied paid sick leave (since 2007).

5. According to NELP as stated in their recent manual entitled *An Advocate’s Guide to State and City Policies to Fight Wage Theft*, “Wage theft is not incidental, aberrant or rare, or committed by a few rogue employers at the periphery of the labor market. It takes place in industries that span

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the economy—including retail, restaurants and grocery stores; caregiver industries such as home health care and domestic work; blue collar industries such as manufacturing, construction and wholesalers; building services such as janitorial and security; and personal services such as dry cleaning and laundry, car washes, and beauty and nail salons.”

6. Wage theft causes significant harm to San Franciscans. Worker victims of wage theft cannot make ends meet individually or for their families, responsible businesses face unfair competition from employers paying below legal wages, and our city government loses significant tax revenue during a time of large annual budget deficits.

7. Wage theft negatively impacts the health of individuals and communities in San Francisco. Extensive research shows that income is one of the most important determinants of health. By negatively impacting income earned, wage theft impacts workers' ability to meet basic needs such as rent, groceries, and health care, which can increase their risk of homelessness, overcrowding, hunger and ability to pay medical bills. Wage theft can also increase stress on individuals and families and increase risk of depression, anxiety, high blood pressure, and substance use. Additionally, employers who disregard wage and hour laws are more likely to disregard other laws, including consumer safety laws, which may increase consumers' risk of food borne illness or accidental injuries.

B. Task Force Membership

The Task Force was made up of fifteen voting members drawn from City departments that have the power to address wage theft, and from businesses, community-based organizations, and labor unions with experience and understanding of low-wage workers, low-wage industries, and the problem of wage theft. The Task Force was co-chaired by Donna Levitt, Director of the San Francisco Office of Labor Standards Enforcement and Charlotte Noss, Project Attorney at the Legal Aid Society – Employment Law Center. S.F. Admin. Code § 5.260-1(a).

The appointees from the City departments included:

1. Laurel Turner, Manager, Administrative Services, City Attorney’s Office;
2. Donna Levitt, Director, Office of Labor Standards Enforcement;
3. Rebecca Wagner, Assistant District Attorney, District Attorney’s Office;
4. Captain Thomas Cleary, Police Department;
5. Karen Yu, Senior Environmental Health Inspector, Department of Public Health;
6. Leigh Phillips, Director, Office of Financial Empowerment, Office of the Treasurer and Tax Collector; and
7. Regina Dick-Endrizzi, Director, Office of Small Business.

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The members appointed from business, community-based groups, and labor unions included:

8. Ace Wiseman, Board of Directors of Young Workers United;
9. Shaw San Liu, Lead Organizer, Chinese Progressive Association (Winifred Kao, Litigation Director, Asian Americans Advancing Justice - Asian Law Caucus was appointed to fill this seat when it became vacant in July 2013);
10. Terrence Valen, Executive Director, Filipino Community Center;
11. Charlotte Noss, Project Attorney, Legal Aid Society – Employment Law Center;
12. Tina Chen, Secretary/Treasurer, UNITE-HERE Local 2;
13. Mani Sheik, Attorney, Miller Law Group;
14. Karen Heisler, Co-Owner, Mission Pie; and
15. Dawn Huston, Owner, El Rio.

C. Meeting Schedule

Wage Theft Task Force Launch, Press Conference & Member Orientation (October 1, 2012)

Including remarks by Dolores Huerta from the Dolores Huerta Foundation, Supervisor David Campos, Supervisor Eric Mar, and a worker member from Young Workers United who spoke about his experience confronting wage theft.

The Problem of Wage Theft in Low-Wage Industries (November 14, 2012)

Including presentation by Winifred Kao from the Asian Law Caucus.

Looking at Wage Theft Locally (December 12, 2012)

Including presentations by worker victims of wage theft, Donna Levitt, Shirley Trevino, and Josh Pastreich from the San Francisco Office of Labor Standards Enforcement, Tiffany Crain-Altamirano and Ace Weisman from Young Workers United, Terrence Valen from the Filipino Community Center, and Shaw San Liu from the Chinese Progressive Association.

Dealing with Employer Retaliation (January 30, 2013)

Including presentations by worker victims of retaliation, Rocio Avila from Golden Gate Law School's Women's Employment Rights Clinic and Eunice Cho from the National Employment Law Project.

Challenges Businesses Face and Pathways to Compliance (February 27, 2013)

Including presentations by Regina Dick-Endrizzi from the Office of Small Business, Karen Heisler from Mission Pie, and Dawn Huston from El Rio.

Discussion of Strategies to Effectively Address Wage Theft (March 27, 2013)

How the State Deals with Wage Theft and Ideas for Collaboration (April 24, 2013)

Including presentations by Donna Chen from the state Bureau of Field Enforcement and Renee Bacchini from the state Labor Enforcement Task Force.

Develop Recommendations (May 22, June 26, July 24, and August 28, 2013)

Approve Final Report (September 25, 2013)

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D. Task Force Charge

The Task Force was charged with making recommendations to the Board of Supervisors regarding how the City may best address wage theft in San Francisco. S.F. Admin. Code § 5.260. The Task Force was to submit its recommendations to the Board of Supervisors within the twelve months from the date that all fifteen voting members were appointed. S.F. Admin. Code § 5.260-3(d). All fifteen voting members were appointed to the Task Force on October 2, 2012, following their approval by the Rules Committee on September 20, 2012.

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II. Background

WAGE THEFT IS A PERVASIVE PROBLEM

A. What is Wage Theft

“Wage theft” is when an employer steals from an employee by failing to comply with legal requirements regarding working terms and conditions. This “theft of service” is unlawful, and even criminal,¹ and comes in many forms:

- An employer pays an employee less than the legally required minimum wage for every hour that he or she works.²
- An employer pays a worker a fixed daily or weekly amount that fails to compensate him or her at the required minimum hourly rate or applicable overtime rate.³
- An employer requires an employee to work “off the clock.”⁴
- An employer commits payroll fraud by misclassifying an employee as an “independent contractor” or as an employee “exempt” from overtime and break requirements.⁵
- An employer steals an employee’s tips,⁶ or illegally deducts money from a worker’s paycheck.⁷
- An employer pays an employee late,⁸ with a check that has insufficient funds,⁹ or fails to give an employee their last paycheck after they have quit or been fired.¹⁰

¹ Cal. Penal Code § 484.

² Employers must pay their employees the wages promised to them. *See DiGiacinto v. Ameriko-Omserv Corp.* (1997) Cal. App. 4th 629, 637. Those wages must be at least the compensation set by statute – which in San Francisco is \$10.55 per hour. S.F. Admin. Code Chapter 12R.

³ An employer is generally required to pay overtime premiums (one and one-half times the regular rate) for all hours a non-exempt employee works over eight in a day or over forty in a week, and doubletime premiums (twice the regular rate) for all hours an employee works over twelve in a day or over eight on the seventh consecutive day of work. Cal. Labor Code § 510.

⁴ An employee must be compensated for each hour that they are “suffered or permitted to work” by an employer. *See Industrial Welfare Commission (hereinafter “IWC”) Wage Orders 1-16*, Cal. Code Regs., tit. 8 §§ 11010-11160.

⁵ California law prohibits the willful misclassification of individuals as independent contractors and creates a civil penalty of between \$5,000 and \$25,000 per violation. Cal. Labor Code § 226.8.

⁶ All tipped employees in California are entitled to earn the minimum wage. IWC Wage Order 5-2001. The tips that an employee earns belong to that employee, and cannot be shared with managerial employees or owners who are not engaged in service at the establishment. Cal. Labor Code § 351.

⁷ An employer may only make deductions from an employee’s wages that are authorized by the employee in writing, and cannot deduct for employee uniforms or any other business expense. Cal. Labor Code §§ 224, 2802.

⁸ Wages must be paid twice during each calendar month, on days designated as regular paydays. Cal. Labor Code § 204.

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In San Francisco, wage theft also occurs when a worker should have accrued sick leave under the Sick Leave Ordinance but is not compensated for the time he or she takes off due to illness, care for a family member or designated person, or to seek medical care.¹¹ Wage theft occurs when an employer fails to pay a covered worker the correct prevailing wage for work performed on a public works contract.¹² It is wage theft when a covered employee is denied the hourly wage set by the Minimum Compensation Ordinance for work performed on covered City contracts and leases.¹³

In sum, there are myriad forms of wage theft involving violations of employment laws, too numerous to list here, but all resulting in a worker earning less than they are entitled to earn. During the Task Force sessions, several worker victims of wage theft discussed their experiences. The following worker testimonials helped illuminate the different forms of wage theft and pressures that workers face when confronting exploitation in the workplace.

- A Chinese man worked at a restaurant in Chinatown for four years as a waiter and kitchen helper. He worked 5-days a week, 10-hours a day, earning only \$1,000 a month – approximately \$5.00 per hour. The owner took any tips he earned. And then the owner decreased his break time as punishment for complaining about his working conditions.
- A Latina woman talked about her job at a laundromat in San Francisco. She worked 7-hours a day, 7-days a week for three years, earning \$550 a month – approximately \$2.50 per hour. Even though the patrons who came to the laundromat told her that her low wages were unfair, she felt indebted to the owner for giving her a job. She was worried that she would lose her job if she spoke up.
- A Filipino man worked as a caregiver at a carehome to support his family. He took care of six elderly patients and was not allowed to take breaks while he was working. He worked a 24-hour shift two days a week and an 11-hour shift three days a week for a total of 81 hours a week. He earned \$1,450 a month – approximately \$4.00 per hour. He shared a room at the carehome with another caregiver, but was never able to sleep the entire night through because the patients needed his attention.

⁹ An employer is liable for a penalty, or for paying any bounced check fees, if the check provided to the worker has insufficient funds. Cal. Labor Code § 203.1; Cal. Civil Code § 1719.

¹⁰ An employer is required to pay any unpaid wages immediately upon an employee's discharge, or within 72 hours of an employee giving notice that he or she is quitting the job. Cal. Labor Code §§ 201, 202.

¹¹ [San Francisco Sick Leave Ordinance, S.F. Admin. Code Chapter 12W.](#)

¹² San Francisco Prevailing Wage Ordinance, S.F. Admin. Code Chapter 6.22.

¹³ San Francisco Minimum Compensation Ordinance, S.F. Admin. Code Section 12P.

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- A Latino man talked about his job at a restaurant in the Tenderloin. He worked 6-days a week for 10 hours a day and was paid about \$1000 every two weeks – approximately \$8.30 per hour. When he and his coworkers filed a claim for their owed wages, the employer attempted to bribe them. The owner actually gave the workers thousands of dollars in cash to sign false statements and bought some of them one-way plane tickets to Mexico.

B. Extent of the Problem

Recently released studies have focused national attention on the widespread violation of wage and hour employment laws.¹⁴ Nationally, over \$19 billion is stolen from workers each year.¹⁵ A landmark study of low-wage workers surveyed 4,387 workers in the three largest U.S. cities—Chicago, Los Angeles, and New York City.¹⁶ The study found that more than two-thirds (68%) of the workers who were surveyed experienced at least one pay-related violation in the previous workweek. The study also found that “[t]he average worker lost \$51, out of average weekly earnings of \$339. Assuming a full-time, full-year work schedule, we estimate that these workers lost an average of \$2,634 annually due to workplace violations, out of total earnings of \$17,616. That translates into wage theft of 15 percent of earnings.”¹⁷

Several local studies show that wage theft in San Francisco is comparable to national trends. A survey of 433 restaurant workers in San Francisco’s Chinatown found that half of the workers were not paid minimum wage.¹⁸ The study estimated that these stolen wages cost Chinatown restaurant workers an estimated \$8 million every year in lost wages. A similar survey of 240 San Francisco based domestic workers found that 90% of those individuals who worked overtime did not receive overtime pay.¹⁹ A national survey of 2,660 day laborers, which included

¹⁴ See, e.g. Bernhardt A., et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* (July 2009), available at http://www.unprotectedworkers.org/index.php/broken_laws/index; Bernhardt, A., et al., *Confronting the Gloves-Off Economy: America’s Broken Labor Standards and How to Fix Them* (July 2009), available at http://www.cepr.net/documents/publications/gloves_off_final.pdf; Ballon, D. et al., *Voices from the Underground Economy: The Experiences of Workers and Advocates Seeking Meal and Rest Breaks in Low-Wage Industries* (August 2009), available at <http://www.betztedek.org/wp-content/uploads/voicesfromtheunderground.pdf>; National Council of La Raza, *Fractures in the Foundation: The Latino Worker’s Experience in an Era of Declining Job Quality* (November 2009), available at http://www.nclr.org/index.php/publications/fractures_in_the_foundation_the_latino_workers_experience_in_an_era_of_declining_job_quality/; Nik Theodore, *The Movement to End Wage Theft*, A Report to the Discount Foundation (October 2011), available at http://www.discountfoundation.org/sites/all/files/Wage_Theft_Report_2011_Oct.pdf.

¹⁵ Kim Bobo, *Wage Theft in America: Why Millions of Working Americans Are Not Getting Paid*, The New Press (2009).

¹⁶ Bernhardt, et al., *Broken Laws, Unprotected Workers*, *supra*, note 14.

¹⁷ *Id.* at page 5.

¹⁸ Chinese Progressive Association, *Check, please! Health and Working Conditions in San Francisco Chinatown Restaurants* (September 2010), available at http://cpasf.org/sites/default/files/ExecSum_ENG.pdf.

¹⁹ Mujures Unidias y Activas, La Raza Centro Legal, and DataCenter, *Behind Closed Doors: Working Conditions of California Household Workers* (March 2007), available at <http://www.datacenter.org/reports/behindcloseddoors.pdf>.

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surveys of day laborers in San Francisco, found that almost half of all day laborers were not paid at all for work they performed in the two months prior to the survey.²⁰

C. Industries Where Wage Theft is Rampant

Workplace abuses occur in a wide variety of industry sectors, but violations are rampant in the underground economy and industries that employ predominantly immigrant workers. The term “underground economy” refers to any business that deals in cash and/or uses other schemes to cover up its true tax liability from government licensing, regulatory, and taxing agencies. Employers that operate in the underground economy often commit wage theft. Workers employed in the underground economy are cheated out of public benefits including unemployment, disability, and social security. Immigrant workers often labor in the underground economy and suffer extremely high levels of wage and hour abuses as well as workplace safety violations.²¹ The social repression and marginalization of immigrants further emboldens unscrupulous employers to take advantage of and abuse these workers. This is true despite the fact that state law makes it clear that immigration status is irrelevant to claims for unpaid wages.²²

It is instructive to examine the most common industries investigated by the statewide Labor Enforcement Task Force (hereinafter “LETf”).²³ The LETf is an intergovernmental task force established specifically to combat the underground economy. The LETf focuses primarily on employers in the agricultural, automotive, construction, garment, and restaurant industries. However, the LETf also inspects businesses in other industries where statistical information from local enforcement offices and tips from community-based organizations suggest that violations are occurring. In 2012, in addition to its primary focus industries, LETf inspected and found violations at businesses in the following industries: beauty salon, building manufacturer, car wash, night club, warehouse, and wholesale.

The San Francisco Office of Labor Standards Enforcement (hereinafter “OLSE”) receives almost half of its minimum wage violation complaints (48%) from restaurant and café workers.²⁴

²⁰ Valenzuela, A., et al. *On the Corner: Day Labor in the United States* (January 2006), available at http://www.sscnet.ucla.edu/issr/csup/uploaded_files/Natl_DayLabor-On_the_Corner1.pdf.

²¹ Bernhardt, et al., *Broken Laws, Unprotected Workers*, *supra*, note 14.

²² See Labor Code § 1171.5(a) (“All protections, rights and remedies available under state law, except any reinstatement remedy prohibited by federal law, are available to all individuals regardless of immigration status who have applied for employment, or who have been employed, in the state.”).

²³ Department of Industrial Relations, *Labor Enforcement Task Force Annual Report* (2012) available at http://www.dir.ca.gov/letf/LETf_Annual_Report_2012.pdf.

²⁴ Office of Labor Standards Enforcement, *Wage Theft Enforcement Summary Statistics for the Wage Theft Task Force Final Report* (2013), on file with Task Force.

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The second largest number of complaints comes from the retail and sales industry (14%). The following chart shows the number of minimum wage complaints made by industry:²⁵

Chart 1: Minimum Wage Complaints filed with the OLSE (2004 – 2013)

	Number	Percent
Restaurant & Café	313	48%
Retail & Sales	93	14%
Health Care	29	4%
Day Labor Service	25	4%
Laundry & Cleaning	19	3%
Hotels & Apartments	14	2%
Other	160	25%
Total	653	100%

The state Division of Labor Standards Enforcement (hereinafter “DLSE”) received approximately 5,000 complaints from workers in San Francisco between January 1, 2010 and June 10, 2013.²⁶ Approximately one quarter of the complaints received by the state come from workers in the restaurant industry. The following chart shows the distribution across industry of complaints filed by individual workers during this time period:

²⁵ Note, however, that these statistics do not definitively demonstrate that violations are the most common in these industries. OLSE investigates only when it receives a complaint from a worker or other source. Whether a worker decides to complain about illegal workplace conditions is a complex decision and varies depending upon outreach and support from community organizations, the economy and likelihood of finding another job, fear of immigration authorities, etc.

²⁶ Division of Labor Standards Enforcement, *Data Related to All Complaints Filed and Investigated by DLSE from January 1, 2010 through June 10, 2013*, PRA #4897 (2013), on file with Task Force. Note that these complaints are not exclusively minimum wage complaints, but also include claims related to other sections of California labor law that the DLSE enforces, including claims for meal and rest break violations, overtime, and waiting time penalties.

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Chart 2: Wage Theft Complaints filed with the San Francisco DLSE (2010 – 2013)

	Total	Percent
Restaurants	1149	25%
Employment Agencies	779	17%
Retail & Sales	725	16%
Construction	586	13%
Transportation & Automotive	457	10%
Health Care	192	4%
Janitorial & Laundry	181	4%
Hotels	148	3%
Private Households	92	2%
Other Industries ²⁷	296	6%
Total	4605	100%

D. Consequences of Wage Theft

Wage theft has devastating effects not only on its victims but also on the worker’s community and society as a whole. Most obviously, wage theft results in reduced wages for already low-wage workers.²⁸ For a worker’s family, these stolen wages might mean there is not enough income each month to pay for basic needs like rent, utilities, food, transportation, and medical care. This can add strain to an already overburdened social service system.²⁹ Furthermore, wage theft harms workers in the longer term by reducing certain benefits that are tied to income level like disability payments or social security benefits.

Wage theft has demonstrated detrimental health consequences. The San Francisco Department of Public Health issued a fact sheet on the effects of wage theft on the health of

²⁷ These complaints came from entertainment, carnival, logging, landscaping, and agricultural workers, as well as complaints from unknown industries. Note that complaints from government employees and workers in professional offices were not included, as outside the scope of the Task Force. See Admin. Code § 5.260.

²⁸ See, e.g. Kim Bobo, *Wage Theft in America*; Bernhardt, et al., *Broken Laws, Unprotected Workers*.

²⁹ Zabin, C, et al., *The Hidden Public Costs of Low-Wage Jobs in California*, University of California Institute for Labor and Employment, U.C. Berkeley (2004), available at <http://escholarship.org/uc/item/9hb1k75c>.

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workers.³⁰ Wage theft can lead to hunger and homelessness, increased stress, decreased access to health care, and is associated with increased health and safety violations by noncompliant employers.³¹

In addition to the negative effects upon workers, wage theft harms the economy in several ways. Workers who earn less money have less to spend at local businesses.³² The various forms of wage theft also reduce the revenue collected by all levels of government: workers and employers are paying taxes on lower wages, or employers are avoiding paying taxes at all by hiring so-called “independent contractors” or paying workers under-the-table in cash.³³ Finally, workers who do not earn enough money to meet their basic needs often rely on public subsidies funded by the taxpayer.³⁴

Wage theft also undercuts responsible businesses that comply with minimum labor standards. Those employers who commit wage theft are engaging in unfair competition with these responsible businesses. The effect spreads across entire industries as opportunistic employers depend on the impotence of these laws, forcing responsible employers to either follow suit or be undercut on contracts or in the marketplace.

³⁰ San Francisco Department of Public Health – Work Environment Program, *Wage Theft and Health Fact Sheet* (2012), available at <http://www.sfphes.org/component/jdownloads/finish/35-wages-and-health/215-wage-theft-and-health-fact-sheet/0?Itemid=0>.

³¹ *Id.*

³² See, e.g. Sabine Schoenbach, *Wage Theft in North Carolina: The Hidden Crime Wave Robbing Workers and Communities* (March 2013), available at <http://www.ncjustice.org/?q=workers-rights/wage-theft-north-carolina-hidden-crime-wave-robbing-workers-and-communities>.

³³ Sachin Pandya, *Tax Liability for Wage Theft*, *Columbia Journal of Tax Law* 3(2): 113-143 (2012).

³⁴ Zabin, et al., *The Hidden Public Costs of Low-Wage Jobs in California*, *supra*, note 29.

CURRENT ENFORCEMENT STRATEGIES

III. Current Enforcement Strategies

A. Labor Enforcement at the Local & State Level

1. Local: San Francisco Office of Labor Standards Enforcement

San Francisco is at the forefront of confronting wage theft because of the enforcement efforts of the City's Office of Labor Standards Enforcement (hereinafter "OLSE"). The OLSE was created in 2001 to enforce prevailing wage requirements on the City's public works contracts. At the time, the OLSE had three enforcement staff. The enforcement responsibilities of the OLSE have grown over time, especially because of new local labor laws. The most substantial expansion came after the Minimum Wage Ordinance was adopted in 2003. The OLSE enforces two other laws of general application, the Paid Sick Leave Ordinance (enacted in 2007) and the Health Care Security Ordinance (enacted in 2008). The OLSE also enforces several labor laws that apply to the City's professional service contracts and lessees, including San Francisco's Minimum Compensation Ordinance (enacted in 2000) and Health Care Accountability Ordinance (enacted in 2001). Finally, the OLSE enforces the City's Sweatfree Contracting Ordinance (enacted in 2005).³⁵ To enforce all of these labor laws, the OLSE's budget for Fiscal Year 2012-2013 included 19 staff positions (although the agency's actual staff has never exceeded 18).

Enforcement of the Minimum Wage Ordinance

Between February 2004 and July 2013, the OLSE received 653 complaints alleging violations of the Minimum Wage Ordinance.³⁶ When the OLSE receives a complaint from a worker, it assigns a compliance officer to investigate the complaint. The agency has a staff of eighteen compliance officers, including seven contract compliance officers who are bilingual in Spanish, Cantonese, Mandarin, Tagalog, or Thai. The OLSE conducts investigations that include:

- an in-depth interview with the claimant(s);
- a site visit to the claimant(s)' place of work to observe business operations;
- interviews of employees and the employer on site;
- a review of the employer's payroll records; and
- any documentation of hours worked or wages received provided by the employees.

After a thorough review of the available information, the OLSE compliance officer conducts an audit and calculates whether any back wages, interest, and penalties are owed pursuant to the Minimum Wage Ordinance. If the compliance officer finds violations of the

³⁵ City and County of San Francisco Office of Labor Standards and Enforcement website (last accessed 8/20/2013), available at <http://sfgsa.org/index.aspx?page=391>.

³⁶ Data in this section are from the Office of Labor Standards Enforcement, *Wage Theft Enforcement Summary Statistics for the Wage Theft Task Force Final Report* (2013), on file with Task Force. Note that these data are only available from February 2004 through July 2013.

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MWO, the compliance officer sends the employer a Notice of Determination informing the employer that the investigation found violations and the amount of back wages, interest, and penalties that are owed.

Over two-thirds of the complaints received by OLSE resulted in a finding that back wages, interest, and penalties were owed. Twenty two percent of the complaints the agency received were closed without recovering any back wages. The most common reasons that OLSE closes a case are because the claimant withdraws the complaint or the claimant falls out of touch with the OLSE. Additionally, the OLSE referred approximately 10% of the complaints it received to other agencies (usually the state enforcement agency). The following chart shows the outcome of the complaints filed with the OLSE for violations of the minimum wage:

Chart 3. Outcome of Minimum Wage Complaints Filed with OLSE (2004 – 2013)

	Number	Percent
Determination that Back Pay Owed	423	65%
Closed (without a Back Pay Award)	140	22%
Referred to Another Agency	65	10%
Pending	25	4%
Total Complaints Filed	653	100%

From February 2004 through July 2013, the OLSE determined that back wages were owed in 423 of the cases it investigated for violations of the Minimum Wage Ordinance. The OLSE attempts to settle minimum wage cases without proceeding to administrative hearing, as that is the most efficient and cost-effective way to recover back wages for workers. The OLSE works with the employer to reach a pre-hearing settlement that recovers the full amount of back wages owed and interest owed to the employees, plus penalties in the amount of the City's enforcement costs. The OLSE also includes in settlements any unpaid citation amounts, and sometimes assesses additional penalties, particularly in the case of repeat offenders. Employers have an incentive settle with the OLSE rather than request a hearing because the MWO provides that after a due process hearing, cumulative penalties in the amount of \$50 per worker for each day that the violation occurred or continued can be assessed both for each worker and for the City.

Between February 2004 and July 2013, the OLSE recovered over \$6,584,340 in back wages, interest, and penalties for workers resulting from violations of San Francisco's Minimum

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Wage Ordinance.³⁷ The OLSE has reached settlement in the vast majority (99%) of the cases where the agency determined that back wages were owed. All of these settlements included full payment of the back wages due. The OLSE compliance officer who conducted the investigation and audit is also responsible for ensuring that timely payments are received from the employer in accordance with the applicable settlement agreement.

In five of the cases where the OLSE determined that back wages were owed to the workers, they were unable to reach a satisfactory settlement with the employer. In those cases, where no settlement was reached or the employer ignored the Notice of Determination informing him or her of violations, the OLSE proceeded to a formal administrative hearing. During this administrative hearing process, the OLSE acts to enforce the findings of its investigation contained in the Notice of Determination. In two of the five cases, the OLSE was able to recover the back wages owed after the hearing officer decision was issued.

The complaint and investigative process at OLSE have particular strengths. The agency's investigations are conducted of the entire workforce, not limited to the worker who filed a complaint. The OLSE utilizes this strategy to keep the identity of the complainant confidential to the maximum extent permitted by law, pursuant to the Ordinance. Protecting confidentiality makes it easier for some workers who fear retaliation to come forward to report wage theft. Back wages are awarded to all workers that experienced wage theft at the workplace, and OLSE attempts to correct the employer's business practices going forward. Finally, OLSE will not settle for less than the full amount of wages owed.

The OLSE contracts with a collaborative of community based organizations to conduct outreach and to educate low-wage and immigrant workers and support workers in filing wage theft complaints. The collaborative has done deep outreach into San Francisco's low wage immigrant communities and has had particular success in referring victims of wage theft in the restaurant and home care industries. The Board of Supervisors more than doubled the funding available for this program in Fiscal Year 2012-2013, and the OLSE has used the funding to increase the number of partners in the collaborative in order to effectively target additional communities.

Enforcement of the Paid Sick Leave Ordinance

In addition to enforcing the Minimum Wage Ordinance, the OLSE addresses wage theft by remedying violations of the Paid Sick Leave Ordinance. Adopted by San Francisco voters in November 2006, the Paid Sick Leave Ordinance established the first paid sick leave law in the United States. Before the law took effect, it was estimated that approximately 115,000 San Francisco workers did not have paid sick leave. Since 2007, the OLSE has recovered a total of

³⁷ Office of Labor Standards Enforcement, *Wage Theft Enforcement Summary Statistics for the Wage Theft Task Force Final Report* (2013), on file with Task Force. Please note, however, that the agency does not centrally track statistics on all types of wage theft, but does maintain data on complaints regarding alleged violations of the Minimum Wage Ordinance.

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\$318,774.86 in back wages and penalties for workers in 133 paid sick leave cases. The agency serves as an enforcement model for jurisdictions around the country who are implementing similar legislation.

Enforcement of the City's Prevailing Wage Requirements

The OLSE also enforces the City's Prevailing Wage requirements. The City adopts the prevailing wage determinations for each craft and classification of work as issued by the California Department of Industrial Relations, and the OLSE follows the Department of Industrial Relations' guidelines for enforcement. In addition to its primary enforcement duties, OLSE employs strategies designed to prevent violations. OLSE staff regularly participate in pre-construction meetings with the Contracting Department. The OLSE also conducts training workshops to educate contractors about prevailing wage compliance. It is the mission of the OLSE to ensure that all workers on the City's construction contracts are paid the wages to which they are legally entitled, which ensures that contractors have a fair level playing field on which to compete for City work.

All public works contractors and subcontractors are required to submit certified payroll records to the City listing every employee's hours, classification and rate of pay on the City contract. OLSE staffing limitations do not allow for review of most of the submissions. Since adopting a web based reporting system, OLSE reports that the average number of prevailing wage assessments per year has increased: there were an average of 29 per year before the electronic payroll system, and there are now an average of 42 per year.

An OLSE compliance officer talked about a case in which workers confided to a City inspector that they were being paid \$17 - \$18 an hour. This is much less than the prevailing wage rate of approximately \$46 an hour that the contractor was reporting to the City on its certified payroll records. Upon seeing glaring discrepancies in the documents produced by the employer, the OLSE subpoenaed the contractor's payroll records directly from its payroll processor and its bank. The source documents showed the actual checks used to pay workers and another set of checks made out for the higher prevailing wage rates that workers signed but did not receive. The OLSE was able to recover back wages for employees (on four different City contracts where this subcontractor worked and the contractor was debarred from bidding on City contracts for 4 ½ years. The OLSE was even able to send restitution checks to the two original claimants who had returned to Mexico fearing retaliation from the employer.

Since enforcement began in 2002, the OLSE has recovered \$4,390,861 in back wages and \$1,588,512 in penalties for prevailing wage violations. Four contractors have been debarred from bidding City contracts, and two egregious cases have been referred to the District Attorney for criminal prosecution.

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Enforcement of the Minimum Compensation Ordinance

The OLSE is also charged with enforcing San Francisco's Minimum Compensation Ordinance, which covers businesses who perform professional service contracts for the City or who have leases at the airport. The Minimum Compensation Ordinance requires employers to pay covered employees with no less than a specified wage rate, and to provide 12 paid days off and 10 unpaid days off per year. The Minimum Compensation Ordinance is San Francisco's version of a "living wage" law and the wage rate in 2013 is \$12.43 per hour for businesses and \$11.03 per hour for non-profits.

A business must sign a declaration that assures the City that they will comply with the Minimum Compensation Ordinance in order to be granted a City contract. Contractors must post a notice that informs employees about the Minimum Compensation Ordinance and also distribute a "know your rights" notice to their employees.

Since enforcement began in 2002, the OLSE has recovered over \$1.1 million in back wages for more than 800 employees and over \$55,000 in penalties for violations of the Minimum Compensation Ordinance. With its current budget, OLSE assigns less than one full-time compliance officer to enforce the Minimum Compensation Ordinance on all covered contracts and is only able to follow up on complaints.

2. State: Department of Industrial Relations, Division of Labor Standards Enforcement

The California Division of Labor Standards Enforcement (hereinafter "DLSE" or "Labor Commissioner") enforces all of the California labor and employment laws that establish baseline workplace conditions for low-wage workers. These include violations of minimum wage and overtime protections, but also failure to pay commissions, vacation pay, or failure to provide meal or rest breaks. Workers can file individual claims on their own behalf for nonpayment of wages (including non-compliance with the San Francisco Minimum Wage) or benefits with the Labor Commissioner.

From January 2010 through July 2013, the San Francisco Office of the DLSE received over 5,000 claims for unpaid wages in San Francisco.³⁸ The Labor Commissioner holds a settlement conference between the worker and employer to determine whether the parties can come to an agreement to settle the claim. If no settlement is reached, the Labor Commissioner determines whether there are sufficient facts alleged to constitute a violation, and whether they have jurisdiction over the claim. If these two conditions are met, the Labor Commissioner will hold a formal hearing to adjudicate the worker's claim.

³⁸ Division of Labor Standards Enforcement, *Data Related to All Complaints Filed and Investigated by DLSE from January 1, 2010 through June 10, 2013*, PRA #4897 (2013), on file with Task Force.

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Only approximately half of the claims that are filed are resolved through DLSE through this process. The other 49% of claims may have been dropped by the worker, dismissed by the DLSE, or the parties may have reached a settlement outside of the DLSE process. The following charts show the outcome of the claims filed with DLSE by San Francisco workers alleging various types of labor law violations:

Chart 4. Disposition of Claims Filed with the DLSE (2010 – 2013)

	Number	Percent
Settled Prior to Hearing	1,712	32%
Claim Went to Hearing	1,007	19%
Unknown Disposition	2,575	49%
Total Claims Filed	5,294	100%

If a claim is not settled or dismissed prior to the hearing, a DLSE hearing officer adjudicates the workers claim. The DLSE determines that either the worker is not owed wages, or the worker is entitled to collect unpaid wages and/or penalties from the employer. For those claims that went to hearing, the DLSE determined that the worker was owed back wages in the vast majority (86%) of those cases – and awarded approximately \$12,303,534 in unpaid wages, penalties, and interest to those workers. The following chart shows the outcome of those cases that went to hearing:

Chart 5. Resolution of Cases that Went to Hearing at the DLSE (2010 - 2013)

	Number	Percent
Worker Awarded Back Wages	869	86%
No Award of Back Wages	138	14%
Total Cases that Went to Hearing	1,007	100%

The DLSE also contains the Bureau of Field Enforcement (hereinafter “BOFE”) that is responsible for investigating complaints and initiating enforcement actions to ensure employees are not being required or permitted to work under unlawful conditions. BOFE investigates labor standards complaints that cover two or more workers as well as criminal complaints. BOFE relies on self-audits, conducted by employers, to augment the investigations performed in response to specific complaints. If employers refuse to perform self-audits, BOFE auditors obtain payroll records to conduct independent audits. BOFE additionally has a program of re-inspecting employers previously cited for Labor Code violations as a control to help ensure compliance with the State Labor Code. If an employer refuses to adhere to the findings of a BOFE investigation, DLSE may file a civil lawsuit against the employer. Unlike the individual Labor Commission

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complaint process, described above, employees have the option of remaining anonymous when filing a complaint with BOFE.

Harnessing the powers of different enforcement agencies in California, the Labor Enforcement Task Force (hereinafter “LETF”) was created to specifically target and combat the underground economy. The LETF's goals are to ensure workers receive proper payment of wages and are provided a safe work environment, ensure California receives all employment taxes, fees, and penalties due from employers, eliminate unfair business competition by leveling the playing field, and make efficient use of the state and federal resources.³⁹ The LETF conducts industry sweeps with multiple agencies working together to audit an employer's compliance with, for example, employment law and workplace safety requirements at the same time. These sweeps target problem industries and seek to proactively ensure compliance with labor laws, rather than depend on worker complaints for enforcement actions.

B. Other Local Agency Enforcement

1. Department of Public Health

The Environmental Health Protection, Equity and Sustainability Branch of the Department of Public Health currently addresses wage theft using its existing Health Code authority. The Department of Public Health has published a fact sheet that describes the health impacts of wage theft. The Department of Public Health uses its existing authority to assist OLSE, DLSE and community-based organizations in gaining compliance from noncompliant employers who hold a health permit by initiating permit revocation hearings when there is an outstanding judgment for unpaid wages. A number of businesses, such as food and massage establishments must obtain a “Permit to Operate” from the Department of Public Health.⁴⁰ Given that 48% of wage theft complaints received by OLSE involve establishments that serve food, this enforcement power is particularly useful.

Additionally, the Department of Public Health helps educate employers and employees of wage law requirements through the permit application process⁴¹ and through required food handler training program. Finally, the Department of Public Health analyzes San Francisco wage theft data to determine whether or not employers found guilty of committing wage theft are more likely than other employers to violate other laws protecting the public's health and well-being.

³⁹ State of California, Department of Industrial Relations, Labor Enforcement Task Force website (last accessed 8/20/2013), available at <http://www.dir.ca.gov/letf/letf.html>.

⁴⁰ S.F. Health Code Article 8 § 440(j).

⁴¹ San Francisco Department of Public Health – Environmental Health, *Labor Law Checklist for Business Owners* (January 2010), available at <http://www.sfdph.org/dph/files/EHSdocs/ehsFood/permitsdocs/FoodPermitAppPacket2012.pdf>.

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2. City Attorney's Office

The San Francisco City Attorney's Office advises OLSE on its investigations of wage theft complaints, assists OLSE in settlement negotiations, prepares settlement agreements in matters that settle without litigation, and represents OLSE in cases that go to formal administrative hearings.

In addition, the City Attorney's Office has filed affirmative lawsuits to enforce San Francisco's Minimum Wage Ordinance, Paid Sick Leave Ordinance, and Health Care Security Ordinance. Recent cases include:

- *City and County of San Francisco v. Vladigor Investments, Inc., dba Tower Car Wash et al.*, which settled for one-half million dollars in back wages and interest to employees who, over the course of four years, were illegally subjected to unpaid waiting time while managers decided whether to allow workers to clock in for their shifts.
- *City and County of San Francisco et al. v. Dick Lee Pastry, Inc. et al.*, for failing to pay more than \$440,000 in wages plus interest to seven employees.

The City Attorney's Office recently recovered \$844,644 for approximately 1,500 eligible employees at 19 different businesses when it discovered that many restaurants in San Francisco were charging surcharges to cover employee benefits as required by San Francisco's Health Care Security Ordinance but failing to use that money for the stated purpose.⁴²

3. District Attorney's Office

The District Attorney's Office works collaboratively with other governmental agencies, including the Department of Insurance Fraud Division, Department of Industrial Relations, OLSE, Mayor's Office of Public Safety, San Francisco Police Department (Permit and Economic Crimes Division), State Contractor's Board, Consumer Mediation Units, Attorney General's Consumer Fraud Unit, and the City and County of San Francisco's Whistleblower Program in order to identify cases of wage theft. The Office also works with nonprofit organizations to assist low-wage workers who have been victimized by their employer.

The District Attorney's Office is empowered to prosecute cases of wage theft under the relevant criminal statutes, and to bring civil enforcement actions under Business and Professions Code section 17200 *et seq.* Whether an allegation of wage theft is handled criminally, civilly, or both, depends on the particular facts and circumstances of each case. In both types of enforcement actions, obtaining restitution for the victims is a central component of any resolution. Some recent cases include:

⁴² Office of the City Attorney, *Restaurant Workers Net \$844K Restitution in 19 Surcharge Enforcement Settlements So Far*, News Release: 2013-05-13 (May 2013), available at <http://www.sfcityattorney.org/index.aspx?page=523>.

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- *People v. Abelmohssen Abozaid*: Mr. Abozaid pled guilty to 487(a) of the Penal Code, felony grand theft, and was sentenced on April 21, 2009 to five years of felony probation, 112 days in the county jail, over \$19,000 restitution to employees and was ordered to obtain worker's compensation and unemployment insurance for his employees as a condition of probation. The case was referred to the District Attorney by La Raza Centro Legal.
- *People v. Danny Ho*: Mr. Ho was sentenced to one year in the county jail related to theft of labor and failure to secure worker's compensation insurance among other violations. He was convicted of a felony grand theft charge related to the thefts of labor. He was ordered to pay over \$80,000 in restitution. Parts of the case were referred to the District Attorney by La Raza Centro Legal and Asian Pacific Islander Legal Outreach Program.
- *People v. Frances Doherty*: Criminal case pending. Ms. Doherty is currently charged with 57 felony counts related to wage theft, filing false instruments, workers' compensation fraud and offering other fraudulent documents.
- *People v. Martha O'Neill and Avoca Trucking et al*: The defendants had numerous public works contracts with the City of San Francisco and were originally charged with multiple criminal violations related to failure to pay prevailing wage, workers compensation fraud, grand theft, filing false statements and failure to pay taxes. The defendant pled guilty to two felony counts and, in June 2010, was sentenced to five years of probation, one year in the county jail, \$500,000 restitution and other standard terms of probation.

4. Office of Small Business

The Office of Small Business and its Small Business Assistance Center function as the City's central point of information and referral for entrepreneurs and small businesses located in the City and County of San Francisco. Staff at the assistance center counsel businesses with employees on San Francisco's specific employment laws and provide literature related to the business' legal obligations at the local, State, and Federal levels.⁴³

5. Office of the Treasurer and Tax Collector

The Treasurer's Office coordinates with OLSE to collect from employers who fail to pay what they owe to workers and/or penalties owed to the city.

⁴³ City and County of San Francisco, Office of Small Business, *What You Need to Know About Hiring Employees*, available at <http://sfgsa.org/modules/showdocument.aspx?documentid=9666>.

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6. Police Department

The San Francisco Police Department works collaboratively with the District Attorney's office, City Attorney, Department of Public Health, Internal Revenue Service Criminal Investigative Unit, and the FBI to combat forced labor and theft of services. In addition, the Police Department has a human trafficking unit focusing on the worst forms of wage theft.

C. Local Community Efforts

1. Community-Based Organizations/Worker Centers

Due to fear or ignorance of government enforcement agencies, workers often first report instances of wage theft to advocates at community based organizations or worker centers. Worker Centers can be defined as “community-based mediating institutions that provide support to and organize among communities of low-wage workers.”⁴⁴ Worker centers have arisen across the country to counteract the insufficient government enforcement of workplace laws. Workers centers often use a combination of strategies – organizing workers, leadership development and worker education, legal claims, and legislative advocacy to address wage theft. Worker centers often serve specific racial or ethnic groups or specific industries and employ culturally and linguistically competent staff to serve the target population.

Examples of San Francisco based worker centers include the following:

Young Workers United: Formed in 2002, Young Workers United assists 5-10 workers each week that are confronting wage theft. The organization works with younger workers and workers in the restaurant industry. Young Workers United outreaches to workers by conducting know your rights presentations in English language classes at city college classes. The organization was instrumental in passing the San Francisco Paid Sick Leave Ordinance, and has recovered over \$1 million in back wages for hundreds of workers.

Filipino Community Center: Formed in 2004, the Filipino Community Center works with mostly Filipino workers in the caregiving industry. The organization has also assisted parking garage attendants and airport screeners. Workers organize through their parallel organization, *Migrante USA*, to improve their working conditions.

The Chinese Progressive Association: Formed in the 1970s, the Chinese Progressive Association serves Chinese workers living in neighborhoods throughout San Francisco and working in a variety of industries. The organization has helped recover hundreds of thousands of dollars in unpaid wages, including \$740,000 in 2012.

⁴⁴ Janice Fine, *Worker Centers: Organizing Communities at the Edge of a Dream*, EPI/Cornell University Press (2006).

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2. Legal Services Organizations

In addition to worker centers, many non-profit legal organizations assist wage theft victims by representing individual workers in the administrative wage claims process or in civil court or by filing class action wage and hour litigation to recover unpaid wages for larger groups of workers.

Examples of San Francisco non-profit legal organizations include the following:

Asian Americans Advancing Justice - Asian Law Caucus: Founded in 1972, the Asian Law Caucus is the nation's first legal and civil rights organization serving the low-income Asian Pacific American communities. The Asian Law Caucus works together with community organizations such as the Chinese Progressive Association and the Filipino Community Center to recover back wages for low-wage workers in a variety of industries. Over the years, the organization has focused on nail salon workers, airport screeners, taxi workers, and restaurant workers along with other industries with high numbers of Asian Pacific American workers. In September 2012, the Asian Law Caucus reached the \$1 million benchmark in winning unlawfully withheld wages for low-wage immigrant workers through their direct service cases since reopening its workers' rights program in April 2011.

Legal Aid Society – Employment Law Center: Founded in 1972, the Employment Law Center addresses employment issues affecting underserved communities, including the poor and their families. Employment Law Center attorneys, law clerks, and volunteers provide advice and counsel to approximately 2,800 low-wage workers each year through their workers' rights clinics and hotline calls. Employment Law Center attorneys represent workers in state and federal court, in individual and class action cases.

CHALLENGES TO ADDRESSING WAGE THEFT

IV. Challenges to Addressing Wage Theft

A. Limits on Agency Enforcement Abilities

The agencies tasked with the enforcement of workplace rights face severe limitations on their ability to effectively ensure compliance with employment laws.

First among these limitations is the paucity of resources available. The San Francisco OLSE has faced staffing challenges. For example, despite the fact that the Board of Supervisors designated funds to hire an additional compliance officer for OLSE in the 2012-2013 Budget, the OLSE is still not authorized to hire to fill that position.

The OLSE does not currently have enough resources to do targeted proactive enforcement. It currently relies only upon worker-initiated complaints to investigate instances of wage theft. The office also does not have the resources to conduct follow-up audits of past violators, develop specific enforcement strategies for problem industries, or work in regular collaboration with State enforcement agencies. The Task Force believes that providing increased resources to the OLSE would reduce the prevalence of wage theft in the City.

B. Data Sharing

Many different San Francisco City and County Departments interact, permit, or regulate businesses. For example, the Treasurer and Tax Collector registers San Francisco businesses, the Department of Public Health inspects and permits restaurants, massage establishments, and other businesses to ensure compliance with the Health Code, and the Department of Building Inspections permit construction projects. Each department has its own database system and no department currently coordinates the type of data it collects from businesses. Furthermore, many departments do not collect the business registration number of the businesses it permits or regulates despite the fact that the law requires all San Francisco businesses to register with the Treasurer and Tax Collector.⁴⁵

The absence of a standard and coordinated method of collecting data from San Francisco businesses makes it difficult for those departments to easily share data when needed. The absence of uniformity makes it difficult for different departments to easily leverage each other's power over the business in order to gain compliance with San Francisco employment laws. While the Mayor's Office has made great strides in open government and transparency with the launch of the SFOpenBook website,⁴⁶ similar interdepartmental open data initiatives could prove fruitful to address wage theft.

⁴⁵ S.F. Bus. & Tax Reg. Code Article 12A.

⁴⁶ San Francisco Open Book Data website, *available at* <https://data.sfgov.org/>.

CHALLENGES TO ADDRESSING WAGE THEFT

In addition, the lack of verification and cross-checking of the data collected provide opportunities for non-compliant employers to escape accountability. Currently, the Treasurer and Tax Collector do not cross-check to ensure that registered businesses have all the required permits and licenses. There is also a lack of verification that the business entity listed on the business registration, permits, and licenses is a legal entity and that the same legal entity is being listed on all City applications.

C. Challenges to Collecting on Judgments

Collecting on a judgment for unpaid wages can be very difficult for low-wage workers. A recent study on collecting unpaid wages for California's workers found that between 2008 and 2011, workers were only able to collect \$42 million of the \$282 million in back pay awards issued by the DLSE.⁴⁷ The study also found that 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. The factors contributing to the difficulty of recovering unpaid wages include the lengthy duration of the wage claim and collections process, lack of clear methods for enforcing judgments, and inadequate collections tools.

In only a very small number of cases, the San Francisco OLSE has been unable to collect the full amount of back wages that it determined were due to the workers. The following chart shows the outcome of the cases where OLSE determined that back wages were owed to workers:

Chart 6. Investigations Where OLSE Determined Back Wages Owed (2004 – 2013)

	Number	Percent
Back Wages Fully Collected	383	91%
Employers Making Scheduled Payments	30*	7%
Back Wages Uncollected	10	2%
Total Cases with Back Wages Owed	423	100%

* Two of the employers on payment plans were significantly behind as of July 2013.

The data obtained from the state DLSE show that employees who win their hearing actually collect the money that they are owed in only about 40% of the cases. In the other 60% of cases, the worker did not collect on their owed wages through the DLSE. They may have settled their claim outside of the DLSE process after the hearing, may not have been able to collect on their claim, or the employer may currently be in the process of appealing the hearing decision. The following chart shows the resolution of cases filed at the DLSE:

⁴⁷ Cho, E., et al., *Hollow Victories: The Crisis In Collecting Unpaid Wages for California's Workers* (2013) available at http://nelp.3cdn.net/f6fc363a30266f0cd3_pzm6id1xa.pdf.

CHALLENGES TO ADDRESSING WAGE THEFT

Chart 7. Resolution of Cases at the DLSE (2010 - 2013)

	Number	Amount
Wages Claimed by Workers ⁴⁸	5,294	\$71,570,621
Worker Collected Wages via Settlement	1,712	\$6,945,152.81
Worker Awarded Back Wages	869	\$12,303,534.67
Worker Collected Back Wages Awarded at Hearing	332	\$2,493,519.51
Total Wages Awarded & Not Collected	537	\$9,810,015.16
Total Wages Collected	2,044	\$9,438,672.32

D. The Vulnerability of Wage Theft Victims

Another significant challenge to addressing wage theft is the vulnerable state of worker victims. Many wage theft victims are immigrants and many of these immigrants are undocumented. In fact, almost one in every ten workers in California is undocumented.⁴⁹ For a variety of reasons, undocumented workers are more likely to experience wage theft.⁵⁰ Because undocumented workers do not have the legal right to work in the United States, their work situation is inherently vulnerable. Many undocumented immigrants fear that if they complain at all, they will be fired and unable to obtain another job. Furthermore, given the widespread nature of wage theft in the industries where immigrant workers predominate, finding another job does not often equate with improved conditions. While retaliation is serious for any worker, an employer's threat to alert immigration or local law enforcement about an undocumented immigrant worker's status carries added force. For all these reasons, undocumented workers often fear reporting wage theft.

Employer retaliation against a worker that reports wage theft is commonplace for immigrant workers and native-born workers alike. A national study of low-wage workers found that 43 percent of those who made complaints or attempted to organize a union experienced retaliation by their employer or supervisor.⁵¹ Fear of job loss is especially acute during economic recessions where high unemployment rates make finding a new job difficult. Immigration status, economic recession, employer retaliation coupled with ineffective enforcement are all factors making it less likely that workers are willing to come forward on their own initiative to report violations of employment laws.

⁴⁸ This is an estimate, based on a sample of the data.

⁴⁹ Jeffrey Passel and D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends*, (2010) available at <http://www.pewhispanic.org/2011/02/01/unauthorized-immigrant-population-brnational-and-state-trends-2010/>.

⁵⁰ Milkman, R., et al., *Wage Theft and Workplace Violations in Los Angeles*, (2010) available at http://www.ruthmilkman.info/rm/Policy_Reports_files/LAwagetheft.pdf.

⁵¹ Bernhardt, et al., *Broken Laws, Unprotected Workers*, *supra*, note 14.

FINDINGS

V. Findings

After consideration of the materials presented to the Task Force, and deliberations among city agencies and community members, the Task Force makes the following findings:

- (1) The City and County of San Francisco lacks a comprehensive strategy and has not committed sufficient resources to address wage theft.
- (2) The general public lacks awareness of the problem of wage theft.
- (3) Workers do not know about their employment rights, do not believe that there are solutions, and are afraid of the consequences of speaking up (e.g. retaliation).
- (4) Agencies do not have enough resources for effective enforcement, and lack efficient data sharing and coordination between agencies.
- (5) Employers engage in wage theft because they operate in industries where there is a culture of noncompliance, they lack knowledge of their responsibilities, because they have engaged in a cost/benefit analysis that weighs in favor of violation, and/or because they lack the skills or resources to comply with employment laws.

RECOMMENDATIONS

VI. Recommendations

A. General Recommendation Involving Multiple City Departments

The City of San Francisco needs a comprehensive strategy that prioritizes adequate funding for wage theft enforcement and maximizes collaboration between agencies to leverage existing resources, power and opportunities. The following is a list of recommendations for how multiple City Departments can work in a coordinated fashion to impact the prevalence of wage theft in San Francisco.

1. Ongoing Collaboration

- Enact a permanent Wage Theft Working Group where departmental staff meet on a regular basis to share work on wage theft as well as strategize about how to hold recalcitrant employers responsible including discussing whether cases should be handled administratively, civilly or criminally. The Working Group should incorporate community-based organizations in ongoing collaboration.
- The City should continue to fund community-based organizations through the OLSE to conduct outreach, education, investigation, and assist workers in filing wage theft related complaints with the City.

2. Coordinated Data-Tracking System

- Track all interactions that a business has with any City department using the business registration number. Departments should all verify that the business entity listed on permits and licenses is a legal entity and that the same legal entity is listed on all interactions with the City.
- Implement a system for flagging those businesses that are "wage theft violators" – that is, employers who have been found in violation of local, state and/or federal labor and employment laws within the last three years.
- Enlist the Department of Technology to create a system (or modify existing systems) to implement coordinated data sharing between all departments to allow for efficient access to information about San Francisco employers and their dealings with the City.

3. Use Incentives to Discourage Wage Theft

- Screen all businesses receiving a City benefit or recognition to ensure that wage theft violators are not eligible.

RECOMMENDATIONS

4. Enhancing Departments Ability to Enforce Wage Theft

- The Board of Supervisors should pass an ordinance authorizing all departments that issue permits to San Francisco businesses to suspend or revoke those permits issued to wage theft violators.

5. Public Awareness Campaign

- Use all opportunities to publicize a "Campaign to End Wage Theft." For example, the OLSE, the City Attorney, and District Attorney's offices should publicize victories against employers who engage in wage theft. Departments should use their websites and newsletters to discuss their efforts to address wage theft.
- Use opportunities to create public awareness of and enhance public recognition of responsible employers.
- Each City department should identify points of contact with workers, and especially lower wage workers, within its routine business where it can provide know your rights information to workers.

B. Office of Labor Standards Enforcement

- Increase the OLSE staffing to implement new wage theft prevention strategies:
 - Deputy Director: This position was removed from the OLSE's budget in a prior mid-year cut. The position would enhance the OLSE's capacity to implement a comprehensive, city-wide strategy to combat wage theft, including the recommendations of the Task Force.
 - Minimum Wage Compliance Officer: An additional position on the Minimum Wage Ordinance team would allow the OLSE to investigate additional complaints referred by the expanded community outreach collaborative and monitor the ongoing compliance of past Minimum Wage Ordinance violators.
 - Prevailing Wage Compliance Officer: An additional prevailing wage compliance officer would allow the OLSE to do more on-site interviews that are the most effective way to identify egregious violations.
 - Clerical support: A second clerical position is needed to provide administrative support to 15 investigators and coordinate disbursement of back wages to workers.
- Fill the vacant Health Care Security Ordinance compliance officer position at the OLSE.
- Work with a database consultant to develop new case management system designed to streamline the investigative process and enhance the OLSE's capacity to analyze and report case data.
- Issue press releases to highlight the problem of wage theft and victories combating wage theft.

RECOMMENDATIONS

- Post a list of wage theft violators on the OLSE website.
- Follow-up with wage theft violators to monitor ongoing compliance with labor laws.
- Explore collaboration with the state's Labor Enforcement Task Force to address wage theft in the underground economy.

C. City Attorney

- Continue to work collaboratively with the OLSE, other City departments and outside entities, with the goal of pursuing affirmative cases consistent with the recommendations in the Task Force report.

D. District Attorney

- Improve lines of communication between the District Attorney's Office and the OLSE, Police Department, City Attorney, other City departments and outside entities to ensure that wage theft cases are referred to the District Attorney for criminal and/or civil prosecution.
- Create a multi-lingual wage theft hotline in the District Attorney's Office and reference the number in the District Attorney's newsletter to encourage victims of wage theft to file a complaint.
- Prosecute criminal and/or civil enforcement actions in egregious cases, including those involving repeat violators, multiple victims, and cases in which the wage theft violations are accompanied by violations of other statutes (e.g., threats to workers, workers compensation violations, unlicensed contractors, etc.).
- Continue its ongoing collaboration with OLSE and the state Bureau of Field Enforcement (part of the California Division of Labor Standards Enforcement) on issues related to workers compensation fraud.
- Investigate the possibility of hiring an assistant district attorney and a district attorney investigator dedicated to the investigation and prosecution of criminal and civil wage theft enforcement actions.

E. Department of Public Health

- Identify points within the Department of Public Health's routine operation where wage theft educational materials can be provided and issues related to wage theft enforcement can be addressed. For example, staff implementing the Women, Infants, and Children (WIC) program can provide a brochure to its clients about minimum wage in San Francisco that includes where to go for assistance.
- Establish regulations delineating that wage theft is a public health issue and that the Department of Public Health:

RECOMMENDATIONS

- (a) Requires all permit holders to comply with applicable federal, state and local labor and employment laws;
 - (b) Has the authority to suspend or revoke health permits based upon findings of noncompliance from decisions made by federal, state, and local labor law regulatory agencies (e.g. the California Department of Labor Standards Enforcement or the San Francisco Office of Labor Standards Enforcement); and
 - (c) Has the policy of acting to suspend or revoke health permits in such cases unless employers come into compliance with the applicable laws.
- Continue to promote responsible employers through recognition programs like the Restaurant Appreciation Month, which integrates labor standards into the selection criteria.
 - Align permit holder information with the business registration information to increase the probability of accountability of non-compliance by both the Department of Public Health and the Treasurer and Tax Collector's Office.

F. Office of Small Business

- Include educational materials about employer's responsibilities towards workers in its on-line business portal.
- Ensure that all businesses seeking assistance from the Office are registered with the City and have a current, valid business license.
- Engage in continuous "touches" with businesses as they grow (e.g. from sole proprietorship into hiring employees). Provide information and/or resources that are specific to the stage of that business.

G. Office of the Treasurer and Tax Collector

- Continue to ensure that all businesses in San Francisco are registered with the City as well as help facilitate the use of the business registration number in any data gathering system of other departments.
- Investigate and implement a manner for placing a "red flag" on the business registration of wage theft violators.
- Ensure, to the extent permissible under law, tax credits or tax exclusions are not granted to those businesses that are wage theft violators.
- Expand information provided by the Office of Financial Empowerment to include information about San Francisco employment laws.
- Advise workers who receive large settlement as a result of a wage theft case about how to responsibly handle and manage the money through the Office of Financial Empowerment.

RECOMMENDATIONS

H. Police Department

- Partner with OLSE on particularly difficult investigations. For example, have uniformed police officers accompany OLSE investigators on employer visits.
- Engage in ongoing collaboration with OLSE, probably through the special victims unit.
- Implement training and education programs with police officers about identifying wage theft, especially when responding to workplace disputes, and certifying U Visas for wage theft victims:
 - Invite nonprofit community based organizations to educate police officers at line-up.
 - Promulgate police bulletin.
 - Incorporate issues of criminal “theft of service” in police academy curriculums.

CONCLUSION

VII. Conclusion

Wage theft is pernicious, and causes specific harm to workers, responsible businesses, and local economies. Wage theft is widespread and is not limited to any specific industry or sector of the workforce. While the prevalence and character of wage theft can be daunting, San Francisco is well equipped to tackle the problem.

The San Francisco Office of Labor Standards Enforcement is a tremendous asset. It is rare for a local government to have an enforcement agency with the infrastructure allowing individuals to file wage theft complaints. While San Francisco is fortunate to have the OLSE, the City could better utilize the agency to impact wage theft. Workers are often intimidated to come forward and make complaints about their employer for fear of losing their job, other forms of retaliation, or because they do not believe their complaint will bear fruit. With increased resources, OLSE would be able to institute proactive enforcement or other new strategies targeted at specific industries where workers fear coming forward. With additional staff, OLSE could also collaborate with other City departments and state enforcement agencies in order to target problem businesses as well as implement smart enforcement strategies.

In addition to greater resources for OLSE, the Task Force believes other City departments could contribute more to prevent and address wage theft. On the front end, City departments like the Department of Public Health, Treasurers and Tax Collectors Office, Office of Small Business and the Police Department can take advantage of their regular interaction with low-wage workers and/or employers to educate them about their rights and responsibilities. On the back end, the City Attorney and District Attorney could file more wage theft cases. Furthermore, all City agencies that issue permits to San Francisco businesses should have the power to revoke permits if the business commits wage theft.

Finally, the City should better coordinate its work to address wage theft. The OLSE should have the resources to staff a permanent Wage Theft Task Force. Departments that collect data on San Francisco businesses should be able to share that information in a streamlined fashion. Businesses that commit wage theft should not be allowed to benefit from any City recognition program or tax incentive.

San Francisco is addressing wage theft. However, given the extent of the problem and the impact on the community, the City can and should do more by prioritizing additional staff for OLSE as well as better coordinating the work of different departments.

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VIII. Acknowledgments

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