Wage, Child Labor and Protected Leave Investigations

2017 Annual Report to the Governor

December 2017
# Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Summary</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td><strong>2017 Information Update</strong></td>
<td>4</td>
</tr>
<tr>
<td>Wage violations</td>
<td>4</td>
</tr>
<tr>
<td>Child labor</td>
<td>5</td>
</tr>
<tr>
<td>Protected leave</td>
<td>6</td>
</tr>
<tr>
<td>New initiatives</td>
<td>7</td>
</tr>
<tr>
<td>Conclusion</td>
<td>9</td>
</tr>
<tr>
<td><strong>Figures</strong></td>
<td></td>
</tr>
<tr>
<td>Figure 1: Wage violations</td>
<td>4</td>
</tr>
<tr>
<td>Figure 2: Child labor information</td>
<td>6</td>
</tr>
<tr>
<td>Figure 3: Protected leave activity</td>
<td>7</td>
</tr>
</tbody>
</table>
Executive Summary

Introduction
The Department of Labor and Industries (L&I) protects the safety, health and security of Washington’s workers. The agency’s Employment Standards Program is responsible for carrying out state laws that protect workers’ wages and working conditions.

As required by RCW 49.12.180, L&I submits this report to the Governor annually to provide updated information about investigations and proceedings related to worker wages, child labor, and protected leave.

2017 Information update
Worker wages
The Wage Payment Act authorizes L&I to cite employers for unpaid wages. The majority of worker rights complaints filed with L&I are wage complaints submitted by individual workers for unpaid wages. Since 2006, L&I has collected and returned over $27 million in unpaid wages to over 22,000 Washington workers.

In fiscal year (FY) 2017, 18 L&I field agents throughout the state investigated wage complaints and worked with employers to return money owed to workers. These agents investigated nearly 5,900 complaints, and collected and returned nearly $3.5 million to about 2,400 workers in FY 2017. About 64 percent of this money was collected from employers through voluntary compliance, without issuing formal citations.

Child labor
As directed by the Industrial Welfare Act, L&I has developed and enforces rules that protect minor workers. In addition to enforcing these rules, the department educates workers and employers about the requirements and how to comply.

Child labor complaints are of critical importance to L&I because of the vulnerability of young workers. These complaints can require rapid staff response and onsite visits to ensure child safety. In FY 2017, the agency received 116 child labor complaints, approved over 26,000 minor work permits, and issued over 200 variances allowing workers to exceed the normal limitations on youth working hours.

The Employment Standards Program has also actively participated in initiatives to increase youth apprenticeship opportunities in Washington, including a process for businesses to apply for student learner exemptions from some child labor requirements. During FY 2017, 11 active student learners worked in companies under these exemptions.
**Protected leave**

Protected leave laws protect an employee’s job in the event of an absence from work for any of the specifically outlined purposes in the Family Leave Act, the Family Care Act, the Domestic Violence Leave Act, leave for spouses of deploying military personnel, and leave for certain volunteer first responders (firefighters, reserve police officers and civil air patrol members).

L&I’s protected leave staff investigates complaints about violations of protected leave laws and determines whether a violation has occurred. In FY 2017, staff conducted 51 investigations, which is consistent with the historical average of approximately 50 complaints per year. L&I staff also educates workers and employers about protected leave requirements, reaching out to nearly 600 workers and employers in FY 2017.

**New initiatives**

*Initiative 1433*

On November 8, 2016, Washington voters approved Initiative 1433, the Washington Minimum Wage Increase. The initiative contains new requirements that will affect investigations and proceedings related to worker rights, including a requirement to provide paid sick leave to employees. L&I is currently conducting rulemaking, implementing changes to the complaint management system, and increasing staffing to enforce these requirements.

*Paid Family and Medical Leave Act*

In the 2017 legislative session, the legislature passed the Paid Family and Medical Leave Act, which provides eligible Washington workers with up to 12 weeks of paid family leave benefits. L&I is coordinating with the Employment Security Department, which has the main responsibility for implementing this program.

**Managing complaints**

L&I has implemented efficiencies in standard work processes to reduce complaint backlogs (complaints aged over 60 days). The complaint backlog has historically ranged from between 150 and 500 complaints. Due to L&I’s more efficient processes, the backlog remained around or below 200 complaints in FY 2017. Reducing this backlog has been a priority for L&I since the passage of the Wage Payment Act, and this progress is significant.

Since 2013, employees have been able to file wage complaints electronically. Complaints filed electronically increased from less than 1,500 in FY 2014 to over 3,300 in FY 2017, and now comprise approximately 60 percent of all complaints filed. The Employment Standards Program is currently preparing to implement a mobile-friendly version of the online complaint form in FY 2018. Easier complaint filing, the growing economy, and additional requirements related to Initiative 1433 are expected to contribute to a continued increase in worker rights complaints in the future.
Introduction

The Department of Labor & Industries’ (L&I) Employment Standards Program supports L&I’s mission to protect the safety, health and security of Washington’s workers by enforcing state laws ensuring that employers:

- Pay legally required wages
- Allow appropriate leave
- Follow rules about minor workers’ ages, restrictions on work hours, equipment use and training

Each year, L&I’s agents investigate thousands of wage, leave and child labor complaints. The success of these efforts in retrieving owed wages and returning them to workers is a result of continued process improvements, including:

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

L&I continues to make enforcement of child labor laws a top priority, as well.

This report describes how L&I protected the safety, health and security of Washington’s workers in fiscal year (FY) 2017 by implementing state laws on wages and working conditions; and provides information about wage, child labor and leave investigations conducted in 2017 and their results.
2017 Information Update

WAGE VIOLATIONS

The Wage Payment Act requires employers to properly pay wages to workers. Employer noncompliance with these laws most commonly involves failing to pay overtime or failing to pay at least minimum wage for hours worked. L&I investigates every wage complaint received to determine whether the law has been violated. If a violation has occurred, L&I makes every reasonable effort to collect and distribute delinquent wages owed.

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

More than one quarter of the wage complaints investigated in FY 2017 resulted in L&I collecting money for the worker without resorting to a citation and notice of assessment. Unfortunately, not all wage complaints can be resolved through voluntary compliance. L&I issued over 750 citations and notices of assessment (representing 13 percent of total complaints filed) for employers who violated the law and did not pay during the investigation. Four percent of complaints were resolved with a determination of compliance (the employer did not violate the law); and 11 percent were withdrawn. The remaining complaints were “not accepted,” most commonly because they did not contain enough information to enable an investigation or because the agent could not reach the complainant after the complaint was filed.

Figure 1 shows the number of wage complaints investigated and wages returned to workers from FY 2014 to FY 2017. As shown, the number of complaints rose nearly 50 percent from FY 2014 to FY 2017. Online filing alone increased the number of total complaints received by 39 percent in the first year it was made available (2014). The wages returned to workers has increased from $2.1 million to nearly $3.5 million, roughly a 62 percent increase.

Figure 1: Worker rights complaints

<table>
<thead>
<tr>
<th>Wage complaints, investigations and collections</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of wage complaints investigated</td>
<td>3,907</td>
<td>5,440</td>
<td>5,846</td>
<td>5,895</td>
</tr>
<tr>
<td>Collected wages owed to workers</td>
<td>$2.1 million</td>
<td>$2.8 million</td>
<td>$3.4 million</td>
<td>$3.5 million</td>
</tr>
</tbody>
</table>

Source: L&I Employment Standards Program
L&I credits three areas – online filing, process improvements, and help for those with limited English proficiency – with helping increase the amount of unpaid wages collected. The Employment Standards Program continues to work with translation coordinators to translate forms and improve access for those with limited English proficiency.

**CHILD LABOR**

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

During the school year, teens’ working hours are restricted; however, L&I can grant special variances for 16- and 17-year-olds with the written permission of both a legal guardian and an authorized school administrator.

L&I reviews minor injury reports, work permits, and minor work variances issued to determine employer compliance with child labor laws. Figure 2 shows L&I’s child labor law enforcement activity from FY 2013 to FY 2017. In FY 2017, the department issued over 26,000 minor work permits and reviewed just over 1,300 minor injury reports. The number of minor injury reports reviewed more than doubled in FY 2016 from the previous year, due to a new weekly report of minor injuries that enables the child labor specialist to take more timely action on these injuries. (This was not indicative of more injuries occurring.) Of the minor injury reports reviewed, over 30 were forwarded to field agents for further investigation regarding prohibited work.
**Figure 2: Child labor information**

<table>
<thead>
<tr>
<th>Investigations, work permits and variances</th>
<th>FY 2013</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY2016</th>
<th>FY2017</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor injuries reports reviewed</td>
<td>369</td>
<td>512</td>
<td>647</td>
<td>1,303*</td>
<td>1,301</td>
</tr>
<tr>
<td>Minor work permits issued</td>
<td>24,936</td>
<td>24,522</td>
<td>24,481</td>
<td>21,876</td>
<td>26,511</td>
</tr>
<tr>
<td>Minor work variances issued</td>
<td>116</td>
<td>117</td>
<td>153</td>
<td>191</td>
<td>230</td>
</tr>
</tbody>
</table>

* The number of minor injury reports reviewed more than doubled in FY 2016 from the previous year, due to a new weekly report of minor injuries that enables the child labor specialist to take more timely action on these injuries.

Source: L&I Employment Standards Program

The Employment Standards Program conducted a process improvement and workload review in FY 2017 that identified a need for an additional child labor specialist. That person was hired and began work in August 2017. The program has also increasingly automated citations and notices of violation, which has improved productivity and decreased processing time.

The Employment Standards Program has also actively participated in initiatives to increase youth apprenticeship opportunities in Washington, in collaboration with the Office of the Superintendent of Public Instruction (OSPI), Washington Science, Technology, Engineering, and Math Education (STEM), and the Aerospace Joint Apprenticeship Committee (AJAC). Efforts include educating employers about rules and regulations for youth apprenticeship opportunities, and streamlining the process for employers to request a student learning variance exempting high school students under the age of 18 from some child labor restrictions. During FY 2017, 11 active student learners worked in companies under these exemptions.

**PROTECTED LEAVE**

Protected leave laws protect use of sick leave and vacation leave, as well as use of leave without pay for certain activities. Protected leave laws also ensure that victims of domestic violence, victims of sexual assault or stalking, military spouses, and volunteer firefighters are not only provided appropriate leave rights, but are protected from employer retaliation for using the leave.
Protected leave laws include:

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

Figure 3 shows L&I’s protected leave enforcement activity in FY 2017. During that time period, L&I received over 3,700 inquiries about protected leave laws, a number that has steadily increased since the protected leave unit was formed in 2009. The department conducted 51 investigations, which is consistent with the historical average of about 50 complaints per year. Staff reached out to more than 180 workers and employers in FY 2017 to educate them about their protected leave rights and responsibilities.

**Figure 3: Protected leave activity**

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<tbody>
<tr>
<td>Investigations conducted</td>
<td>35</td>
<td>46</td>
<td>54</td>
<td>49</td>
<td>51</td>
</tr>
<tr>
<td>Investigations completed</td>
<td>28</td>
<td>52</td>
<td>54</td>
<td>48</td>
<td>50</td>
</tr>
<tr>
<td>Educational/outreach events</td>
<td>10</td>
<td>18</td>
<td>7</td>
<td>23</td>
<td>15</td>
</tr>
<tr>
<td>Participants attending educational/outreach events</td>
<td>646</td>
<td>528</td>
<td>158</td>
<td>394</td>
<td>185</td>
</tr>
</tbody>
</table>

Source: L&I Employment Standards Program

**New initiatives**

**Initiative 1433**

Voter-approved Initiative 1433 contains new requirements that will affect investigations and proceedings related to worker rights, including a requirement to provide paid sick leave to employees. The initiative:

- Sets future minimum wage rates ($11 per hour in 2017, $11.50 per hour in 2018, $12 per hour in 2019, and $13.50 in 2020).
• Requires an employer to pay all tips and gratuities to its employees, as well as all appropriate service charges.\(^1\)
• Requires employers to provide paid sick leave to their employees as of January 1, 2018.
• Protects employees from retaliation for exercising their rights under the Minimum Wage Act.

L&I’s Employment Standards Program is currently conducting rulemaking, implementing changes to the complaint management system, and increasing staffing to enforce these requirements. The implementation of Initiative 1433’s requirements is expected to have a substantial impact on the volume of worker rights complaints, although the scale of that impact is currently unknown.

**Paid Family and Medical Leave Act**
In the 2017 legislative session, the legislature passed the Paid Family and Medical Leave Act. This law provides eligible Washington workers with up to 12 weeks of paid family leave benefits annually for the birth of a child, care of a family member, or certain military assignments. Premiums will be collected beginning in 2019, and benefits will be available beginning in 2020. The Washington Employment Security Department (ESD) implements this program, which replaces the Washington Family Care Act previously implemented by L&I. L&I is working collaboratively with ESD on the transition to this new program.

**Managing complaints**
L&I has implemented efficiencies in standard work processes to reduce complaint backlogs (complaints aged over 60 days). The complaint backlog has historically ranged from between 150 and 500 complaints. Due to L&I’s more efficient processes, the backlog remained around or below 200 complaints in FY 2017. Reducing this backlog has been a priority for L&I since the passage of the Wage Payment Act, and this progress is significant.

Since 2013, employees have been able to file wage complaints electronically. Complaints filed electronically increased from less than 1,500 in FY 2014 to over 3,300 in FY 2017, and now comprise approximately 60 percent of all complaints filed. The Employment Standards Program is currently preparing to implement a mobile-friendly version of the online complaint form in FY 2018. Easier complaint filing, the growing economy, and additional requirements related to Initiative 1433 are expected to contribute to a continued increase in worker rights complaints in the future.

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\(^1\) A service charge is an amount that is automatically added to a customer’s bill for services rendered by the employer’s workers. Service charges include, but are not limited to, compulsory charges designated on the customer’s receipt as a “service charge,” “gratuity,” “delivery charge” or “portage charge.” For example, a restaurant that charges a compulsory gratuity for a table of six people or more secures a service charge, not a tip, on behalf of the employees who will receive the payment.
Conclusion

L&I has a successful history of protecting workers’ wages and working conditions by enforcing wage, child labor and protected leave laws. As shown, complaints in each of these areas remain high due to an improving economy with more workers employed, as well as to online filing which has made it easier to file wage complaints. In FY 2017, L&I investigated a record 5,895 complaints, and collected and returned to workers nearly $3.5 million in wages. At the same time, L&I decreased backlogged complaints to a record low. L&I also continues working to provide education about protected leave laws to more workers and employers.

Online filing has been such a success that approximately 60 percent of the total complaints received are now filed online. L&I has made changes in technology and staffing to decrease complaint backlogs and reduce waiting time for customers. The agency’s Employment Standards Program is preparing to implement a mobile-friendly version of the online complaint form in FY 2018.

The number of child labor complaints and protected leave complaints has remained fairly static; however, as a result of new efficiencies, L&I staff are reviewing more than twice the number of minor injury reports for child labor violations that may have contributed to an injury. The Employment Standards Program has also actively participated in initiatives to increase youth apprenticeship opportunities in Washington. During FY 2017, 11 active student learners worked in companies under exemptions for some child labor laws allowed by these initiatives.

Initiative 1433 created new requirements for employers, which are expected to have a substantial impact on the volume of worker rights complaints in FY 2018. The Employment Standards Program is currently conducting rulemaking, implementing changes to the complaint management system, and increasing staffing to enforce these requirements. L&I is also working collaboratively with the Employment Security Department to transition to implementation of the new Paid Family and Medical Leave Act.