Wage, Child Labor and Protected Leave Investigations

2018 Annual Report to the Governor

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Executive Summary

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

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.

2018 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 $33 million in unpaid wages to over 24,000 Washington workers.

In fiscal year (FY) 2018, 22 L&I agents around the state investigated wage complaints and worked with employers to return money owed to workers. These agents investigated nearly 6,200 complaints, and collected and returned nearly $5.5 million to about 2,000 workers in FY 2018. About 75 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 adopted and enforces rules that protect minor workers. The department also educates workers and employers about the law’s requirements and how to comply with them.

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 young workers’ safety. In FY 2018, the agency received 180 child labor complaints, approved over 42,200 minor work permits, and issued more than 300 variances allowing workers to exceed the normal limitations on youth working hours.

The Employment Standards Program actively participates in initiatives to increase youth registered apprenticeship opportunities and Paid Work-Based Learning in Washington, including a process for businesses to apply for student learner exemptions from some child labor
requirements. During FY 2018, 19 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 2018, staff conducted 42 investigations, which is generally 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 over 100 workers and employers in FY 2018.

Status of new initiatives
In addition to the above long-standing requirements, several new rights and responsibilities regarding worker protections have been added. These include:

*House Bill 2661*

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

*Initiative 1433*

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

*Paid Family and Medical Leave Act*

In the 2018 legislative session, the legislature passed the Paid Family and Medical Leave Act, which provides eligible Washington workers with up to 12 weeks of paid family leave benefits. In FY 2018, L&I continued to coordinate with the Employment Security Department, which has the main responsibility for implementing this program.

Managing complaints
L&I expects the number of worker rights complaints filed to continue to increase as a result of easier complaint filing, the growing economy, and the additional requirements of Initiative 1433 and other new requirements. Although managing these complaints remains a challenge, the agency has made significant progress in reducing backlogs.
During FY 2018, L&I continued to maintain a reduced backlog of complaints aged over 60 days. Process improvements first implemented in previous years continue to help keep the numbers low. The department kept the backlog at or below 200 complaints, compared to a previous high of 500. Reducing this backlog has been a priority for L&I since the passage of the Wage Payment Act, and this progress is significant.

Employees have been able to file wage complaints electronically since 2013. Complaints filed electronically have increased from less than 1,500 in FY 2014 to over 3,800 in FY 2018, and now comprise approximately 60 percent of all complaints filed.

The Employment Standards Program implemented a mobile-friendly version of the online complaint form in FY 2018.
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) 2018 by implementing state laws on wages and working conditions; and provides information about wage, child labor and leave investigations conducted in FY 2018 and their results.
2018 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 delinquent wages owed and get them to workers.

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

In FY 2018, more than half of the wage complaints investigated resulted in L&I collecting money for the worker without resorting to a citation and notice of assessment. However, since not all wage complaints can be resolved through voluntary compliance, L&I also issued more than 550 citations and notices of assessment (representing less than nine 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 2018. The number of complaints rose nearly 60 percent from FY 2014 to FY 2018. 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 $5.5 million since FY 2014. In FY 2018, wages returned to workers increased by $2 million over FY 2017.
**Figure 1: Worker rights complaints**

<table>
<thead>
<tr>
<th>Wage Complaints, Investigations and Collections</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
</tr>
<tr>
<td>FY 2014</td>
</tr>
<tr>
<td>----------------</td>
</tr>
<tr>
<td>Number of Wage Complaints Investigated</td>
</tr>
<tr>
<td>3,907</td>
</tr>
<tr>
<td>Collected Wages Owed to Workers</td>
</tr>
<tr>
<td>$2.1 million</td>
</tr>
</tbody>
</table>

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

Source: L&I Employment Standards Program

Online filing, process improvements, and help for those with limited English proficiency have been instrumental in increasing the amount of unpaid wages collected over the years. In addition, L&I continues its efforts to improve access to services 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.

Finally, 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 2018. In FY 2018, the department issued over 42,000 minor work permits and reviewed over 1,300 minor injury reports. The increase in the number of work permits in FY 2018 is due to changes in the minor work permit application that resulted in more permits being reviewed by L&I.
Figure 2: Child labor information

<table>
<thead>
<tr>
<th>Investigations, work permits and variances</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minor Injuries Reports Reviewed</td>
<td>512</td>
<td>647</td>
<td>1,303*</td>
<td>1,301</td>
<td>1,359</td>
</tr>
<tr>
<td>Minor Work Permits Issued</td>
<td>24,522</td>
<td>24,481</td>
<td>21,876</td>
<td>26,511</td>
<td>42,207</td>
</tr>
<tr>
<td>Minor Work Variances Issued</td>
<td>117</td>
<td>153</td>
<td>191</td>
<td>230</td>
<td>315</td>
</tr>
<tr>
<td>Participants Attending Educational/Outreach Events</td>
<td>N/A**</td>
<td>N/A**</td>
<td>N/A**</td>
<td>N/A**</td>
<td>2,207</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. This was not indicative of more injuries occurring.

**This data was collected starting in FY2018.

Source: L&I Employment Standards Program

The Employment Standards Program continues to actively participate in initiatives to increase youth registered apprenticeship and Work-Based Learning 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 registered apprenticeship opportunities, and streamlining the process for employers to request a student learning variance exempting high school students between the ages of 16 and 17 from some child labor restrictions. During FY 2018, 19 active student learners worked in companies under these exemptions.

In FY 2018, the Youth Employment Unit also collaborated with the Department of Revenue’s Business Licensing Service to update both the online and paper minor work permit applications. This will help alleviate workload by eliminating the need for telephone calls to employers regarding specific duties listed on their application.
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 Care Act.
- The Domestic Violence Leave Act.
- Leave for spouses of deployed military members.
- Leave for volunteer firefighters, reserve peace officers and civil air patrol members.

Figure 3 shows L&I’s protected leave enforcement activity from FY 2014 to FY 2018. In FY 2018, L&I received over 2,200 inquiries about protected leave laws and conducted 42 investigations. (An inquiry may be a phone call or email asking for guidance about laws, and is not necessarily a complaint requiring investigation.) Of the 42 investigations conducted, 19 were regarding the family leave act, 15 were regarding the family care act, and eight were regarding domestic violence leave. Staff also reached out to over 100 workers and employers in FY 2018 to educate them about their protected leave rights and responsibilities.

Figure 3: Protected leave activity

<table>
<thead>
<tr>
<th>Investigations, Education and Outreach</th>
<th>FY 2014</th>
<th>FY 2015</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigations Conducted</td>
<td>46</td>
<td>54</td>
<td>49</td>
<td>51</td>
<td>42</td>
</tr>
<tr>
<td>Investigations Completed</td>
<td>52</td>
<td>54</td>
<td>48</td>
<td>50</td>
<td>42</td>
</tr>
<tr>
<td>Educational/Outreach Events</td>
<td>18</td>
<td>7</td>
<td>23</td>
<td>15</td>
<td>14</td>
</tr>
<tr>
<td>Participants Attending Educational/Outreach Events</td>
<td>528</td>
<td>158</td>
<td>394</td>
<td>185</td>
<td>107</td>
</tr>
</tbody>
</table>

Source: L&I Employment Standards Program
Status of new initiatives

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

Initiative 1433
Voter-approved Initiative 1433 contained new requirements affecting investigations and proceedings related to worker rights. The initiative increased minimum wage; required employers to pay employees all tips, gratuities, and appropriate services charges; mandated employer-provided paid sick leave; and provided employees protection from retaliation.

L&I’s Employment Standards Program adopted rules related to I-1433, implemented changes to the complaint management system, and increased staffing to enforce the new requirements. The department expects implementation of Initiative 1433’s changes to increase 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 up to 12 weeks of paid family leave benefits annually for the birth of a child, care of a family member, or certain military assignments. The 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. Premiums will be collected beginning in 2019, and benefits will be available beginning in 2020.

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 between 150 and 500 complaints. As a result of L&I’s more efficient processes, the backlog remained at or below 200 complaints in FY 2018 – well below the previous high of 500. Reducing this backlog has been a priority for L&I since the passage of the Wage Payment Act, and this progress is significant.

Employees have been able to file wage complaints electronically since 2013. Complaints filed electronically increased from less than 1,500 in FY 2014 to nearly 3,800 in FY 2018, and now comprise approximately 60 percent of all complaints filed.
The Employment Standards Program implemented a mobile-friendly version of the online complaint form in FY 2018. L&I expects the number of worker rights complaints filed to continue to increase as a result of easier complaint filing, the growing economy, and the additional requirements of Initiative 1433.
Conclusion

L&I has a successful history of protecting workers’ wages and working conditions by enforcing wage, child labor and protected leave laws. In FY 2018, L&I investigated a record 6,213 complaints and collected and returned to workers nearly $5.5 million in wages. As shown, worker complaints remain high due to an improving economy with more workers employed, as well as to online filing which has made it easier to file wage complaints. Despite this high number of complaints, L&I continues to decrease backlogged complaints substantially, while also continuing to educate more workers and employers about protected leave laws.

Online filing has been such a success that approximately 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 implemented a mobile-friendly version of the online complaint form in FY 2018.

Although the number of child labor complaints and protected leave complaints remains fairly consistent, L&I staff are now reviewing more than double the amount of minor injury reports for child labor violations that may have contributed to an injury as in the past. The Employment Standards Program has also actively participated in initiatives to increase youth apprenticeship opportunities in Washington. During FY 2018, 19 active student learners worked in companies under exemptions from some child labor laws allowed by these initiatives.

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