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# ENFORCING CITY MINIMUM WAGE LAWS IN CALIFORNIA: BEST PRACTICES AND CITY-STATE PARTNERSHIPS



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## I. Introduction

California leads the nation on one of the most significant trends in U.S. labor standards policy in decades. Across the country but especially in California, cities are passing their own minimum wage laws, often with significantly higher wages than currently exist at the state or federal level. For example, last year San Francisco raised its minimum wage to \$15.00 an hour by 2018. This spring, the Los Angeles City Council voted to establish a city minimum wage that will reach \$15.00 an hour in 2020 for businesses with more than 25 employees (and in 2021 for smaller businesses); Los Angeles County recently followed suit. San Jose adopted a city minimum wage in 2012 and smaller cities have recently done the same, including Oakland, Berkeley, Richmond, Sunnyvale, Emeryville, Mountain View, Santa Clara, and San Diego.<sup>1</sup> All signs point to additional minimum wage increases in cities throughout California in the next several years.

As cities begin to implement these minimum wage laws, the critical question of how best to enforce them rises to the forefront. Delivering on the promise of higher wages hinges on our ability to put robust enforcement systems in place to fight the chronic wage theft that low-wage workers experience far too often.

Unlike state or federal minimum wage laws, which already have an enforcement system in place, city minimum wage laws raise the twin challenges of creating new enforcement systems at the city level and coordinating with state enforcement efforts. Those tasks are further complicated by the range of city sizes and capacities, as well as the already stretched resources for enforcement at the state level.

Fortunately, policymakers and advocates increasingly understand the need for enforcement and can build on good existing models. In California, recent city minimum wage laws all include a set of strong legal tools to help with enforcement. Best practices have emerged from San Francisco, the city with the oldest local minimum wage law and the leading example of a robust city enforcement agency.

The goal of this report is to lay out a framework for enforcement of city minimum wage laws in California and to explore how cities can best coordinate with state enforcement efforts. We start by giving an overview of the problem of wage theft. We then discuss in detail the three pillars of an effective enforcement system: strong legal tools in the minimum wage laws themselves; where possible, a well-staffed local agency that is committed to proactive enforcement strategies; and ongoing partnerships with community-based organizations. We pay special attention to identifying options for funding enforcement and discuss in detail the constraints faced by small cities. We conclude by proposing a model of city-state collaboration on enforcing minimum wage laws in California.

## II. The Problem of Wage Theft

Wage theft occurs when workers are not paid the wages to which they are legally entitled. This can occur when workers receive payment at a rate below the legal hourly minimum, whether paid by the hour, by the piece, by the week, or by the project. Wage theft also occurs when employees are not paid for off-the-clock work, are not properly paid overtime, or fail to get the required rest and meal breaks, among other violations.

Significant and extensive minimum wage violations have been documented around the country and in cities throughout California. An analysis of worker surveys conducted by the Census and Bureau of Labor Statistics estimates that in California, minimum wage violations occur in any given week in 11 to 12 percent of all the low-wage jobs in the state (Eastern Research Group 2014). While this estimate already represents a significant amount of wage theft, experience suggests that official government surveys undercount workers who are especially vulnerable to wage theft, such as those working off the books or who are undocumented.

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<sup>1</sup> San Diego passed a local minimum wage law last year; it is currently on hold pending the results of a referendum in 2016.

Other estimates come from surveys that use alternative sampling strategies much more likely to capture the full range of workers in the low-wage labor market. The best such study to date is a large representative survey of low-wage workers in Los Angeles in 2008, which found that 30 percent had been paid below the minimum wage during the previous week and 88 percent had at least one pay-related violation in the previous week. The amount of underpayment due to minimum wage violations assuming a full-year work schedule averaged \$1,135 a year per worker, or 6.9 percent of earnings. Counting all pay-based violations, such as unpaid overtime and off-the-clock work, workers lost \$2,070 per year, or 12.5 percent of earnings. Violations occurred across industries and occupations, with above-average rates of minimum wage violations in garment manufacturing, domestic service, building services, and department stores (Milkman, Gonzalez and Narro 2010).

Additional evidence comes from community-based surveys of particular groups of workers in specific industries. In San Francisco’s Chinatown, for example, half of restaurant workers surveyed in 2008 reported earning less than the minimum wage (Chinese Progressive Association 2010). Surveys of day laborers in Los Angeles and Orange Counties indicate that almost half of workers have experienced non-payment of wages, and a similar rate was reported by the Government Accountability Office for day laborers in 2002 (Valenzuela 1999, Government Accountability Office 2002; see National Employment Law Project 2013a for a full inventory of research on workplace violations).

Given this high prevalence of workplace violations, realizing the benefits of higher minimum wage levels requires strong enforcement language in the law itself, a proactive city enforcement agency where possible, and ongoing enforcement partnerships with community groups (see Yoon and Gebreselassie [2015] for a more in-depth treatment). We next discuss each of these three pillars of enforcement in turn.

### III. Provisions in the Law Itself

The bedrock of strong enforcement is the set of legal tools included in the law itself to ensure compliance. Over the past several years, a consistent model of strong enforcement tools has emerged in California’s local minimum wage laws. We briefly summarize this core legal framework that should be included in any future city minimum wage laws, as well as several provisions, such as wage liens and criminal penalties, that are less common in California but that have been included in minimum wage laws elsewhere. For a summary of which provisions are included in which laws, see Table 1.

#### **Fines, penalties, and liquidated damages:**

Employers have little incentive to comply with minimum wage laws if the only consequence of violation is payment of wages due (Meyer and Greenleaf 2011). Citations that carry penalties or fines, as well as “liquidated damages” (sums of money awarded to workers in addition to the underlying wages owed), increase the cost of noncompliance and can incentivize prompt payment. Penalties that accrue over time also provide an incentive for speedier repayment. Penalties can be either mandatory or discretionary. Some legal experts argue that penalties should be mandatory to create the proper incentives for deterrence; others argue that allowing agencies discretion to assess penalties can help them negotiate better settlements with employers, resulting in full back wages and a more prompt resolution of the case.

Eight of California’s 12 local minimum wage laws include penalties or fines payable to the worker of \$50 per violation per worker per day, from the first day that the unpaid wages were due to the day on which they were paid back in full. The city of Los Angeles provides for \$100 per violation per employee per day, while Oakland and San Diego allow for up to \$1,000 per violation per employee per day. San Diego’s minimum wage law also provides for double liquidated damages—twice the amount stolen from the worker—to be awarded for minimum wage violations (National Employment Law Project 2011). In general, higher penalties combined with a higher chance of detection increase the incentive to comply (Weil 2005). Other U.S. laws include substantially higher penalties to promote compliance. For

example, violations of the Americans with Disabilities Act carry a \$75,000 fine for first violations;<sup>2</sup> Clean Water Act penalties range from \$2,500 per day to \$25,000 per day for first time violators (33 U.S.C. § 1319(1)).

### Private right of action:

A private right of action allows workers to sue their employers directly for unpaid wages, instead of filing an administrative complaint and awaiting results. The federal Fair Labor Standards Act, most states (Meyer and Greenleaf 2011), and nearly every city have a private right of action enabling workers to directly sue their employers for unpaid wages, including all 11 municipalities in California that have enforcement provisions in their minimum wage ordinance (Los Angeles County voted to increase its minimum wage in September; its enforcement provisions are currently being drafted). In addition, the best minimum wage laws include provisions awarding reasonable attorneys' fees and costs to employees whose rights have been violated, a necessary provision to encourage attorneys to take cases (Yoon and Gebreselassie 2015).<sup>3</sup>

### Retaliation protection:

Fear of employer retaliation is a significant reason that violations go unreported (Bernhardt et al. 2009). Strong anti-retaliation protections in the law can help mitigate this problem.<sup>4</sup> Employers who fire, suspend, demote, or take any other "adverse action" against a worker for exercising his or her right to be paid in accordance with the law should have to prove their action was justified and not retaliatory. This is called a "rebuttable presumption" of retaliation. In California, every municipality that has raised its minimum wage except San Diego and Santa Clara created a rebuttable presumption of retaliation when an employer takes "adverse action" against an employee within three months of that worker's assertion of his or her rights. Oakland extends this period during which an employer's action is presumed retaliatory to six months following a worker's protected activity, and also holds employers to a very high standard of evidence—"clear and convincing"—to prove their action was permissible and not retaliatory. (Los Angeles County's provisions are currently being drafted.)

In addition, the strongest anti-retaliation provisions protect a worker from the moment he or she speaks to anyone about his or her rights—including co-workers, a community organization, or a union—even before the worker decides to approach management or file a complaint. In California, nine cities explicitly protect workers in their minimum wage laws from the moment they speak to anyone about their rights.

Finally, strong anti-retaliation laws increase the costs of retaliation to employers through an explicit fine for such actions. Berkeley, San Francisco, and Los Angeles fine employers at least \$1,000 for retaliation. In San Francisco, repeat violators face up to \$10,000 for retaliation.

### Business license revocation:

Another strategy to increase compliance and prompt repayment is to involve other city departments or agencies

<sup>2</sup> See [http://www.ada.gov/civil\\_penalties\\_2014.htm](http://www.ada.gov/civil_penalties_2014.htm).

<sup>3</sup> All but one city in California provide attorneys' fees and costs to workers with successful complaints in their minimum wage laws; the city of Emeryville allows employers to recover their attorneys' fees if the worker is unsuccessful, which may discourage workers from bringing complaints for fear of incurring their employer's defense costs.

<sup>4</sup> Recent state legislation provides California workers with strengthened protections against employer retaliation, including specific protections for immigrant workers. Effective January 1, 2014, employers found by the Labor Commissioner or a court to have retaliated by threatening to report the immigrant status of a worker or a worker's family member may face up to \$10,000 penalties and have their business license suspended or revoked. See Cal. Lab. Code § 98.6(b)(3) (creating up to \$10,000 penalty for each instance of retaliation); Cal. Labor Code § 244(b) (prohibiting reports or threats to report immigration status because an employee has exercised a right under the California Labor Code); and Cal. Bus. & Prof. Code § 494.6 and Cal. Labor Code § 1019 (a court may order the suspension of an employer's business license for immigration-related retaliation). Attorneys who make such threats may be disciplined or disbarred. Cal. Bus. & Prof. Code § 6103.7. Finally, these threats may be prosecuted as extortion. Cal. Penal Code § 518. For a full explanation of these recent changes, see National Employment Law Project (2013b).

in revoking or suspending business licenses, permits, or registration certificates until a wage violation is remedied (National Employment Law Project 2011; Gleeson, Taube and Noss 2014). Most California cities with higher minimum wages—all but San Diego and Emeryville—have adopted this strategy. Nationwide, Chicago, Seattle, and Washington, D.C. do likewise. Other cities, like Houston and El Paso, which have implemented wage theft provisions though not higher minimum wages, include wage theft expressly as a reason to rescind contracts with the city and debar contractors from future consideration or renting city-owned space (Gleeson, Taube and Noss 2014).

Experience suggests that these types of business license provisions can establish a powerful incentive to comply. For example, San Francisco’s Office of Labor Standards Enforcement (OLSE) has had success working with the health department to consider outstanding wage complaints before granting health permits to restaurants (Dietz, Levitt and Love 2014). While restaurants account for one-half of all complaints for minimum wage violations filed in San Francisco, OLSE has revoked just one permit in the nearly nine years since the city amended its minimum wage law to revoke violators’ permits and licenses—strong evidence that the threat of revocation causes employers to comply or resolve disputes promptly (Office of Labor Standards Enforcement 2013, Love 2015). Localities that cannot identify existing licenses that can be leveraged in this way could consider creating licensing requirements either for all businesses or for industries with particularly high rates of wage theft.

### **Notice posting and record keeping:**

California local minimum wage laws recognize the importance of informing both employers and employees of the minimum wage. Cities must publish their updated minimum wage rates, and employers must post the minimum wage in relevant languages for workers to see. Employers are also required to keep payroll records and provide access to workers, advocates, and investigators. In Berkeley, Mountain View, San Diego, San Francisco, San Jose, Richmond, Santa Clara, and Sunnyvale, an employer’s failure to provide access to payroll records creates a presumption that an employee’s report of wages and hours is correct. Likewise, Berkeley, Emeryville, San Francisco, San Diego, and Los Angeles impose fines for an employer’s failure to post notice, as well as for failure to allow access to inspect payroll records. When an establishment is under investigation, cities can require that the employer post a workplace notice to that effect, visible to employees. San Francisco’s OLSE notes that this can be especially important in workplaces with many employees and multiple shifts (Pastreich 2015).

### **Outreach and education:**

San Francisco, Los Angeles, and Seattle have dedicated resources to fund outreach and education to workers and employers; Oakland and San Diego plan to do the same (Office of Labor Standards Enforcement 2013; City of Seattle 2015; City of Los Angeles Bureau of Contract Administration 2015; Oakland City Auditor 2014; San Diego Office of Independent Budget Analyst 2014). These cities direct funds to community-based organizations with cultural and linguistic expertise, whose outreach builds community trust and deepens awareness of wage laws (San Francisco Wage Theft Task Force 2013; Ichikawa and Smith 2014). We will elaborate on the role of community groups in Section V.

### **Criminal penalties:**

Several municipalities (including Seattle and Santa Fe) criminalize wage theft as a misdemeanor. Threat of jail time, bench warrants, and court fees and fines can deter violators and bring uncooperative parties to the table (National Employment Law Project 2011). In California, where wage theft is a seldom-prosecuted crime under state law, local municipalities should streamline its prosecution by creating “strict liability” misdemeanors for particularly egregious wage theft. Like selling alcohol to minors, strict liability misdemeanors require no intent to violate (California Penal Code Section 484).

### **Wage liens:**

A lien is a temporary hold on the property of a debtor until the debt is paid. Liens against employers’ property (such as real estate, accounts receivable, and inventory) help guarantee that workers receive unpaid wages by securing

**Table 1.** Local Minimum Wage Enforcement Provisions across Jurisdictions

	Enforcement agency	Fines, penalties, & damages	Private right of action	Retaliation protection	Revoke licenses/ permits/ contracts	Posting & payroll access	Outreach & education	Criminal penalties	Liens
<b>California Cities or Counties</b>									
Berkeley	Y	Y	Y	Y	Y	Y	Y		
Emeryville	Y	Y	Y	Y		Y			
Los Angeles	Y	Y	Y	Y	Y	Y	Y		Y
Los Angeles County*									
Oakland	Y	Y	Y	Y	Y	Y	Y		
Mountain View	Y	Y	Y	Y	Y	Y			
Richmond	Y	Y	Y	Y	Y	Y			
San Diego	Y	Y	Y	Y		Y	Y		
San Francisco	Y	Y	Y	Y	Y	Y	Y		Y
San Jose	Y	Y	Y	Y	Y	Y			
Santa Clara	Y	Y	Y	Y	Y	Y			
Sunnyvale	Y	Y	Y	Y	Y	Y			
<b>Other Localities</b>									
Albuquerque, NM			Y	Y		Y			
Bernalillo County, NM			Y			Y			
Birmingham, AL	Y	Y	Y	Y	Y				
Chicago, IL	Y	Y	Y	Y	Y	Y			
Johnson County, IA		Y							
Las Cruces, NM			Y			Y			
Louisville, KY		Y	Y						
Montgomery County, MD	Y			Y					
Prince George's County, MD									
Santa Fe, NM	Y		Y	Y	Y	Y		Y	
Santa Fe County, NM	Y		Y	Y	Y	Y		Y	
Seattle, WA	Y	Y		Y	Y	Y	Y	Y	
Washington DC	Y	Y	Y	Y	Y	Y		Y	Y
Portland, ME	Y	Y	Y	Y		Y			

\*Los Angeles County voted September 29, 2015, to raise its minimum wage; it is currently drafting enforcement provisions.



those assets to prevent their disappearance (Sirolli 2015). In California, 83 percent of workers with final judgments for unpaid wages from the State Division of Labor Standards Enforcement (DLSE) never collect any payment (Cho, Koonse and Mischel 2013). A lien on the property of these employers would pressure them to pay and help prevent unscrupulous employers from ignoring wages owed, hiding assets, or simply disappearing. Evidence from Wisconsin, whose wage lien statute allows liens to be filed at the beginning of the complaint process rather than only after a judgment has been issued, indicates that this process results in increased collection of wages due (Cho, Koonse and Mischel 2013). A number of other states, including Alaska, Texas, and Wisconsin, have legislation enabling workers to impose wage liens (National Employment Law Project 2011). In California, such wage liens will become available to the Labor Commissioner on January 1, 2016, under the provisions of Senate Bill 588, for all wage claims against an employer who already has an outstanding judgment, refuses to pay that judgment, and fails to post a bond for unpaid wages.<sup>5</sup> Wage liens should also be pursued at the local level. Wage enforcement agencies in San Francisco and Los Angeles may file a lien on employer property where that employer refuses to pay a citation for unpaid wages.

## IV. Creating a Proactive Enforcement Agency

Workers whose wages are stolen can do one of two things: file a complaint with a government agency, or find a lawyer to sue their employer directly (for more details on the state enforcement process, see Appendix A). Lawyers for hire are called “the private bar.” Private attorneys alone cannot address wage theft to scale.<sup>6</sup> First, low-wage workers have limited access to culturally and linguistically competent employment attorneys. Second, the value of the average complaint (less than \$2,000)<sup>7</sup> dramatically reduces profit for private attorneys, even when taking 40 percent of the recovery. Finally, difficulty collecting from resistant employers further disincentivizes attorneys from taking wage theft cases, as it jeopardizes their ability to recover their attorneys’ fees and earn anything for their effort. For these reasons, public enforcement plays a central role in ensuring that workers receive the wages they are owed.

However, state enforcement resources are currently insufficient to fully enforce California’s new city minimum wage laws. State (and federal) enforcement offices are already understaffed and struggle to provide thorough investigations and timely collections (Government Accountability Office 2009; Su 2013; Bobo 2009), let alone deter wage theft with proactive enforcement and a credible expectation of compliance checks (Fine and Gordon 2010, Ichikawa and Smith 2014). In particular, California’s state enforcement offices are limited not only in their resources but also in their legal ability to collect wages associated with local minimum wage laws—though after January 1, 2016, a new state law takes effect, Assembly Bill 970, that amends the labor code to allow for enforcement up to the local minimum.<sup>8</sup> At the time of publication, low-wage workers who file reports of labor law violations with the Labor Commissioner’s Bureau of Field Enforcement (BOFE, the state’s “whistleblower” unit; see Appendix A) will recover only that which is owed to them under state minimum wage law, not under their city’s higher minimum wage rate.

Cities with sufficient resources and administrative infrastructure should establish a local enforcement agency to realize the economic and social benefits from raising the minimum wage. San Francisco has both the oldest local minimum wage ordinance in the state and the most robust local enforcement agency. The record in San Francisco suggests that local enforcement agencies can collect unpaid wages at a higher rate than the state agency. The city’s Office of Labor

<sup>5</sup> Senate Bill 588 contains multiple provisions to address wage theft. First, liens, it allows the Labor Commissioner to target employers who refuse to pay outstanding judgments through mandatory bonds for unpaid wages, and stop work orders. S.B. 588, § 4-5, Reg. Sess. (Cal. 2015). It closes loopholes in corporate law that help evade liability by creating individual and successor liability for unpaid wages. S.B. 588, § 4(e), Reg. Sess. (Cal. 2015). It creates joint liability extending to businesses who contract for labor in property services and long term care (two industries with exceptionally high rates of wage theft). S.B. 588, § 9, Reg. Sess. (Cal. 2015). Finally, SB 588 gives the Labor Commissioner the power to seize (“levy”) assets of a violator directly, on behalf of the worker. S.B. 588, § 1, Reg. Sess. (Cal. 2015).

<sup>6</sup> An important goal, not the focus of this policy brief, is to increase the volume of wage theft cases taken by private attorneys.

<sup>7</sup> Authors’ analysis of wage complaints filed with the DLSE, 2008-2011.

<sup>8</sup> Currently, the state Bureau of Field Enforcement can issue citations but only for payment up to the state minimum wage; the Department of Labor Standards Enforcement Wage Claim Adjudication unit can adjudicate higher minimum wages, but it is up to the worker to collect on the judgment.

Standards Enforcement's thorough investigations and strong record of successful collection of back wages makes them a model for other cities. In this section we draw on the San Francisco experience in developing, staffing, and funding an office, and describe agency functions and various enforcement strategies.

## AGENCY FUNCTIONS

Creating, funding, and staffing a local office dedicated to enforcement is vital to implementing an effective minimum wage law (there are many options for where such an office could fit within existing government departments; the best location will depend on local context). A dedicated city office serves as a centralized place to educate workers and employers, administer complaints, and collect wages due. Specifically, local enforcement entities can:

- Educate and annually notify employers about the city's minimum wage law
- Receive, investigate, and adjudicate complaints for unpaid wages and retaliation in a timely manner
- Cite and collect administrative fees and penalties
- Conduct proactive audits and investigations targeting employers and industries with high rates of noncompliance
- Coordinate with other agencies to leverage business licenses and permits
- File liens on behalf of claimants on employer property to secure those assets and prevent them from disappearing before or during investigation
- Contract with community groups to conduct targeted outreach and education, and regularly communicate the status of ongoing cases and investigations
- Foster effective partnerships with relevant state and local agencies and departments
- Publicize enforcement actions to increase the deterrent effect of enforcement
- Create and enforce a protocol to address language needs of claimants

## AGENCY DEVELOPMENT

Stakeholders should be aware that building an effective office takes time. The appropriate performance metrics will likely change as an office moves from the initial start-up phase to full implementation. Metrics include:

*Number of complaints:* Cities cannot expect a high volume of complaints immediately. During the first few years of implementation, a low volume of complaints may stem from workers' lack of knowledge about the new law or their rights, or the risks in filing a complaint. It takes time to build the trust necessary for effective enforcement. Trust grows by developing strong relationships with worker and community groups, as discussed below, and creating a track record of successfully winning back wages for workers.

*Training:* A new office may need more than one year to scale up because of the time involved in finding and training investigators and establishing policies and procedures. In particular, cities should focus on training new investigators to be effective. For example, San Francisco's enforcement agency initially worked with the state's enforcement agency to train new investigators, who accompanied their more experienced state counterparts on industry-focused audits of low-wage workplaces. The city also adopted key policies and procedures from the state, which were then modified and expanded over time (Levitt 2015).

*Outreach and education:* While the basic functions of a local enforcement office remain constant, the focus may change over time. Cities should emphasize outreach and education in the first several years of the minimum wage law's implementation. For example, San Jose officials stressed the need for community-led outreach and education to generate interest and cooperation with investigators (Grayson 2015, Hickey 2015). In addition, proactive audits and investigations may be an effective way to demonstrate the need for enforcement.

## STAFFING

Staffing depends on local employment conditions. Other jurisdictions can provide a baseline, but the particulars of economy and geography matter. More resources may be appropriate for areas with higher concentrations of low-wage jobs, for industries with poor track records of compliance and high numbers of immigrant workers, and for convoluted employer-employee relationships, such as the use of “temp” or staffing agencies, subcontractors, or independent contractors. Large volumes of small employers within larger geographic areas will also require more resources to achieve the same level of enforcement.

Unfortunately, very little research exists to help estimate the ideal number of enforcement staff for a given city. San Francisco currently has 5.5 investigators who enforce its minimum wage and paid sick leave ordinances, for a labor force of approximately 600,000, or about 110,000 workers per investigator. However, San Francisco has a relatively low concentration of low-wage workers. Focusing just on the 142,000 low-wage workers projected to benefit from its minimum wage increase by 2018, San Francisco has approximately 25,000 low-wage workers per investigator. But this ratio should be treated only as a rough minimum benchmark, because San Francisco has not been able to evaluate what proportion of total violations the agency addresses. Moreover, its enforcement staff works at full capacity responding to complaints; the agency would need to increase staffing in order to conduct proactive enforcement strategies (see below). Los Angeles has recently proposed a target of 19 investigators at full implementation of its law in 2020, resulting in a ratio of 32,000 low-wage workers per investigator (City of Los Angeles Bureau of Contract Administration 2015). But again, little research exists to assess the adequacy of these staffing levels. This will be an important area for future monitoring and research as an increasing number of cities implement and enforce their own minimum wage laws.

## FUNDING

Creating and staffing an enforcement agency requires resources. San Francisco’s Office of Labor Standards Enforcement designates approximately \$1.4 million and 5.5 investigator positions to enforce its minimum wage and paid sick leave ordinances (San Francisco Office of Labor Standards Enforcement 2013). Seattle’s Office of Labor Standards allocates \$1.2 million and 4 investigator positions to enforce its minimum wage ordinance (Bull 2015, Seattle Office for Civil Rights 2015). The City of Los Angeles allocated \$700,000 this fiscal year to create 5 new positions, and plans to grow its new wage enforcement office to a total staff of 31 (City of Los Angeles Bureau of Contract Administration 2015). All three cities draw from their general funds for enforcement.

There are at least five different sources to consider for funding local enforcement:

*General fund:* A city’s general fund money can be used to fund enforcement activities. However, this approach requires enforcement to compete with all the other funding priorities of the city and renders funding particularly susceptible to changes in political leadership.

*Penalties and fines:* Cities can recover some of the costs of enforcement through penalties and fines charged to employers who violate the law. San Francisco, which has the longest track record, recovered \$153,828 in penalties in 2013 (San Francisco Office of Labor Standards Enforcement 2013). High penalties and fines for violators have the benefit of increasing the incentive to comply with the law in the first place. However, collecting back wages owed to the workers should be the first priority of enforcement. Collecting even these back wages can be difficult—the state collects only a fraction of back wages due—and sometimes enforcement agencies use fines and penalties as leverage to bring recalcitrant employers to the table. An enforcement regime that relies too heavily on penalties and fines could end up perpetually underfunded if collecting those fines and penalties proves difficult. In addition, reliance on fees and fines makes it difficult to predict agency budgets from year to year. Finally, over-reliance on fines and penalties may incentivize agencies to target employers who can pay over those who cannot, regardless of the merit of cases against the latter.

*Taxes, or business license and registration fees:* Businesses that follow the law benefit from strong enforcement

because they are less likely to be undercut by unscrupulous businesses. For this reason, imposing a small fee on all employers (or employers in high-violation industries) to recover reasonable regulatory costs of wage enforcement makes sense.

Regulatory fees to fund enforcement appear throughout the California Labor Code. For example, carwashes, farm labor contractors, garment contractors, talent agencies, and employers in many other industries pay fees collected by the state’s Division of Labor Standards Enforcement, regardless of whether they have violated the law. Similarly, workers’ compensation assessments fund the costs of work-related injuries in all workplaces. More broadly, employers pay fees regardless of their own compliance to recover the costs of industry-wide damage to the environment or consumer health.<sup>9</sup>

Employer-funded enforcement has wide and longstanding precedent. However, in California, Proposition 26 (passed in 2010) imposes restrictions on taxes and fees. Any employer fee must not exceed the real cost necessary to support enforcement, and must bear a reasonable relationship to the employers’ burdens on the regulation. Careful crafting of regulatory fees, such as a scale proportionate to the employer’s size or number of hours worked, is likelier to withstand scrutiny than a flat fee, for example.

*Cross-jurisdictional funding:* Rather than bear the cost of creating an enforcement agency out of whole cloth, smaller cities and jurisdictions may wish to contract with neighboring cities or counties for enforcement. Other models might include multiple small cities in a county co-funding a county-wide enforcement agency.

*Contracts or grants from state and federal enforcement agencies:* State and federal agencies can elect to contract with local entities to perform some or all of their enforcement responsibilities. For example, in California the state Department of Insurance provides grants to local district attorneys for fighting workers’ compensation insurance fraud. Workers’ compensation insurance premiums (paid by employers) finance the grants. The 2015 Little Hoover Commission report on the underground economy specifically recommends replicating this funding mechanism for wage and hour enforcement (Little Hoover Commission 2015). Similarly, the U.S. Equal Employment Opportunity Commission (EEOC) is authorized by statute to use the services of state and local “Fair Employment Practices Agencies” (FEPAs) to enforce anti-discrimination laws. A “work sharing agreement” provides a FEPA with the requisite authorization and funding to provide such assistance.<sup>10</sup> These grants and contracts provide a model for state funding of local entities; additional state-level funding can and should be directed to local enforcement for investigation of workplace violations.

## ENFORCEMENT STRATEGIES

As growing numbers of cities and states raise their minimum wages, enforcement strategies are evolving to meet the challenges of the 21st century workplace and maximize impact given constrained funding. While handling incoming complaints from workers will always constitute a core function of enforcement agencies, two important strategies have emerged in recent years that increase the effectiveness of minimum wage enforcement.

*Company-wide investigations:* When responding to a worker complaint, the San Francisco Office of Labor Standards Enforcement (OLSE) and the state Bureau of Field Enforcement (BOFE, the state’s “whistleblower” unit; see Appendix A) investigate the entire workplace on behalf of all workers. This practice allows the worker who came forward to

<sup>9</sup> Ohio Rev. Code § 3737.87 et seq.; see also State ex rel. Petroleum Underground Storage Tank Release Comp. Bd. v. Withrow, 579 N.E.2d 705 (Ohio 1991) (Ohio Supreme Court upholding the validity of underground storage tank assessment funds to assure the cleanup of leaks from underground storage tanks); Fla. Stat. § 766.301; see also Coy v. Fla. Birth-Related Neurological Injury Comp. Plan, 595 So. 2d 943 (Fla. 1992) (Florida Supreme Court concluding that there was a rational basis for the statutory assessment under “NICA” of all physicians, even though they did not practice obstetrics); Martin, NICA-Florida Birth-Related Neurological Injury Compensation Act: Four Reasons Why This Malpractice Reform Must Be Eliminated, 26 Nova L.Rev. 609 (2002); Studdert & Brennan, Toward a Workable Model of “No-Fault” Compensation for Medical Injury in the United States, 27 Am. J.L. & Med. 225 (2001).

<sup>10</sup> For example, the city of Austin Equal Employment Fair Housing Office, which serves a city of 885,400 people, has a contract with the EEOC for \$107,600 to process 152 charge resolutions and intake services for 148 charges.

remain anonymous for longer, which may provide some protection from retaliation. Because violations rarely occur for a single employee, this approach also allows investigators to recover back wages for everyone affected (Dietz, Levitt and Love 2014).

*Proactive investigations:* Many jurisdictions rely solely on complaints to enforce wages, even though the most vulnerable and exploited workers are among the least likely to complain (Weil and Pyles 2005). Moreover, complaint-driven enforcement is less effective at deterrence than targeted investigations (Ichikawa and Smith 2014). In response, federal, state, and city enforcement offices increasingly conduct targeted, proactive investigations of industries and employers. As part of a proactive strategy, random payroll audits in a given industry or region can help generate data about the scale of violations and guide the strategic focus of investigations, as well as create a mechanism to assess effectiveness of enforcement strategies over time (National Employment Law Project 2011).

Proactive investigations already take place at labor enforcement agencies across the country. The Wage and Hour Division of the U.S. Department of Labor increased its directed investigations from 27 percent of investigations in 2009, to 44 percent in 2013, and focuses those investigations on priority industries (Weil 2014). In California, the Janitorial Enforcement Team works alongside the Maintenance Cooperation Trust Fund to monitor workplace conditions in the janitorial industry, which is full of complex subcontracting relationships (Fine and Gordon 2010). In New York, the state Department of Labor uncovered \$6.6 million in unpaid wages through a proactive investigation of the car wash industry (New York State Department of Labor 2008).

*Compliance incentives:* A largely unexplored policy strategy is to create incentives for employers to remain violation-free. Examples of such incentives might include expedited business license renewals or other certifications controlled by cities. In the case of businesses that have been found to violate the law, cities could consider waiving fees and fines if the employer is willing to be subject to ongoing monitoring. This type of experimentation with incentives could be a fruitful avenue for strengthening local enforcement regimes.

## SMALL CITIES

Some localities may be too small to create and fund an entire enforcement agency, but still have a vested interest in strong enforcement of their minimum wage law. Few proven models exist to guide small-city enforcement, so this largely unexplored policy terrain needs to be developed as smaller cities increasingly adopt local minimum wage laws (especially in California).

The default scenario is that small cities simply rely on the state agency for core enforcement activities, including:

- Investigating and adjudicating wage and hour complaints
- Issuing citations and collecting administrative fines and penalties
- Conducting proactive investigations that target industries with high rates of violations

But experience suggests that localities should not rely solely on state enforcement, both because of state resource constraints and because local knowledge—of businesses, industries, community groups, and local officials—is a valuable tool in effective enforcement.

Specifically, even if they do not create their own agency, small cities should at a minimum designate a city official to act as a liaison between workers, the state agency, and other stakeholders. Such an official would:

- Respond to workers' questions and complaints of minimum wage violations or retaliation and direct them to legal services groups and/or the DLSE
- Troubleshoot problems with current cases, and advocate with the state agency
- Educate and annually notify employers about the city's minimum wage law
- Fund and partner with local community groups and legal services providers to conduct worker outreach

and education (see next section)

- Coordinate media campaigns to educate the public broadly, particularly where few community groups exist to conduct outreach and education
- Partner with the state to strategize proactive enforcement audits
- Partner with the state to create, maintain, and make publicly available a database to track final judgments for unpaid wages

Beyond relying on the state enforcement agency, policymakers might also consider regional collaborations on enforcement. For example, two smaller cities in California (Sunnyvale and Mountain View) have contracted enforcement of their minimum wage provisions to San Jose. While this is a potentially promising strategy, smaller cities must ensure that the larger city they are contracting with has the capacity to take on additional enforcement (as of mid-2015, San Jose had only one minimum wage investigator). Alternatively, several smaller cities might pool resources to fund a county-wide enforcement agency. Regional collaboration on enforcement will be easier if cities also align the content of their ordinances (i.e., the wage levels, the dates on which increases occur, phase-ins, and any exemptions).

## V. Role of Community Organizations

Successful enforcement of labor laws depends fundamentally on building trust with workers. Mistrust of government institutions can deter workers from filing complaints or cooperating once an investigation starts (Dietz, Levitt and Love 2014). Many of the most vulnerable workers—low-wage workers from immigrant communities and communities of color—feel wary of government institutions but do trust organizations within their community (Gleeson 2009). As Donna Levitt, manager of San Francisco’s OLSE, has acknowledged, “workers feel more comfortable going to a community group than a government agency” when they are mistreated on the job (Meyerson 2015).

Enforcement agencies can leverage the complementary strengths of community-based organizations (CBOs) and legal services providers in order to increase effectiveness and reach. The linguistic, cultural, and industry knowledge within CBOs make them valuable partners in educating workers about their rights, building trust between workers and investigators, and providing knowledge of the particular industry dynamics at play (Fine and Gordon 2010, Fine 2014, Little Hoover Commission 2015). CBOs can also play an important role in addressing retaliation by, for example, organizing “walk backs” that show community support for workers who have been retaliated against.

San Francisco funds \$482,000 in contracts for immigrant and low-income community organizations to conduct worker outreach and education and to help develop cases. One of the most significant cases in the city, a \$4 million settlement with dim sum restaurant Yank Sing, was brought about through intense work by the Chinese Progressive Association. The organization was able to build on its existing relationship with workers, many of whom were monolingual Chinese speakers, so that workers felt safe coming forward and pressing their case. While OLSE staffers themselves have a broad range of language abilities and experience in various industries, they still see CBOs as important and complementary partners (Dietz, Levitt and Love 2014). In fiscal year 2013-14 the office collected more in back wages and interest from cases filed with the help of CBOs than from those generated by worker complaints alone (Love 2015).

Because of the success in San Francisco, Los Angeles and Seattle are funding community groups to do minimum wage-related worker outreach and education. Los Angeles plans to allocate \$700,000 annually to outreach and education and is currently determining the amount to allocate to contracts; Seattle recently awarded bids for community contracts of \$1 million (Los Angeles Bureau of Contract Administration 2015; Seattle Community Outreach and Education Fund Request for Proposals 2015). San Diego and Oakland are considering contracts as well (Oakland City Auditor, 2014; San Diego Office of the Independent Budget Analyst 2014).

In Los Angeles, the Board of Public Works and the Unified School District have successfully partnered with building trades unions to train volunteers to help enforce prevailing wage laws. The city inspectors determine violations and assess penalties, but the partnership brings cases to their attention and strengthens them. These volunteers gather information that city inspectors use to put together cases. In addition to expanding the capacity of the city to enforce prevailing wage—essentially acting as the “directed enforcement team”—these volunteers also provide deep industry knowledge and expanded language capabilities (Fine and Gordon 2010).

## VI. Towards a Model of City-State Enforcement Partnerships

To date, 12 municipalities in California have instituted their own minimum wage laws and at least seven more are poised to do so, raising the important question of how to coordinate public enforcement at multiple jurisdictional levels. The best models feature collaborative partnerships between city and state wage enforcement agencies.

As described above, California’s state enforcement agency currently does not have the legal authority to cite employers for violations of local minimum wage laws. But even when the state receives this authority in January 2016, understaffed state enforcement offices struggle to provide robust investigations and timely collections (Government Accountability Office 2009, Su 2013, Bobo 2009, Cho, Koonse and Mischel 2013). Enforcement resources in California have not kept pace with increases in the number of employers and the complexity of the employment relationship over time (Little Hoover Commission 2015). The Labor Commissioner has fewer than 60 field investigators to conduct more than 6,000 inspections annually, and processes more than 30,000 new wage claims, seeking over \$100,000,000 in unpaid wages, every year (Su 2013). Partnerships with city enforcement agencies would allow the state Bureau of Field Enforcement to select strategic industries for proactive enforcement to deter wage theft. Moreover, city and state partnerships have a track record of success. For example, it was a joint investigation by San Francisco’s OLSE and the state’s BOFE that produced the record \$4.25 million settlement for 280 Yank Sing restaurant workers mentioned above.

Partnerships between state and local minimum wage enforcement agencies should maximize resources through a division of labor that avoids duplication of effort. Agencies at both levels should implement a referral system that helps ensure the claimant recovers the full value of what she is owed. For example, where strong local enforcement offices exist, the state should refer workers who file for local minimum wage and overtime violations to those offices. Conversely, local wage enforcement offices may wish to prioritize minimum wage enforcement and refer other complaints to the state (e.g., for meal and rest break violations, failure to receive a final paycheck, or unlawful deductions).

Cities should also be sure to leverage new anti-retaliation protections available under state law, particularly those that protect immigrant workers from being singled out due to their immigration status. They may do so by enforcing provisions where authorized by the new state anti-retaliation laws (e.g., revoking business licenses), and by referring to the state Labor Commissioner’s anti-retaliation unit where only that agency is authorized to remedy the violation, such as disciplining or disbaring attorneys who threaten immigrant workers. Finally, the state should direct additional resources to help enforce local minimum wage laws in cities and counties that either do not have local agencies or where local agencies are overwhelmed.

In addition to a clear division of labor, joint projects between state and local enforcement offices can significantly improve the effectiveness of enforcement at all levels. Examples of joint projects include:

1. *Tracking violators and identifying high-risk industries:* Agencies at all levels should maintain and make available enforcement data to identify repeat violators and high-risk industries (Ichikawa and Smith 2014, San Francisco Wage Theft Task Force 2013). This database should be updated by all relevant departments and selection of targets should be coordinated between agencies.
2. *Proactive investigations:* To achieve scale and maximize resources, directed investigations should target

high-risk industries and repeat violators. Cross-agency partnering to conduct targeted investigations can change employer behavior in a lasting and systematic manner.

3. *Cross-agency wage theft working group:* City and state agencies can improve communication and accountability by establishing a permanent wage theft working group that includes members from relevant departments and offices, such as public health, district attorneys, offices of small business, offices of the treasurer and tax collector, and police departments. Community organizations should also be included in this working group (San Francisco Wage Theft Task Force, 2013). This group should meet on a regular basis to share information and strategize on wage enforcement.
4. *Investigator training:* As more and more cities develop local wage enforcement offices, the state should play a central role in training new local enforcement staff. The state has considerable expertise in investigations and auditing, and has already created dozens of training modules. Similarly, over time, city investigators can share with state investigators the experience and knowledge they have gained about best strategies that work in their particular industry mix.

## VII. Conclusion

City minimum wage laws are an important innovation in California's labor standards policy. But fully realizing the economic benefits of those laws will require a robust system of coordinated city-state enforcement. In this report, we have outlined the key legal tools and enforcement strategies that will be required, and highlighted the important role of community-based organizations. Useful lessons are emerging from the successful San Francisco model of minimum wage enforcement and other efforts across the country. Nevertheless, many questions remain. How can smaller cities with limited resources best engage in enforcement of their laws? How can cities work with their state's enforcement agencies to develop the most efficient and effective partnerships? As California leads the country into this new public policy terrain, there will be significant opportunity for its cities to learn from one another and work with state representatives to develop best practices.



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## Appendix A: Wage Enforcement in California

Workers whose wages are stolen can do one of two things: file a complaint with a government agency, or find a lawyer to sue their employer in court.

### ENFORCEMENT AGENCIES

In cities without their own wage enforcement agency, workers who choose to file a complaint with a government agency may file with the federal Department of Labor’s Wage and Hour Division or the office of the California Labor Commissioner, also called the Division of Labor Standards Enforcement (DLSE). Because California minimum wage laws are stronger than federal laws, most workers choose to file with the Labor Commissioner.

### The Labor Commissioner

The Labor Commissioner’s office is a part of the California Department of Industrial Relations; it is the state agency that investigates and adjudicates complaints for violations of basic wage laws, such as minimum wage, overtime, and meal and rest breaks. Workers can take their complaints to any and all of the Labor Commissioner’s units simultaneously; workers who prevail at one unit will collect proportionately less money if they likewise prevail for the same violation in another.

The Wage Claim Adjudication Unit decides individual complaints for unpaid wages and other labor law violations. Between 30,000 and 40,000 workers per year choose this route. When a worker files with this unit, she must prove her claim. Neither side is required to have an attorney, nor can attorneys’ fees be recovered. Parties are notified of a settlement conference, where a deputy labor commissioner dismisses invalid claims and attempts to help the parties settle the dispute for valid claims. Cases that do not settle proceed to a hearing, where each side receives an opportunity to argue its case under relaxed rules of evidence. Parties may issue subpoenas in advance to gather evidence, but neither side may submit evidence or arguments prior to the hearing. A hearing officer hears the case and makes a decision called an “Order, Decision, or Award” (ODA). If the decision is in the worker’s favor, the employer has 10 days to pay or appeal. If the employer does neither, the ODA becomes a final judgment enforceable in court. The worker must enforce that judgment herself through legal remedies called liens and levies, which allow the worker to force the sale of, or seize, a debtor’s assets.

The Bureau of Field Enforcement (BOFE) investigates complaints against employers for violations of minimum wage, overtime, or meal and rest periods. It also enforces laws regarding workers’ compensation, child labor, recordkeeping, and licensing or registration. Unlike the Wage Claim Adjudication Unit, workers do not have to prove their cases when they file a complaint with BOFE. Instead, the unit investigates on behalf of all affected workers, and issues and enforces citations for violations it discovers. It distributes any unpaid wages it collects to all affected workers, and keeps the administrative penalties and fines to recuperate or offset the costs of investigation. The Retaliation Complaint Investigation Unit investigates complaints of retaliation prohibited under state law, and issues and enforces citations against violators.

The Labor Commissioner has special units for garment and construction workers. The Public Works Unit investigates and enforces prevailing wage laws<sup>11</sup> for public works construction projects. The Garment Worker Unit helps garment workers access additional rights and protections enforced by the Labor Commissioner under AB 633, the “Garment Worker Protection Act.”

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<sup>11</sup> “Prevailing wages,” required for workers on certain public construction projects, are construction wage rates that are higher than minimum wage.

## Local Wage Enforcement Offices

Workers in the 12 municipalities in California with higher minimum wages may file complaints of unpaid wages and retaliation with the city agency designated to receive, investigate, and decide those complaints. These agencies function much like the Labor Commissioner's BOFE, because they investigate on behalf of the complainant, issue citations for violations experienced by all of the employer's employees, and collect the money owed under these citations to distribute to all affected workers. Like BOFE, these agencies may retain any penalties or fines they assess in order to recuperate or offset the costs of investigation.

## FILING A LAWSUIT

State and local wage laws in California create a "private right of action" enabling aggrieved workers to sue their employers directly for unpaid wages as well as liquidated damages. Liquidated damages are statutorily-mandated sums of money awarded to workers in addition to the underlying wages owed. Workers who are owed less than \$10,000 may file a lawsuit in the Small Claims court of the Superior Court where they live. Neither side is permitted an attorney in small claims court, so workers must draft their own complaints, serve the complaint to the employers themselves, prepare their own witnesses, and examine and cross-examine witnesses without help. Workers owed sums greater than \$10,000, who experience retaliation, or who want to join a class of similarly-situated workers to file a "class action" may file a lawsuit in federal or state Superior Court where they live or work. Most local and state wage laws try to encourage workers to file meritorious claims without fear of incurring the legal debt of their employers through one-way "fee-shifting" provisions. These allow a worker whose case prevails to recover attorneys' fees and costs, but do not require payment of the employer's legal costs where the lawsuit fails. Workers who receive final judgments must enforce that judgment on their own, without the help of a government agency.

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