

The State of New Mexican Workers

DWS Needs More Resources to Enforce NM Wage Laws

On the third anniversary of workers filing a lawsuit against the New Mexico Department of Workforce Solutions (DWS) for inadequately enforcing the Minimum Wage Act, and almost two years after the entry of a court-approved settlement agreement, the status of many low-wage workers' pay and conditions in the state is improved.

In its first year, the Lujan Grisham administration increased the state's minimum wage, began expediting the investigation of violations of the Human Rights Act, and implemented necessary changes in DWS' wage and hour enforcement procedures.

Yet workers who are victims of wage theft continue to face a dire challenge: long delays in recouping their unpaid wages, in part because of DWS' lack of sufficient resources to address the persistent backlog of uninvestigated claims and handle the increase of new ones.

The Current Department of Workforce Solutions Is Committed to Improving Enforcement

On January 17, 2017, impacted workers and worker rights' organizations sued DWS to stop the Department's unlawful failure to enforce the state's minimum wage laws and other illegal practices. In March 2018, a state court judge approved a settlement agreement, in which the Department committed to ending the aforementioned unlawful practices, investigating all wage claims, revising its regulations, creating a new policy manual to govern its investigations, and providing a mechanism for previously denied workers to re-submit their wage complaints.

Under the current administration, the Department has improved its enforcement of wage laws, including training its investigators on its new policy manual, creating a new centralized database of all wage complaints, meeting with community based organizations, improving language access, and expanding some of the services available at Workforce Connection offices throughout the state to all workers, irrespective of immigration status. The Department is currently performing workplace-wide investigations in some cases when it believes an employer is committing systemic violations. The Department is coordinating with federal and local enforcement agencies to leverage resources. The Department has also improved outreach to employers and workers throughout the state.

DWS Inherited a Backlog of Wage Complaints that Persists

When the previous administration left office at the end of 2018, the Department had built up a backlog of about 1,800 open wage claims. The Department, like many other state agencies, had unprecedented vacancy rates.

While some positions have been filled, vacancies and the backlog remain. At the end of 2019, the Department had 1,803 open wage claims—almost exactly as many as it had a year ago. Meanwhile, the Department continues to receive wage complaints from workers across the state. In December 2019 alone, 118 new wage claims were filed.

The backlog of pending claims is much larger than the number of claims the Department used to receive in an entire year. The caseload is likely to grow even more as New Mexico's minimum wage increases. The minimum wage's gradual increase to \$12.00 will directly affect about 151,000 workers.¹ Some workers are already reporting they have not received the raise they were due when the minimum wage increased to \$9 on January 1. Furthermore, recent changes to the law brought additional workers within the protections of our wage laws: students² and domestic workers.³

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Lengthy Delays to Recover Lost Wages

The Legislature measures the effectiveness of the Department's Labor Relations Division (LRD) by how many wage claims it resolves within 90 days.

- One in five workers has been waiting over a year and a half for a resolution to their claim.
- Some workers have been waiting more than eight years for LRD to recover their wages.
- In 81% of open cases, workers have been waiting more than 90 days since filing a complaint for unpa wages. The Legislature measures the effectiveness of the Department's Labor Relations Division (LRD) by how many wage claims it resolves within 90 days.

¹ Sarah Hyde, *New Mexicans Are Worth More: Raising the State's Minimum Wage* (New Mexico Voices for Children, 2018).

² SB 437 eliminated exemptions for students who are under the age of 19.

³ SB 85, co-sponsored by Senator Stefanics and Rep. Christine Trujillo and signed into law in the 2019 legislative session, eliminated the domestic worker exemption from the NM wage laws.

The Legislature Must Fund DWS at a Level to Enforce Minimum Wage Laws

The Department's and Legislative Finance Committee's budget for the upcoming fiscal year includes an increase of \$517,000 for LRD, part of which would pay for two more LRD investigators who will focus on complaints of violations of the Public Works Minimum Wage Act. While the Department also has a legal obligation to enforce the Public Works Minimum Wage Act, the vast majority of its complaints fall under the Minimum Wage Act, and this budget may not adequately address the backlog. Last year, the Department requested an additional four investigator positions and while the Legislature granted the money to hire the four investigators, the Department only added two positions. Vacancy rates across the state government have remained stubbornly high due to below market salaries.

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The Department needs to hire additional staff for minimum wage enforcement, including an additional attorney to sue employers who violate state law. The LRD currently has only one attorney. In cases where workers are owed more than \$10,000 and the case must be filed in court, LRD must either file the lawsuit or refer the case to the local district attorney. Currently, the LRD fails to litigate most of these cases, and the district attorneys are not filing them in court.

Therefore, the most egregious cases of wage theft—employers who owe more than \$10,000—have the least accountability, and the workers owed the most often receive nothing.

The New Mexico Worker Organizing Collaborative recommends the following to the Department and the Legislature:

- I. Extend more resources to LRD to hire additional investigators and an attorney to more fully enforce the state's minimum wage laws.
- II. Devise a comprehensive plan for eliminating the wage complaint backlog while simultaneously addressing incoming complaints.
- III. Create a worker & employer education campaign to inform New Mexicans about their rights and obligations under our laws.

Workers Across New Mexico Are Impacted by the Backlog

OCTAVIO RIOS OLIVAS

Octavio Rios Olivas, a Santa Fe resident and a named plaintiff within the lawsuit, filed his wage complaint against his employer in the summer of 2016 for non-payment of overtime hours. In 2015, Mr. Rios Olivas was hired to be a nighttime janitor at a local grocery store but was never paid for the overtime hours he worked on a regular basis. Mr. Rios Olivas was fired from his job in June 2016 when he inquired about his overtime hours. DWS failed to properly investigate his case and it was closed in August 2016.

Mr. Rios Olivas is legally blind and cannot read. After more than three years, the Department re-opened his case and began its second investigation in December 2019. “I know my previous employer is still not paying his workers overtime. He has not stopped breaking the law,” Mr. Rios Olivas said. He added, “Not being paid all my wages made it harder to buy necessities for my family.”

PABLO LAZALDE

Pablo Lazalde, a member of El CENTRO de Igualdad y Derechos, a worker and immigrant rights organization, and a former employee of M’tucci’s restaurant in Albuquerque, formed a worker committee called “Cocineros Unidos” at El CENTRO back in 2017 after being a victim of wage theft. Mr. Lazalde and seven other affected workers who are part of the committee submitted their claim on August of 2018 to try to recover their unpaid wages after their employer had not paid them overtime for years. After they submitted their claim, the workers began to experience retaliation, such as intimidation, veiled threats to call immigration, and drastic cut in hours. Approximately for 18 months Lazalde states that the committee lived with constant anxiety due to retaliation they experienced in the workplace, which was exacerbated by the fact that they received no communication from DWS: not a call or even a form letter. Mr. Lazalde and his committee will be having their first meeting with an investigator in the upcoming weeks and is hopeful that moving forward there will be a fair and efficient process.

“We are proud that DWS, is taking steps in the right direction to improve their wage claim process” said Pablo Lazalde former worker of M’tucci’s restaurant in Albuquerque. “We will continue to work with the legislature and this current administration to ensure that DWS is fully funded, that the backlog is addressed, and that every worker in New Mexico receives the wages that we have worked so hard to earn.”