

The Need for Wage Law Enforcement in Rural New Mexico



**Prepared for the Economic and Rural Development Committee
November 12, 2019**

The NM Worker Organizing Collaborative

The New Mexico Worker Organizing Collaborative is comprised of six organizations, working together to improve the economic security of working families in New Mexico.

We do this through civic engagement, community organizing, strategic communications, law reform, and impact litigation, to create lasting change for New Mexico low-wage and immigrant workers.



Economic Security for Workers

Workers should be paid for the hours they work. All workers should be able to earn a wage that meets their families' basic needs.

That is why New Mexico has strong wage laws:

- Recently increased minimum wage, going into effect January 1, 2020 and expansion to include domestic workers
- Recourse for workers whose wages have been stolen
- Requirement that the state investigate and recover unpaid wages

When a worker is paid for all her hours worked, not only does she benefit and her family benefit, but the local economy grows. She and her family will spend that money in their community.

New Mexico's Wage Laws

Recently increased minimum wage:

- From the current \$7.50 to \$9 on January 1, 2020
- To \$10.50 on January 1, 2021
- To \$11.50 on January 1, 2022
- To \$12 on January 1, 2023

The biggest immediate impact will be in rural New Mexico, because the largest cities and counties already have higher local minimum wages.

New Mexico's Wage Laws

Recourse for workers whose wages have been stolen:

- Entitled to 3x their owed wages, plus interest
- Have 3 years to make a wage claim
- For wage theft that was the employer's consistent practice, can recover owed wages going back to when the theft began

New Mexico's Wage Laws

A **mandatory duty** for the Department of Workforce Solutions' Labor Relations Division to:

- Investigate unpaid wage claims and
- If employer owes wages and doesn't pay, take legal action to enforce and remedy violations

Legal action = file case in court or refer to District Attorney

Lack of Enforcement

- These wage laws only actually protect workers from wage theft if they are enforced.
- Most people working for low wages depend on DWS to enforce their rights.
- DWS is not able to effectively enforce the law with its current staffing and resources.

What Is Wage Theft?

New Mexicans experience wage theft in many ways:

- Failure to pay the minimum wage
- Non-payment of overtime
- Off-the-clock work
- Taking and keeping tips
- Repeated late wage payments or partial wage payments
- Failure to issue a final paycheck
- Failure to pay at all

Javier

- Javier and other co-workers at a restaurant had been working many hours each week but not being paid overtime. This had been happening for years.
- Javier describes this time as their employer misclassifying them “in order not to pay us for our well-deserved overtime we had worked for. We were not only losing money but also time we could have spent with our families.”
- They were afraid their employer would retaliate if they complained.

Javier

- In August 2018, they submitted wage claims to DWS despite their fear.
- Their employer did retaliate.
- Several of Javier's co-workers felt they had to quit.
- He has stayed, partly to show his employer that it can't bully its workers out of asserting their rights. But, "Emotionally, the tension at work has been intense. Financially, our families have been struggling."

Wage Theft Especially Impacts Rural Workers

Workers in rural areas experience high rates of wage theft with negative consequences for families:

- Difficulty paying for family's food, clothes, health care, transportation, and other basic necessities
- Sub-standard living conditions or homelessness
- Increased reliance on asset-stealing title loans and other predatory loans

Wage Theft Especially Impacts Rural Economies

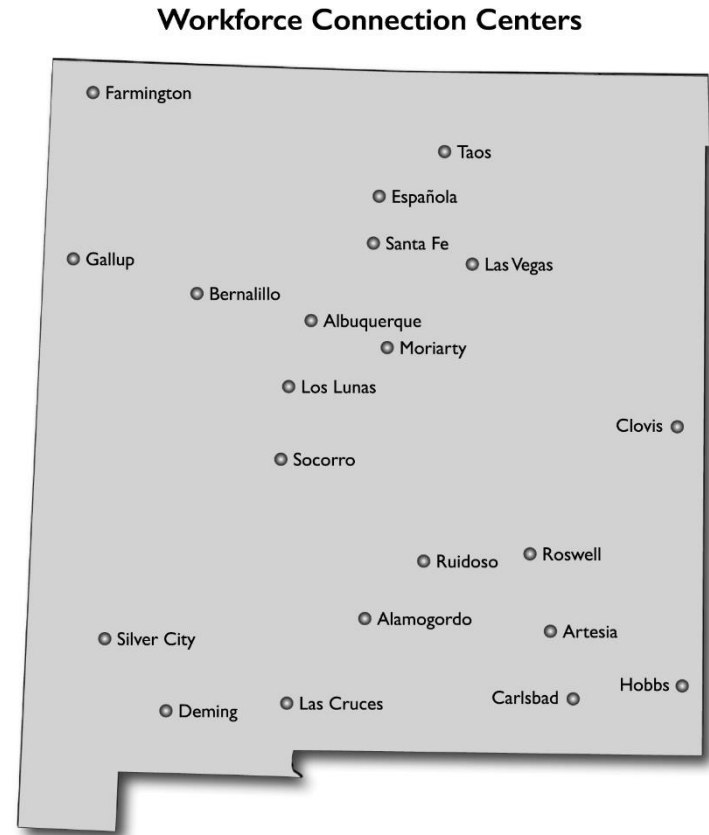
- Millions of dollars in lost payroll and income tax revenues to the local, state, and federal governments
- Law-abiding employers have to compete against employers with lower operating costs

Longstanding Barriers to Enforcement for Rural Workers

- Especially vulnerable to retaliation if they assert their rights
- Lack of reliable transportation to travel to state wage enforcement agencies in urban areas to file a complaint
- Even if workers do have a car, lack of money for gas
- Lack of reliable phone and Internet service
- No access to computers, printers, faxes machines, and other technology

Recent Improvements

- DWS agreed, as part of the settlement of a lawsuit, to use Workforce Connection Centers
- Allow workers to access the wage claim process through all WCCs
- Workers can make wage claims, use telephones and fax machines, and attend meetings and hearings at WCCs



Backlog of Wage Violations

In FY 2017, DWS received a total of 773 wage claims.

In FY 2018, they received a total of 1,121.

Last year around this time DWS stated to the Legislature that it had a backlog of about **1,800 open wage claims.**

DWS currently has **1,717** open wage claims.

Backlog of Wage Violations

- In 2017, DWS stopped illegally refusing to investigate wage claims.
- Due to pervasive wage theft and improvements in DWS' case acceptance policy – there has been a large increase in wage claims.
- The Legislature and DWS responded to this escalation in wage claims by increasing funding and adding two more investigators.

Delays Persist

The Legislature measures LRD's success by how many wage claims it resolves within 90 days.

- In **77%** of open cases, workers have been waiting more than 90 days since filing a complaint for unpaid wages.
- One in five workers has been waiting over a year and one has been waiting **seven years**.
- The Department's data shows no action has been taken in 20% of the open cases. Some of these cases have been sitting **with no activity** for four years.

Pervasive Wage Theft

DWS has not made progress reducing its backlog.

- As of the end of October 2019, the Department had **1,717** open wage complaints, almost exactly as many as it had a year ago.
- DWS has only 11 investigators and 1 attorney to investigate, resolve, and recover money owed in all those cases.

Javier

- Javier and his co-workers submitted their wage claims to DWS in August 2018.
- Their employer did retaliate, and several of his co-workers quit. As Javier describes it, “right after we submitted our wage claim with DWS, our working conditions changed, our hours varied constantly, our work environment had turned toxic and hostile.”
- He and his co-workers reported this retaliation to DWS as well.
- It has been a year and four months since he first filed. He has heard nothing from DWS.

Javier

- “It's been a tough process. It's not easy for workers to confront their employers with wage issues and wait years for DWS to take action on our cases while we continue to work. Their silence felt like this was the reality that all workers must face. We cannot believe the slow pace in which this process is being handled, the investigator does not answer our calls.”

Many Families Going Without Pay

- A delay of even a week in getting paid can mean a car gets repossessed or a family is threatened with eviction.
- 1,717 people believe they weren't paid what they were owed, and have asked DWS to enforce their rights.
- Many have gone months or years without hearing anything or having anything done on their case.
- The number of wage claims will go up—especially in the rural areas—as the state minimum wage goes up.
- The number of wage claims will go up as domestic workers and people 18 and under are newly covered by the state minimum wage.

DWS Recognizes the Need for a Budget Increase

The Department recently publicly stated that it is requesting \$500,000 in additional funds for three more investigators.

- Their goal for some of these new investigator positions is to enforce wages on public works projects.
- The staff who enforce wages on public works projects overlap with the staff who enforce the minimum wage.
- Increasing public works staff will free more time for others to investigate wage theft.

The Department's request for an additional attorney and management position would also improve wage enforcement.

DWS Needs a Budget Increase of at least \$523,000

- LRD must increase the number of wage claim staff
 - \$422,000 in a recurring appropriation will allow DWS to hire five additional FTE
- LRD should also add an attorney
 - \$101,000 in a recurring appropriation will allow DWS to hire an additional attorney
 - The addition of attorneys to its wage and hour division is especially necessary to assist in court enforcement and to litigate the most egregious violations of the state minimum wage act. Currently, there is almost no court enforcement of wage claims over \$10,000.

The Economic and Rural Development Committee Can Help Working New Mexicans

- Support a budget increase of at least \$523,000 for DWS to increase the number of staff and pay for travel and language assistance.
- Request data from DWS on wage theft in rural areas and their plan to ensure workers' rights are being enforced.

Questions?

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