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Wage Theft in King County: Analysis and Recommendations for Improving Labor Standards Enforcement

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Submitted to the King County Office of Equity and Social Justice, March 2022

Acknowledgments

The authors would like to thank the following individuals for their many crucial contributions to this report: Christopher Bhang of King County Metro Transit Department and formerly of the King County Office of Equity and Social Justice; Maya Pinto, Najah Farley, Rebecca Smith, and Tsedeye Gebreselassie of National Employment Law Project; Janice Fine, Jennifer Round, and Jacob Barnes of the Center for Innovation in Worker Organizations (CIWO) at Rutgers University School of Management and Labor Relations; and Andrea Schmitt of Columbia Legal Services. We also thank Elizabeth Ford and her students, Arielle Inveen and Elaine Kissel, at the Seattle University School of Law for their legal research assistance. Finally, the following individuals provided invaluable data collection and analysis: Isaac “Izzy” Sederbaum of University of Washington, Rebeccah Maskin of the King County Office of Performance, Strategy and Budget, and Grant Gibson of the Puget Sound Regional Council.

About Fair Work Center

Fair Work Center and our sibling organization, Working Washington, advance the rights of workers through an innovative model that brings together community education, know-your-rights training, campaigns, and legal services. We work to raise and enforce workplace standards, and we fight for economic and racial justice. We are a multiracial community of working people — including immigrants, women, people with disabilities, and LGBTQ+ workers — united across different industries to improve our working conditions and our lives. In 2021 alone, Fair Work Center conducted nearly 120 know-your-rights training sessions and helped workers recover nearly \$200,000 from their employers.

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EXECUTIVE SUMMARY

A. Findings.

Wage theft, or employers' failure to pay workers the wages that they are owed, is a pervasive problem throughout the country, costing workers billions of dollars per year. Wage theft is concentrated in certain low-wage industries, including leisure, hospitality, retail, personal services, childcare, and home health care. Wage theft also disproportionately affects women, immigrants, and people of color as well as low-wage workers who can least afford it, exacerbating long standing inequalities.

The prevalence of wage theft stems from under-enforcement of existing labor standards. A number of factors drive under-enforcement, including workers' lack of knowledge of existing laws, fear of retaliation, and inability to pursue their claims in court as well as under-funded and ineffective enforcement by government agencies.

There is, however, a growing body of evidence that vigorous and well-designed enforcement actions by government agencies can effectively combat wage theft and provide needed help to impacted workers. This evidence suggests that there are two components of an effective government enforcement model: (1) strategic enforcement and (2) co-enforcement with community partners.

The first component, strategic enforcement, refers to the strategic use of limited government resources to promote broader compliance with labor standards by focusing on areas where the problems are most prevalent and where workers are least likely to exercise their rights. Under this approach, enforcement agencies (a) triage complaints; (b) conduct company-wide investigations; (c) initiate investigations proactively (i.e., "directed

investigations”); (d) levy substantial penalties for violations; and (e) use publicity and communications to deter future violators.

The second component, co-enforcement, complements the first. Under this approach, enforcement agencies partner with community organizations to educate workers about their rights, overcome distrust of government processes, and file complaints. As this report’s detailed case studies on Seattle and San Francisco demonstrate, co-enforcement is uniquely effective at reaching vulnerable workers and helping them enforce their rights.

B. Recommendations for King County.

National wage theft trends are reflected in King County. And the problem is at least as pervasive and severe locally: an estimated 3 in 10 low-wage workers in King County experienced minimum wage violations between 2009 and 2019, depriving them of a sixth of their minimum wages, on average. As in the rest of the nation, immigrants, women, and people of color were much more likely to be affected.

While available data give clues about industries that are disproportionately affected by wage theft in King County, information is limited on the specific needs of workers employed and the types of businesses that operate in the County’s unincorporated areas. We expect that after this information is obtained, the County will conclude that these workers would benefit from enhanced enforcement by the County of existing state laws. In addition, a County wage enforcement effort could also extend to workers in cities and towns that pass new worker protection ordinances if local laws authorize them to use a new county-level enforcement tool.

Accordingly, King County should adopt a phased-in approach to combating wage theft:

1. Phase One: Fund Two-Year Contracts With Community Partners To Reach Workers And Businesses And To Collect Information To Guide Future Action.

The County should begin this project by funding community organizations for a two-year cycle to provide education and outreach services. These organizations should reflect the diversity of vulnerable workers and have deep connections with these communities. The selected partners will be able to provide culturally-competent, language-specific outreach and education services to vulnerable workers concerning their rights under existing wage laws and assist workers in reporting violations. In addition, the County should also consider funding for services that help small businesses owned by low-income or historically disenfranchised communities comply with the law.

During the initial two-year period, the County should collect data and information from community partners to better understand the nature of wage theft, particularly in areas outside of Seattle, types of violations that recur, the industries and employers involved, and the communities of workers that are most affected.

At the end of the two years, the County should analyze this information to determine whether additional enforcement capacity at the County level is required or desired to meet the identified needs of low-wage and other vulnerable workers. If evidence supports such a step, the County should move to Phase Two.

2. Phase Two: Create An Enforcement Division Within An Existing County Department To Provide Enhanced Enforcement Capacity for Existing State And Local Wage Protections.

There are many existing state law protections (e.g., minimum wage, overtime, rest breaks and meal periods, and paid sick and safe time) that are currently enforced by the Washington Department of Labor and Industries or by private lawsuit. And, increasingly, cities

and towns outside of Seattle have created, or are interested in creating, new worker protections. Examples include Burien's hazard pay ordinance for grocery workers and SeaTac's minimum wage law for travel and hospitality workers. For a variety of reasons described in this report, low-wage and vulnerable workers are often unable to use existing enforcement tools to enforce these laws.

The County should consider creating a division within an existing County department to provide a supplemental tool for the enforcement of existing state laws by workers employed in its unincorporated areas. In addition, this enforcement division should be permitted to enter into inter-local agreements with incorporated cities and towns outside of Seattle to enforce local workers' rights ordinances.¹ These agreements would allow the division to serve as a county-wide resource for enforcing local protections, which localities would not otherwise have the administrative capacity to enforce.

To take this approach, the County would need to pass an ordinance creating enforcement capacity within an existing County department, authorize this new division to enforce existing laws, and fund the division at a sufficient level to hire necessary staff. In addition, the new enforcement division would need capacity to initiate outreach and education to workers and businesses about their rights and obligations. We recommend initial appropriations to create a staff of five to six individuals in such areas as enforcement, outreach and education, and communications. Because we recommend continued funding for community partners during Phase Two, at least a part-time contract coordinator position must also be funded.

¹ Currently, Seattle-based workers can access such assistance at the Seattle Office of Labor Standards pursuant to the Seattle Wage Theft Ordinance, SMC 14.20).

I. Wage Theft Is Pervasive And Disproportionately Affects Low-Wage Workers, People of Color, and Immigrants.

Wage theft is the practice of failing to pay workers the wages to which they are entitled under the law.² The term encompasses a “constellation of behaviors” by which employers fail to comply with wage and hour laws, which allow them to benefit from unpaid or underpaid labor.³ These behaviors include failing to pay the minimum wage or overtime premium, withholding tips, or misclassifying workers as independent contractors or as exempt employees to avoid paying legally-required wages.⁴ It also includes requiring workers to work off-the-clock, failing to provide meal or rest breaks, making illegal deductions from wages, or failing to issue a final paycheck after a worker quits or is fired.⁵ Employers often engage in multiple forms of wage theft, depriving workers of their earned wages guaranteed by the law, even in jurisdictions with strong employment protections.⁶

A. Wage Theft Is A Nationwide Problem.

Wage theft is a pervasive problem throughout the United States. A 2017 study analyzed minimum wage violations in the ten most populous states, accounting collectively for just over half of the U.S. workforce.⁷ In those states, 2.4 million workers suffered minimum wage violations--more than the adult population of New Mexico and 14 other states.⁸ The average

² Nicole Hallett, *The Problem of Wage Theft*, 37 Yale Law & Policy Review 93, 98 (2019). See also David Cooper and Teresa Kroeger, *Employers Steal Billions from Workers' Paychecks Each Year*, 4 Economic Policy Institute (2017), available at <https://www.epi.org/files/pdf/125116.pdf>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Cooper and Kroeger (2017), at 9.

⁸ *Id.* Change in Resident Population of the 50 States, the District of Columbia, and Puerto Rico: 1920 to 1920, United States Census Bureau (2021), available at <https://www2.census.gov/programs-surveys/decennial/2020/data/apportionment/population-change-data-table.pdf>.

victim of wage theft lost \$3,300 per year and received only \$10,500 in annual wages.⁹ All together, lost wages totaled approximately \$8 billion per year.¹⁰ Based on the same data, the authors estimated that the total wages stolen nationally from workers for minimum wage violations exceeds \$15 billion each year.¹¹ Because these figures do not account for forms of wage theft other than minimum wage violations, the prevalence and toll of wage theft are likely much higher.¹²

Wage theft has a particularly severe and disproportionate effect on low-wage workers, “the most vulnerable segment of the workforce.”¹³ A 2009 study of thousands of low-wage workers in the three largest metropolitan areas (i.e., New York, Los Angeles, and Chicago) found that the vast majority of low-wage workers experience wage theft at work.¹⁴ Of surveyed workers, nearly 7 in 10 had experienced some form of wage theft in the previous week and more than three quarters had experienced wage theft at some point during their work experience.¹⁵ Low-wage workers like those surveyed lose a substantial portion of their earnings because of wage theft. For example, in the same study, workers who reported experiencing wage theft were typically underpaid by over \$1 per hour.¹⁶ On an annual basis, that means they lost 15 percent of their income to wage theft, on average.¹⁷ A subsequent estimate from the U.S.

⁹ Cooper and Kroeger (2017), at 9.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* at 8 (“Assessing the full impact of all forms of wage theft is exceedingly difficult. No public data source exists with the requisite information to accurately assess workers’ exempt status, total hours worked, total wages received, and what forms of compensation they receive—e.g., hourly/weekly base pay, tips, overtime, etc.”)

¹³ *Id.*

¹⁴ See Annette Bernhardt, Ruth Milkman, Nik Theodore, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities*, National Employment Law Project (2009), available at <https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

¹⁵ *Id.* at 5.

¹⁶ *Id.* at 5.

¹⁷ *Id.* at 5.

Department of Labor in 2014 found that wage theft lowers a minimum-wage worker's income by between a third and nearly one-half when a violation occurs.¹⁸

For workers making low or minimum wages, losing this much income often means falling into poverty.¹⁹ Indeed, one study found that workers who experience minimum wage violations are more than three times as likely to be in poverty than otherwise similarly-situated workers.²⁰ And in a study commissioned by the U.S. Department of Labor, the authors found that minimum wage violations increased poverty rates among workers who experienced wage theft in California and New York by 125 percent and 37 percent, respectively.²¹ Perhaps unsurprisingly, a sizable proportion of wage theft victims and their families are forced to rely on public assistance programs to survive.²²

Further, women, immigrants, and people of color disproportionately bear the burdens of wage theft.²³ For example, a 2017 study showed that women experience minimum wage violations at a higher rate than men despite making up less than half of the minimum-wage-earning workforce.²⁴ It also showed that those without citizenship experience minimum wage violations at 1.5 times the rates of U.S. citizens.²⁵ Similarly, Black and Latino workers experience minimum wage violations at around 1.5 times the rates of white workers.²⁶

¹⁸ Eastern Research Group, *The Social and Economic Effects of Wage Violations Estimates for California and New York: Final Report*, at ES-3, U.S. Department of Labor (2014), available at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WageViolationsReportDecember2014.pdf>.

¹⁹ Hallet (2019), at 101.

²⁰ Eastern Research Group (2014), at 49, Table 14. These numbers are based on the Survey of Income and Program (SIPP).

²¹ Cooper and Kroeger (2017), at 13-14.

²² *Id.* at 14.

²³ *Id.* See also Daniel Galvin, *Deterring Wage Theft: Alt-Labor, State Politics, and the Policy Determinants of Minimum Wage Compliance*, 14. Persp. On Pol. 324 (2016); Bernhardt et al. (2009); Orley Ashenfelter and Robert Smith, *Compliance with the Minimum Wage Law*, 87 J. Pol. Econ. 333 (1979).

²⁴ Cooper and Kroeger (2017), at 14, 17, Figure C.

²⁵ *Id.* at 20-21, Figure F.

²⁶ *Id.* at 16, 19, Figure E. "This is partly a function of the fact that people of color are disproportionately represented among low-wage workers." See also David Cooper, *Raising the Minimum Wage to \$12 by 2020 Would Lift Wages for 35 Million American Workers*, Economic Policy Institute (2015), available at

And people of color, regardless of race, experience minimum wage violations at rates disproportionate to their share of the minimum-wage-earning workforce.²⁷ These trends are consistent with previous findings from the literature that considered additional forms of wage theft, overwhelmingly suggesting that women, immigrants, and people of color are disproportionately affected by this issue.²⁸ Disproportionate exposure to wage theft compounds existing structural inequities that these populations already face, such as pronounced wage and wealth gaps along lines of sex, race, and ethnicity.²⁹

Wage theft is also particularly concentrated in certain low-wage industries and occupations. In particular, the leisure and hospitality industry has had the highest rates of minimum wage violations, which is largely driven by food and drink establishments.³⁰ Other high-violation industries include retail, personal services, childcare, and home health care.³¹ Indeed, studies have also found that nearly half (46.5 percent) of all workers who experience minimum wage violations work in service jobs, the largest share by any category of occupation by far.³²

<http://www.epi.org/publication/raising-the-minimum-wage-to-12-by-2020-would-lift-wages-for-35-million-american-workers/>; Valerie Wilson and William M. Rodgers III, *Black-White Wage Gaps Expand with Rising Wage Inequality*, Economic Policy Institute (2016), available at <http://www.epi.org/publication/black-white-wage-gaps-expand-with-rising-wage-inequality/>.

²⁷ *Id.*

²⁸ See, e.g., Bernhardt et. al (2009), at 5, 48. See also note 22.

²⁹ See e.g., *Quantifying America's Gender Wage Gap by Race and Ethnicity*, National Partnership for Women & Families (2022), available at

<https://www.nationalpartnership.org/our-work/resources/economic-justice/fair-pay/quantifying-americas-gender-wage-gap.pdf>; *The Wage Gap: The Who, How, Why and What to Do*, National Women's Law Center (2021), available at <https://nwlc.org/wp-content/uploads/2020/10/2021-who-what-why-wage-gap.pdf>; Neil Bhutta, Andrew C. Chang, Lisa J. Dettling, and Joanne W. Hsu with assistance from Julia Hewitt, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, Board of Governors of the Federal Reserve System (2020), available at <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

³⁰ Cooper and Kroeger (2017), at 24.

³¹ Hallett (2019), at 100 (citing Bernhardt et. al (2009), at 31).

³² Cooper and Kroeger (2017), at 27.

B. Wage Theft Weakens The Economy For Everyone.

In King County and nationwide, wage theft not only affects the workers that experience violations, but it also weakens the broader economy. Wage theft lowers consumer demand, a driving force of the economy, by depriving workers of income that they would otherwise spend on goods and services.³³ This is particularly true for the workers most vulnerable to wage theft because they typically spend, rather than save, a high proportion of their income just to make ends meet.³⁴ Wage theft also deprives the public of payroll and sales tax revenues while increasing public spending on taxpayer-funded public assistance programs on which wage theft victims are more likely to rely.³⁵ Moreover, wage theft punishes law-abiding businesses by putting them at a competitive disadvantage relative to businesses that use wage theft to achieve lower labor costs.³⁶ And when employers, especially highly visible ones, fail to comply with wage and hour laws without consequences, they send “signals regarding the potential to flout standards to other employers that are similarly situated,” which can cause other employers to change their behavior and depress wages on an industry level.³⁷ Indeed, “[w]henver any group of workers can be exploited and paid artificially low wages, it lowers the wages of similarly skilled workers and other workers in the same industry.”³⁸ The Economic Policy Institute has found that this effect contributes to the overall stagnation of wages in the economy, which drives income inequality and slows the growth of living standards.³⁹

³³ *Id.* at 29.

³⁴ *Id.* at 29.

³⁵ *Id.* at 28-29.

³⁶ *Id.* at 29.

³⁷ David Weil, *The Fissured Workplace: Why Work Became So Bad For So Many And What Can Be Done About It*, 237 (Harvard University Press 2014).

³⁸ Cooper and Kroeger (2017), at 20.

³⁹ Josh Bivens, Elise Gould, Lawrence Mishel & Heidi Shierholz, *Raising America's Pay: Why It's Our Central Economic Policy Challenge*, at 55 Economic Policy Institute (2014).

C. The Prevalence Of Wage Theft Primarily Stems From Under-Enforcement Of Existing Laws.

The under-enforcement of wage and hour standards is at the root of the problem of wage theft. Despite a wave of minimum wage increases and the adoption of other wage and hour protections across the country in the past decade, only a small proportion of employers are ever held accountable for violating wage and hour laws, and even fewer pay for it.⁴⁰ Employers have financial incentives to skirt these laws, especially when the cost of noncompliance is low in the absence of robust enforcement.⁴¹ And, as described above, noncompliance in an industry begets further noncompliance as perpetrators signal that employers can engage in wage theft without consequences, implicitly encouraging others to adopt similar practices to save money or to stay competitive.⁴²

There are several factors that undermine wage and hour enforcement. First, many workers are not aware that they are experiencing wage theft because they are uninformed about the wage and hour laws that protect them.⁴³ As University of Chicago Law Professor Nicole Hallett observed, “[w]orkers most vulnerable to wage theft often have limited education and English proficiency and do not have time or resources to research the laws that protect them. Employers have no incentive to educate their employees about their rights. [And] laws requiring employers to disclose ... workplace rights to workers are routinely violated.”⁴⁴ Although community-based organizations can play a role in remedying this problem by helping workers learn about their rights, they often lack sufficient resources to reach large numbers of workers.

⁴⁰ Hallet (2019), at 104. Minimum Wage Tracker, Economic Policy Institute, available at <https://www.nytimes.com/2020/09/03/business/economy/wage-theft-recession.html>.

⁴¹ Hallet (2019), at 103-4, 118; Galvin (2016), at 339.

⁴² Weil (2014), at 237.

⁴³ Hallet (2019), at 105.

⁴⁴ *Id.*

Second, even if workers are aware that they are being cheated, many do not complain or take legal action for fear of retaliation.⁴⁵ By complaining or taking action, workers risk that their employer may discharge them, reduce their hours, or interfere with future employment opportunities.⁴⁶ One study found that among the 20 percent of surveyed wage theft victims who did not complain, over one half indicated that they refrained because they were worried they would be fired or that their hours would be cut if they complained.⁴⁷ And the evidence suggests that workers' fears of retaliation are not unfounded: of those who did complain, 43 percent faced retaliation of some kind.⁴⁸ Further, some workers are uniquely vulnerable to retaliation. For example, employers may retaliate against those workers without immigration status by reporting them or their family members to immigration authorities.⁴⁹

Workers that choose to risk complaining often face substantial barriers to vindicating their employment rights. In order to pursue wage and hour claims in court, workers usually need a lawyer to represent them because of the practical difficulties and costs of proceeding without representation. A worker with a small-dollar case often is unable to find a private employment attorney willing to take on the case because they typically cannot afford to pay on an hourly basis, and there are few attorneys willing to take a case on a contingency basis (i.e., fees paid out of a successful recovery) if the potential amount of recovery is low.⁵⁰ Although some attorneys do accept wage and hour cases on a contingency basis, they often only take on cases with high potential damages like class actions and those on behalf of highly-compensated

⁴⁵ See Laura Huizar, *Exposing Wage Theft Fear: States Must Protect Workers from Retaliation*, National Employment Law Project, 1-2 (2019).

⁴⁶ *Id.* at 1.

⁴⁷ Bernhardt, et al. (2009), at 24.

⁴⁸ *Id.* at 25.

⁴⁹ Hallet (2019), at 107.

⁵⁰ *Id.* at 105 (citing Stephen Lee, *Policing Wage Theft in the Day Labor Market*, 4 U.C. Irvine L. Rev. 655, 662 (2014)).

individuals.⁵¹ And, while some legal services lawyers do represent low-wage workers in wage and hour litigation, the need for legal services among low-wage workers far outstrips the supply of service providers.⁵² Even for workers who are able to find representation, many are subject to mandatory arbitration agreements, which bar workers from pursuing their claims in court.⁵³ Instead, these agreements force workers to submit to arbitration procedures that overwhelmingly favor employers.⁵⁴

Because of these barriers to pursuing remedies in court, the only option for many victims of wage theft is to seek recourse from a local, state, or national administrative agency tasked with enforcing wage and hour laws. For example, across Washington state, workers can file wage and hour complaints with the Washington Department of Labor & Industries (L&I) or, if they work in Seattle, workers can file with the Seattle Office of Labor Standards (OLS). Filing with agencies is free, and the process of filing a complaint is often more accessible for workers without representation than filing their own lawsuit. But workers may still struggle to file complaints in circumstances where, for example, filing processes are opaque, agencies do not provide self-help materials, agencies cannot provide assistance or materials in a language that a worker understands, or where workers are confused about which agency to approach when there is overlapping jurisdiction. Agencies are also chronically underfunded and understaffed, particularly at the state and local level.⁵⁵ For example, L&I only has 22 investigators to field over 6,700 complaints per year, which means that each investigator has an average caseload of over

⁵¹ *Id.* at 105.

⁵² *Id.* at 106.

⁵³ Alexandra J.S. Colvin, *The Growing Use of Mandatory Arbitration: Access to the Courts is Now Barred for More than 60 million American Workers*, Economic Policy Institute (2018), available at <https://www.epi.org/publication/the-growing-use-of-mandatory-arbitration-access-to-the-courts-is-now-barr ed-for-more-than-60-million-american-workers/>.

⁵⁴ *Id.*

⁵⁵ Hallet (2019), at 106; Jancie Fine and Tim Bartley, *Raising the Floor: New Directions in Public and Private Enforcement of Labor Standards in the United States*, 61(2) J. Ind. Relations 252, 261 (2019).

300 complaints.⁵⁶ Because of understaffing and a statute that requires L&I to investigate and resolve every complaint it receives within 60 days, the Department is forced to prioritize rapid, pre-citation resolution of cases over maximizing damages and penalties or pursuing company-wide relief.⁵⁷ Even when agencies do assess damages or penalties against violators, they often do not have the resources to enforce judgments, leaving workers uncompensated.⁵⁸

Another limitation is that most local, state, and federal agencies use a reactive, complaint-driven approach to labor standards enforcement, which limits their efficacy.⁵⁹ Under this model, agencies rely on workers to report violations and generally treat complaints as individual cases to be resolved, isolated from the company-wide or industry-wide contexts from which the complaint emerged.⁶⁰ For example, L&I typically investigates individual complaints from workers, having initiated company-wide investigations in just 2 percent of closed cases in the past 5 years.⁶¹ As a result, “even a high number of individual cases or complaints are unlikely to lead to structural reforms in a company or across an industry.”⁶² This model also tends to be least effective for low-wage workers who need it most. Studies have shown that workers in industries with the highest rates of wage theft violations are the least likely to complain.⁶³ As described above, workers in these industries are often reluctant to complain

⁵⁶ L&I Presentation on the Employment Standards Program by Joshua Grice, February 2021, on file with the Fair Work Center.

⁵⁷ See RCW 49.48.083(1); Department of Labor & Industries Operations Manual §4.08.04A.

⁵⁸ Eunice Hyunhye Cho et al., *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's Workers*, National Employment Law Project, 2 (2013), available at <https://www.nelp.org/wp-content/uploads/2015/03/Hollow-Victories-Unpaid-Wages-Report.pdf>. See also Elizabeth Ford, *Wage Recovery Funds*, Cal. L. Rev. (forthcoming 2022), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3963311.

⁵⁹ Fine, et al. (2020), at 14.

⁶⁰ *Id.* at 15.

⁶¹ Washington Department of Labor & Industries data on closed cases 2006 – 2021 on file with the Fair Work Center. Recently, L&I began collaborating with the Washington Attorney General's Office to initiate more proactive investigations. See L&I Presentation on the Employment Standards Program by Joshua Grice, February 2021, on file with the Fair Work Center.

⁶² Fine, et al. (2020), at 15.

⁶³ *Id.* (citing David Weil and Amanda Pyles, *Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace*, 27(1) Comparative Labor L. and Policy J. 59 (2005)).

because they face profound power imbalances vis-à-vis their employers and few employment alternatives. Without complaints from these workers to trigger investigations, agencies that limit their investigations to issues and persons identified in complaints often miss other exploited workers in the same workplace.⁶⁴

⁶⁴ *Id.*

II. Effective Enforcement Requires Strategic Use Of Government Resources And Co-Enforcement With Community Organizations.

There are two components of an effective labor standards enforcement scheme that combats wage theft: (a) a strategic use of limited government resources, and (b) a collaborative co-enforcement model in which community organizations help bridge the gap between workers and government.

The first element recognizes the fact that government resources dedicated to combat wage theft are and will continue to be inadequate. As a result, such resources must be used in the most strategic way possible to maximize their impact with the goal of creating a culture of voluntary compliance among businesses. The second element recognizes that an effective enforcement scheme also needs to address barriers that vulnerable workers face, including lack of information about their rights and distrust in government actors. Co-enforcement, a collaborative model between government and community organizations, addresses these barriers by educating workers and increasing workers' trust in government. Case studies of San Francisco and Seattle, two jurisdictions that have resourced agencies that have adopted a strategic, co-enforcement approach, show that this model improves enforcement outcomes, particularly for workers who are most vulnerable to wage theft.

A. Strategic Enforcement Requires Effective Use Of Limited Government Resources.

For the reasons explained at length above, addressing wage theft requires additional government enforcement capacity because wage and hour laws are vastly underenforced. Government agencies have a critical role to play in enforcement: they educate workers and employers on employment standards, field inquiries and complaints, conduct investigations, broker settlement agreements, compel compliance, punish violators, and recover compensation

owed to workers.⁶⁵ And they are often the only viable enforcement option available to vulnerable populations of workers who are most likely to experience wage theft. But due in part to insufficient funding, agencies are limited in their ability to serve as an effective enforcement resource. Increased funding for existing or new enforcement agencies would certainly increase overall enforcement capacity and likely improve enforcement outcomes, to an extent. Yet, even with increased capacity, enforcement agencies will find their resources stretched thin because of the sheer prevalence and scale of wage theft.⁶⁶ In order to maximize their impact with finite resources, enforcement agencies need to pursue strategic enforcement.

“Strategic enforcement,” a term coined by the former head of the U.S. Department of Labor’s Wage and Hour Division, David Weil, refers to “us[ing] the limited enforcement resources available to a regulatory agency to protect workers as proscribed by laws by changing employer behavior in a sustainable way.”⁶⁷ Under this approach, agencies use their finite resources efficiently by “being selective about where and how they use [those] resources” with the objective of promoting broader compliance with labor standards.⁶⁸ To do so, they “prioritize and direct efforts to where the problems are largest, where workers are least likely to exercise their legal rights, and where the agency can impact industry wide compliance.”⁶⁹ By directing resources towards these areas, an agency can make its enforcement resources go further by influencing employer incentives and behavior beyond individual cases, creating ripple effects through employers, industries, and geographies.⁷⁰

⁶⁵ Janice Fine, *Enforcing Labor Standards in Partnership with Civil Society: Can Co-Enforcement Succeed Where the State Along Has Failed?* 45(3) *Politics & Society* 359, 365 (2017).

⁶⁶ Tanya L. Goldman, *The Labor Standards Enforcement Toolbox: Tool 4: Introduction to Strategic Enforcement*, 2 Center for Law and Social Policy (2018).

⁶⁷ David Weil, *Creating a Strategic Approach to Address Wage Theft: One Academic’s Journey in Organizational Change*, 60(3) *J. of Industrial Relations* 437, 437 (2018).

⁶⁸ Goldman (2018), at 2.

⁶⁹ *Id.*

⁷⁰ David Weil, *Improving Workplace Conditions Through Strategic Enforcement*, Report to the U.S. Dep’t of Labor Wage and Hour Division, 16-17 (2010).

In practice, there are at least five components to effective strategic enforcement. First, enforcement agencies should set priorities for investigation and triage cases based on those priorities.⁷¹ For example, agencies might prioritize cases involving high-violation industries, vulnerable groups of workers, or particularly egregious violations.⁷² Then, rather than accepting every complaint for investigation as they are filed, the agency can direct its limited investigative resources towards cases that fit within identified priorities. To give the agency the ability to prioritize and triage, enabling legislation should explicitly give the agency discretion over which cases it investigates.⁷³

Second, enforcement agencies should investigate individual workplace complaints on a company-wide basis, an approach which recognizes that wage violations often impact more than one worker and that some workers may not complain for fear of retaliation.⁷⁴ Enabling legislation should explicitly give the agency authority to conduct these company-wide investigations and avoid restrictions on that authority, such as requiring short deadlines for resolving investigations or requiring written consent from all workers.⁷⁵

Third, rather than solely relying on complaints, agencies should have the power to initiate proactive investigations (sometimes referred to as “directed investigations”).⁷⁶ Because

⁷¹ See Haeyoung Yoon and Tsedeye Gebreselassie, *Building Robust Labor Standards Enforcement Regimes in Our Cities and Counties*, National Employment Law Project, 2-3 (2015); Cailin Dejillas, *Tool 8: A Baker’s Dozen of Essential Enforcement Powers*, Rutgers Center for Innovation in Worker Organization, 2 (2020); Jenn Round, *An Advocate’s Guide to Building Stronger Labor Standards Enforcement: Building Block 1: Essential Labor Standards Enforcement Powers*, 17 (2019).

⁷² Yoon and Gebreselassie (2015), at 2-3; Dejillas (2020), at 2.

⁷³ Round (2019), at 17, 19 (“Model Language: Power to Triage Complaints: The Agency has sole discretion to decide whether to investigate a complaint or otherwise pursue a possible violation of this chapter.”). See also, e.g., N.Y. Lab. § 196(2) (“*Nothing in this section shall be construed as requiring the commissioner in every instance to investigate and attempt to adjust controversies ..., or to take assignments of wage claims, or to institute criminal prosecutions for any violation under this article ..., but he or she shall be deemed vested with discretion in such matters.*”) (emphasis added). Cf. RCW 49.48.083(1) (“if an employee files a wage complaint with the department, the department *shall* investigate the wage complaint.”) (emphasis added).

⁷⁴ Yoon and Gebreselassie (2015), at 3.

⁷⁵ Round (2019), at 10-13.

⁷⁶ *Id.* at 14. (6); Dejillas (2020), at 5-7.

vulnerable workers in some of the highest-violation industries are least likely to file complaints, a system that relies solely on complaints to trigger investigations may not enforce the law in industries where it is needed most.⁷⁷ In contrast, agencies that conduct directed investigations in high-violation, low-complaint industries will promote broader compliance in these industries.⁷⁸ To give an agency authority to initiate these investigations, an enabling statute should explicitly allow for directed investigations in industries that are known to have high violation rates or high numbers of workers vulnerable to wage theft.⁷⁹ And it should avoid any provisions requiring a complaint to initiate an investigation.⁸⁰

Fourth, enforcement agencies should pursue full remedies available under the law. This means pursuing all damages, interest, penalties, and fines available under a statute in addition to collecting unpaid back wages already owed to workers. This increases employers' perceived cost of noncompliance with wage and hour laws, and deters future violations by the violator and other potential violators in the same industry or location.⁸¹ A strong statute would require mandatory escalating penalties or fines for repeat offenders.⁸² And it should avoid requiring an agency to prove that violations were willful before assessing these additional damages.⁸³ Further, a majority of collected damages should go to workers to compensate them and to incentivize future reporting.

⁷⁷ *Id.* at 14.

⁷⁸ Fine, et al. (2020), at 24.

⁷⁹ E.g., SMC § 14.19.070(a) ("The Agency may initiate an investigation pursuant to rules issued by the Director including, but not limited to, situations when the Director has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations ... or the workforce is unlikely to volunteer information regarding such violations.")

⁸⁰ E.g., Wyo. Stat. §§ 27-4-502 & 504 ("*Upon receipt of a written claim for unpaid wages*, the department shall process, investigate, and determine the validity of the claim.") (emphasis added).

⁸¹ Round (2019), at 31. See also Galvin (2016), at 341. See Ford (forthcoming 2022), at 6-7.

⁸² *Id.* at 32. See, e.g., San Francisco Admin. Code § 12R.7(c)(2).

⁸³ Round (2019), at 32-33.

Fifth and finally, it is critical that enforcement agencies should use communications to publicize actions taken against violators. Such communications will deter employers from violating wage laws, educate workers on their rights, and inform other stakeholders and policymakers on the importance of protections against wage theft.⁸⁴ A variety of methods are available, such as postings on websites, through social media channels and press releases.

B. Community Co-Enforcement Is Crucial To Effective Agency Enforcement.

Although increased government enforcement capacity and strategic enforcement are necessary to address wage theft, they are insufficient for effective enforcement, particularly for the workers most vulnerable to wage theft.⁸⁵ This is because many vulnerable workers do not know about their rights or how to exercise them.⁸⁶ And even those who do know their rights often choose not to come forward to report violations because they do not trust the government or know how to navigate the complaint process.⁸⁷ Without connections to workers who have invaluable, on-the-ground information about their workplaces and the industries they work in, even well-resourced agencies with a strategic approach will fail to meet the needs of the workers most vulnerable to wage theft.

Co-enforcement is a model proven to help enforcement agencies overcome these barriers and reach vulnerable workers to help them enforce their rights. Under such a model, government agencies partner with community-based organizations to enforce labor standards.⁸⁸ Agencies contract with and provide funding to these organizations to build trust with workers,

⁸⁴ See generally Terri Gerstein and Tanya Goldman, *Protecting Workers Through Publicity: Promoting Workplace Law Compliance Through Strategic Communication*, Harvard Law School Labor and Worklife Program and Center for Law and Social Policy (2020); Matthew S. Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, 110(6) American Economic Review 1866 (2020).

⁸⁵ See Fine (2017).

⁸⁶ Weil (2014), at 237. Hallet (2019), at 105.

⁸⁷ Fine (2017), at 361.

⁸⁸ Fine and Bartley (2019), at 256.

provide education about their rights, help workers file complaints, facilitate referrals, and inform the agency's investigations.⁸⁹

Key to the co-enforcement model is the idea that community-based organizations, and the workers that they represent, have unique roles to play in enforcement.⁹⁰ And these roles complement, rather than substitute for, those of government, improving overall enforcement outcomes.⁹¹ For instance, workers have direct experience with and detailed information about their workplaces and the violations they experience.⁹² This information is necessary for enforcement, but difficult for agencies to collect without help from workers. Often too, vulnerable workers do not trust government actors enough to report violations or work with them.

Community-based organizations are in a unique position to help bridge this gap. Because of their existing connections and credibility with workers and the community, these organizations can build relationships and trust with workers.⁹³ This allows community-based organizations to educate workers on their rights, conduct consultations, identify violations, encourage workers to file complaints, and assist them with filing and producing information in the investigative process.⁹⁴ In conversations with workers, these organizations also gather information and develop expertise on problematic employers and high-violation industries, which they can share with enforcement authorities. By sharing information, educating workers, and directing them to enforcement authorities, community-based organizations amplify and extend the capacity of government enforcement.

⁸⁹ *Id.* at 259.

⁹⁰ Fine (2017), at 364.

⁹¹ *Id.*

⁹² *Id.* at 366. Fine and Bartley (2019), at 256.

⁹³ Fine (2017), at 366. Fine and Bartley (2019), at 256.

⁹⁴ *Id.*

C. The Co-Enforcement Successes In San Francisco And Seattle Are Instructive.

Two localities, San Francisco and Seattle, exemplify how co-enforcement is a critical component to an agency's strategic enforcement model. As illustrated in the case studies below, there are several key elements contribute to their success:

- (1) Community Outreach & Education Grants - Both labor standards enforcement agencies in San Francisco and Seattle provide grants to community organizations for outreach and education to workers and to otherwise partner with the agency on enforcement. They have done so through long-term contracts that provided flexibility on outcome metrics and reporting.
- (2) Focus on Vulnerable Workers - Both localities require outreach and education to focus on vulnerable groups of workers, including immigrants and people of color, and tailored systems to be more accessible to these workers.
- (3) Strategic Enforcement - Both enforcement agencies were granted the statutory discretion to set priorities and triage complaints, conduct company-wide and directed investigations, and levy substantial penalties to deter violators.

1. San Francisco

The City and County of San Francisco was the first locality in the nation to adopt a co-enforcement scheme and continues to be a model for other jurisdictions.⁹⁵ In 2006, the San Francisco Board of Supervisors ("Board") granted the Office of Labor Standards Enforcement (OLSE) authority to enforce the minimum wage and related wage theft protections.⁹⁶ Crucially, the Board also mandated that the OLSE create a "community-based outreach program to

⁹⁵ Fine and Bartley (2019), at 258.

⁹⁶ Seema N. Patel and Catherine L. Fisk, *California Co-Enforcement Initiatives that Facilitate Worker Organizing*, prepared for Harvard Law School Symposium "Could Experiments at the State and Local Levels Expand Collective Bargaining and Workers' Collective Action?", at 6 (2017), available at <https://harvardlpr.com/wp-content/uploads/sites/20/2017/11/Patel-Fisk-CoEnforcement.pdf>.

conduct education and outreach to [San Francisco] employees” and allocated funding for this purpose.⁹⁷

This mandate and accompanying funding were the basis for collaboration between OLSE and local community groups to enforce state and local employment laws. Recognizing that the most vulnerable populations of workers are least likely to report violations, OLSE envisioned a “proactive, targeted program of worker education and outreach [to] prevent wage theft by addressing the lack of knowledge, insufficient resources, and feelings of vulnerability that many workers currently face.”⁹⁸ To do so, OLSE grants funding to community partners with expertise in employment law and deep connections to communities of low-wage workers where wage theft is most likely to occur.⁹⁹ The aim is to inform vulnerable workers about their rights and “create conditions in which these workers are more likely to report ... violations.”¹⁰⁰ These organizations are under contract for multiple years at a time to provide outreach and education services to these communities, including “participating in community events, holding workshops and training sessions, providing counseling and referral services, and conducting media outreach.”¹⁰¹ They are also expected to “provide assistance in filing and screening complaints and to try to bring employees and employers together to solve problems.”¹⁰²

Key to this approach is a focus on culturally-competent outreach to low-wage workers in minority and immigrant communities.¹⁰³ OLSE has sought outreach and education partners with connections to communities of immigrants, minorities, and those with limited English-proficiency and that offer “culturally competent, community-based support in bringing [their] complaints to

⁹⁷ *Id.* (citing S.F., Cal., Admin. Code § 12R.25 (2003)).

⁹⁸ *Id.* at 7 (quoting San Francisco Office of Labor Standards, Request for Proposals, at 6 (2013)).

⁹⁹ *Id.* at 7-9.

¹⁰⁰ *Id.* at 7-8 (quoting San Francisco Office of Labor Standards, Request for Proposals, at 4 (2016)).

¹⁰¹ Patel and Fisk (2017), at 9 (quoting San Francisco Office of Labor Standards, Request for Proposals, at 6 (2013)).

¹⁰² Fine (2017), at 377.

¹⁰³ Patel and Fisk (2017), at 7.

the City or the State.”¹⁰⁴ To complement this effort, OLSE has made its own resources and systems more accessible to workers. For example, OLSE provides know-your-rights materials, frequently-asked-questions brochures, and complaint forms in a variety of languages beyond English including Cantonese, Spanish, and Filipino.¹⁰⁵ They also provide 12 multilingual hotlines dedicated to answering questions from workers and businesses about different ordinances and policies.¹⁰⁶ OLSE also takes steps to allay fears immigrant workers may have, proactively communicating that it helps workers regardless of where they were born or whether they have work authorization, and assuring workers that they will never be asked about their immigration status.¹⁰⁷

This culturally-conscious, co-enforcement model has been successful in helping reach workers who would not otherwise have trusted the government to report violations. For example, OLSE collaborated with a community-based partner, the Chinese Progressive Association (CPA), to help hundreds of workers at an upscale dim sum restaurant reach a historic \$4.25 million settlement on a variety of wage theft claims.¹⁰⁸ Because of CPA’s connections and credibility in the Chinese community, a few monolingual immigrants who worked at the restaurant approached CPA about a variety of issues they were experiencing at work.¹⁰⁹ CPA provided information about their rights to a minimum wage and breaks, among others, and used the workers’ networks to connect with other employees.¹¹⁰ Many of the workers initially “didn’t trust the government agency and wouldn’t talk to investigators.” But after “a year

¹⁰⁴ *Id.* (quoting San Francisco Office of Labor Standards, Request for Proposals, at 6 (2013)).

¹⁰⁵ See e.g., San Francisco Office of Labor Standards Enforcement, Minimum Wage Ordinance (last visited Nov. 30, 2021), available at <https://sfgov.org/olse/minimum-wage-ordinance-mwo>.

¹⁰⁶ San Francisco Office of Labor Standards Enforcement, FY 2019-2020 Annual Report, at 14 (last visited Nov. 30, 2021), available at <https://sfgov.org/olse/sites/default/files/OLSE%20Annual%20Report%20FY19-20%20Final.pdf>.

¹⁰⁷ See e.g., San Francisco Office of Labor Standards Enforcement, For Workers (last visited Nov. 30, 2021), available at <https://sfgov.org/olse/workers>.

¹⁰⁸ Patel and Fisk (2017), at 15.

¹⁰⁹ *Id.*

¹¹⁰ Fine (2017), at 377.

[of] building relationships through home visits and one-on-one meetings,” CPA convinced 90 workers to file claims with OLSE.¹¹¹ And they collaborated closely with OLSE to connect with these workers to develop a rich factual record to support the workers’ claims.¹¹² The result was a historic settlement for workers negotiated by OLSE that not only included historic financial penalties, but also permanent changes to company policies that raised wages and improved benefits for the nearly 300 workers employed by the restaurant at the time of settlement.¹¹³ Without the formal, collaborative relationship between CPA and OSLE, these workers may never have known about their rights or had a way to pursue them.

Due in part to the groundbreaking co-enforcement approach that this example highlights, OLSE has some of the most impressive enforcement statistics in the nation. Just in fiscal year 2020, the OLSE completed nearly 300 cases and collected \$14.7 million in restitution, fees and penalties for employment law violations, 94 percent of which went to workers.¹¹⁴ Driving this enforcement success was, at least in part, outreach and education. Community-based organizations under contract with OLSE reached nearly 5,000 employees through outreach activities and conducted individual consultations with nearly 1,000 workers about their employment rights.¹¹⁵

2. Seattle

Modeled after San Francisco’s approach, Seattle’s strategic, co-enforcement scheme has also become a national model for labor standards enforcement in it’s own right. At the recommendation of an advisory group on wage theft convened by Seattle’s City Council and

¹¹¹ *Id.*

¹¹² Patel and Fisk (2017), at 15.

¹¹³ *Id.* at 16.

¹¹⁴ San Francisco Office of Labor Standards Enforcement, FY 2019-2020 Annual Report, at 1.

¹¹⁵ *Id.* at 5.

Mayor, the City Council created the Seattle Office of Labor Standards (OLS) in 2015 to enforce Seattle’s labor standards ordinances.¹¹⁶ Since its inception, OLS has fielded inquiries from over 6,700 workers and conducted over 1,000 investigations, nearly 90 percent of which have been completed.¹¹⁷ The Office has assessed over \$22.7 million in total, 95 percent of which is directed to affected workers.¹¹⁸ In total, over 38,000 individual workers have benefited from OLS investigations.¹¹⁹

Since the beginning, OLS has used a co-enforcement approach focused on reaching vulnerable workers and identifying high-violation industries, which has been crucial to its success.¹²⁰ This approach stems from the ordinance establishing OLS’s authority, which explicitly tasked the Office with thoughtfully engaging with the community and businesses to advance labor standards.¹²¹ It directs OLS to do so through outreach, education, and training and through collaborative partnerships with community, businesses, and workers. And it also mandates that OLS commit to racial and social justice in this work, directing the Office to “end barriers to workplace equity for women, communities of color, immigrants and refugees, and other vulnerable workers.”¹²²

¹¹⁶ Fine and Bartley (2019), at 258.

¹¹⁷ Seattle Office of Labor Standards, Worker Inquiries Dashboard (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards/worker-inquiries-dashboard>; Seattle Office of Labor Standards, Resolved Investigations Dashboard (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards/resolved-investigations-dashboards>.

¹¹⁸ Seattle Office of Labor Standards, Financial Remedies Dashboard (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards/financial-remedies-dashboards>.

¹¹⁹ *Id.*

¹²⁰ Fine and Bartley (2019), at 263.

¹²¹ SMC 3.15.000(A) & (C).

¹²² SMC 3.15.000.

In addition to these mandates, a core component of this co-enforcement scheme is a dedicated community outreach and education fund.¹²³ The City Council dedicated a funding stream specifically for OLS to engage in outreach to workers.¹²⁴ Using this funding, OLS created the Community Outreach and Education Fund (COEF) to administer grants to community organizations with deep connections to diverse communities of workers in Seattle.¹²⁵ OLS contracts with these organizations to reach workers, educate them about their rights at work, and assist workers in reporting violations to OLS.¹²⁶ OLS relies on these community partners to provide culturally-competent, accessible, and language-specific information and legal services to vulnerable populations of workers with whom OLS may not have otherwise connected.¹²⁷ In developing relationships with workers, the partners also inform OLS of common violations, problematic employers and industries, and barriers that workers face in enforcing their rights.¹²⁸

OLS has found that flexibility and trust are key elements of the COEF. Accordingly, OLS offers large grants and multi-year contracts to partners without onerous reporting requirements on highly-specific outreach metrics. For example, in 2020, OLS offered two-year grants to fifteen community-based organizations to provide outreach, education and support to low-wage workers.¹²⁹ Although partners still have specific scopes of work, a flexible approach has allowed partners the leeway to pursue their own outreach and education strategies.¹³⁰ As one OLS

¹²³ Fine and Bartley (2019), at 259.

¹²⁴ *Id.* at 263.

¹²⁵ *Id.* at 263. See generally Seattle Office of Labor Standards, Community Outreach and Education Fund (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/funding/community-outreach-and-education-fund>.

¹²⁶ Fine and Bartley (2019), at 259.

¹²⁷ See generally Seattle Office of Labor Standards, COEF Current Recipients (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/funding/community-outreach-and-education-fund/coef-current-recipients>.

¹²⁸ Fine and Bartley (2019), at 259.

¹²⁹ Seattle Office of Labor Standards, COEF Current Recipients (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/funding/community-outreach-and-education-fund/coef-current-recipients>.

¹³⁰ Fine and Bartley (2019), at 264.

representative reflected, “[partners] have the best strategy and understanding of what the barriers workers in that culture and industry are going to face. They know how to organize, how hard to push, where to look, how long it takes for workers to feel comfortable. We need to really value that and resource it.”¹³¹ OLS has recognized that trusting community partners’ expertise and providing flexible contracts has led to “stronger relationships and better outcomes.”¹³²

In addition to the COEF, OLS administers the Business Outreach and Education Fund (BOEF) to educate small businesses about their responsibilities under the wage protection laws.¹³³ OLS provides grants and contracts with business-serving organizations for two-year periods.¹³⁴ These organizations are tasked with conducting outreach and education to “small businesses owned by low-income and historically disenfranchised communities, who typically are not served by traditional outreach methods.”¹³⁵ This approach helps these businesses understand and comply with Seattle’s labor standards.

As a complement to the BOEF and COEF, OLS also provides training, presentations, and technical assistance to employers, workers, and organizations about OLS and Seattle’s labor standards.¹³⁶ Since 2014, OLS has provided over 8,000 trainings, presentations, and technical assistance services, promoting public awareness of and compliance with Seattle’s labor standards.¹³⁷

¹³¹ Fine and Bartley (2019), at 264.

¹³² *Id.*

¹³³ *Id.* at 265.

¹³⁴ Seattle Office of Labor Standards, BOEF Current Recipients (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/funding/business-outreach-and-education-fund/boef-current-recipients>.

¹³⁵ *Id.*

¹³⁶ Seattle Office of Labor Standards, Technical Assistance Dashboard (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards/technical-assistance-dashboard>.

¹³⁷ *Id.*

Beyond its outreach efforts, OLS has also made efforts to make its services and systems accessible to vulnerable workers. For example, OLS has a hotline and an easy-to-navigate web form for workers to submit inquiries and, pre-pandemic, staff answered questions in-person at their office. The intake staff is knowledgeable about the city's labor standards and trained to be sensitive to the needs of vulnerable workers.¹³⁸ And in order to make their services language-accessible, OLS makes its online materials available in 23 languages and offers translation services for intakes.

Due in part to the extensive outreach efforts and the great need for services in the community, OLS receives a very large number of complaints.¹³⁹ Crucially, although OLS has the statutory authority to investigate each complaint, it is not required to do so.¹⁴⁰ Instead, OLS uses a triage system and can prioritize cases based on predetermined factors.¹⁴¹ These include income level, vulnerability of the impacted workforce, the severity of the violations, the number of workers impacted, the potential for broader industry effects, and the potential for involvement and support from community partners.¹⁴²

When OLS does investigate a complaint, it typically conducts a company-wide investigation in recognition of the fact that wage theft violations usually are not unique to one worker in a workplace. In addition, OLS has increasingly used its statutory authority to initiate directed investigations into employers in high-violation, low-complaint industries.¹⁴³ Further, OLS

¹³⁸ Fine and Bartley (2019), at 261.

¹³⁹ *Id.*

¹⁴⁰ SMC 14.20.040 (“The agency *shall* have the power to investigate violations...”) (emphasis added). In contrast, Washington State requires L&I to investigate each complaint it receives. RCW 49.48.083(1) (“if an employee files a wage complaint with the department, the department *shall* investigate the wage complaint.”) (emphasis added).

¹⁴¹ Fine and Bartley (2019), at 261.

¹⁴² Seattle Office of Labor Standards, Investigation Process (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/investigations/investigation-process>.

¹⁴³ Seattle Office of Labor Standards, Directed Investigations Dashboard (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards/directed-investigations-dashboard&sa=D&source=docs&ust=1635963678112000&usg=AOvVaw2Zrc8wIVaa2YbyuiPaGwnd>.

also has the authority and discretion to impose substantial penalties and fines on violators to deter future violations, and it makes an effort to publicize these resolutions in social media and press releases.¹⁴⁴ The penalties and publicity raise the costs of wage theft and retaliation substantially and help deter violations by other employers.

¹⁴⁴ See *generally* SMC 14.20.060; Seattle Office of Labor Standards, Newsroom (last visited Nov. 30, 2021), available at <https://www.seattle.gov/laborstandards/resources-and-language-access/resources/newsroom>.

III. King County Workers Are Similarly Impacted By Wage Theft.

National trends are reflected at the local level in King County. For example, estimates derived from the Community Population Survey (CPS), a nationally-representative survey by the U.S. Census Bureau, indicate that wage theft is at least as pervasive and severe in King County as it is nationally, particularly among and for low-wage workers.¹⁴⁵ Between 2009 and 2019, approximately 30 percent of low-wage workers in King County experienced minimum wage violations.¹⁴⁶ On average, these workers would have lost about \$1.54 per hour to wage theft or approximately 17 percent of the statutory minimum wage to which they were entitled.¹⁴⁷ While these estimates certainly show that a significant proportion of low-wage workers in King County experience wage theft, it is important to note that these are conservative estimates that do not account for forms of wage theft beyond minimum wage violations.¹⁴⁸ So, these estimates almost certainly understate the pervasiveness and severity of wage theft in King County.

King County is also similar to the nation as a whole in that people of color, immigrants, and women in King County disproportionately experience wage theft. As shown in Figure 1, based on the same CPS estimates, Hispanic and Black workers suffer minimum wage violations at double or more of the rate of their white counterparts.¹⁴⁹ And noncitizens experience minimum wage violations at twice the rate of citizens.¹⁵⁰ Women were also significantly (20 percent) more likely than men to experience minimum wage violations.¹⁵¹ The intersection of race, ethnicity,

¹⁴⁵ Daniel Galvin, Associate Professor at Northwestern University, prepared estimates of minimum wage violations among low-wage workers in King County between 2009-2019 based on CPS data (hereafter, “Galvin, CPS Estimates (2021)”). A memorandum with Dr. Galvin’s findings and methodology is on file with the Fair Work Center.

¹⁴⁶ Galvin, CPS Estimates (2021).

¹⁴⁷ *Id.*

¹⁴⁸ Dr. Galvin’s estimates are also conservative because of his methodology: his calculation of minimum wage violation rates systematically overestimates hourly wages because the variable for hourly wages includes overtime, tips, and commissions for both hourly and non-hourly workers.

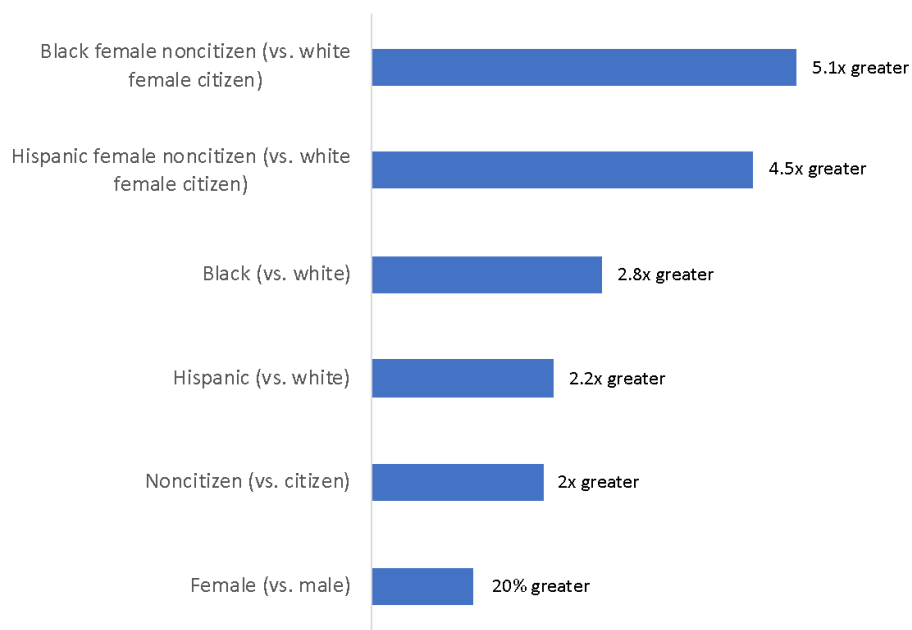
¹⁴⁹ Galvin, CPS Estimates (2021).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

citizenship, and gender only compound these disparities. For example, noncitizen Hispanic women were approximately 4.5 times more likely to experience a minimum wage violation than white female citizens.¹⁵² And women who are Black noncitizens were more than 5 times more likely to experience a minimum wage violation than their white counterparts with citizenship.¹⁵³

Figure 1. Probability Of A Minimum Wage Violation (Relative To Reference Group) By Demographic Group In King County (Including Seattle), 2009-2019.



Also similar to national estimates, wage theft in King County is concentrated in particular low-wage industries, many of which are in the service sector. Of the ten industries with the highest estimated rates of minimum wage violations in King County, most are in the service sector. These include the four highest violation industries: private households, food services and drinking places, accommodation, and personal and laundry services.¹⁵⁴ Social assistance and administrative and support services are also in the top ten.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Galvin, CPS Estimates (2021).

Due to data limitations, information about wage theft in specific cities and towns, or in unincorporated areas in King County is not available. However, local business demographics do offer some clues about the industries that could be affected. For example, Figure 2 shows the estimated proportion of employers and employees by industry in King County outside of Seattle.

¹⁵⁵ In this area, approximately 790,000 workers work for over 72,000 employers.¹⁵⁶ And many are concentrated in traditionally low-wage industries: health care and social assistance, manufacturing, retail trade, accomodation and food services, construction, wholesale trade, and transportation and warehousing.

Figure 2. Estimates of the Largest Proportions Of Employers And Employees In King County Outside Of Seattle By Industry.

Employers		Employees	
Health Care and Social Assistance**	16%	Information	10%
Other Services (except Public Administration)	14%	Health Care and Social Assistance**	10%
Utilities	12%	Manufacturing**	10%
Professional, Scientific, and Technical Services	11%	Retail Trade**	9%
Transportation and Warehousing**	6%	Accommodation and Food Services**	8%
Retail Trade**	6%	Professional, Scientific, and Technical Services	7%

¹⁵⁵ These proportions were calculated using data from the Puget Sound Regional Council 2019 Covered Employment Estimates (hereinafter “PSRC 2019 Estimates”). Data and calculations are on file with the Fair Work Center. See *also* Puget Sound Regional Council, Covered Employment Estimates (last visited Nov. 30, 2021), available at <https://www.psrc.org/covered-employment-estimates>. These estimates are derived from the Quarterly Census of Employment and Wages (QCEW), which are administrative records that employers are required to report to the Washington State Employment Security Department. According to PSRC, “Covered employment refers to positions covered by the Washington Unemployment Insurance Act. The Act exempts the self-employed, proprietors and corporate officers, military personnel, and railroad workers, so those categories are not included in the dataset. Covered Employment accounts for approximately 85-90% of all employment.”

¹⁵⁶ PSRC 2019 Estimates.

Wholesale Trade**	6%	Construction**	6%
Accommodation and Food Services**	5%	Government	6%
Administrative and Support and Waste Management and Remediation Services**	4%	Wholesale Trade**	5%
Information	4%	Education	5%
Finance and Insurance	4%	Transportation and Warehousing**	5%
All Other Industries	13%	All Other Industries	17%
Total	72,108		791,088

**** Denotes a traditionally low-wage industry.**

Zooming in further, Figure 3 shows the estimated proportion of employers and employees in unincorporated King County by industry.¹⁵⁷ In unincorporated areas, nearly 40,000 employees work for nearly 8,000 employers.¹⁵⁸ Of these, many are similarly concentrated in traditionally low-wage industries such as construction, health care and social assistance, administrative and support services, retail trade, manufacturing, and accommodation and food services.

Figure 3. Estimates of the Largest Proportions Of Employers And Employees In Unincorporated King County By Industry.

Employers		Employees	
Utilities	19%	Construction**	16%
Health Care and Social Assistance**	14%	Education	15%
Other Services (except Public	13%	Government	10%

¹⁵⁷ *Id.*

¹⁵⁸ *id.*

Administration)			
Professional, Scientific, and Technical Services	8%	Health Care and Social Assistance**	8%
Agriculture, Forestry, Fishing and Hunting**	7%	Administrative and Support and Waste Management and Remediation Services**	7%
Wholesale Trade**	6%	Professional, Scientific, and Technical Services	6%
Administrative and Support and Waste Management and Remediation Services**	6%	Retail Trade**	6%
Transportation and Warehousing**	4%	Manufacturing**	6%
Retail Trade**	4%	Accommodation and Food Services**	5%
Finance and Insurance	3%	Wholesale Trade**	4%
All Other Industries	16%	All Other Industries	16%
Total	7,964		39,432

**** Denotes a traditionally low-wage industry.**

These statistics offer a preview of the types of industries that could be affected by wage theft in King County (outside of Seattle) in general and in unincorporated King County in particular. But specific information about the differences in the frequency of wage theft on a sub-county level is unavailable. As discussed below, this is an area that needs to be more fully investigated, especially as to the type of violations that recur, the industries involved, and the communities most affected.

IV. King County Should Address Wage Theft By Partnering With Community Organizations And By Creating A New Enforcement Division.

We recommend a multi-year, phased approach to combating wage theft in King County. Although the data suggest that wage theft is pervasive throughout King County, as discussed in Section III, they are insufficiently detailed to describe the types of violations that recur, the industries involved, and the communities affected, particularly in unincorporated King County. Without this more detailed information, enforcement resources may be misdirected.

Thus, initially, the County should partner with community organizations to gather information about the nature and extent of wage theft issues, in order to guide the scope and methods of future enforcement efforts. To do so, the County should provide two-year funding to community partners for outreach, education, and data collection with a particular focus on reaching vulnerable populations of workers. This will help the County better understand the nature of wage theft in areas of the County outside of Seattle and simultaneously develop co-enforcement capacity in communities throughout the County. After two years, using collected data and input from the community, the County will be in a position to assess whether and how to pursue a second step: creating enforcement capacity at the County level.

If the data and community input support the need for additional enforcement capacity, we recommend that the County pass an enabling ordinance that would (a) establish an enforcement division within an existing County department and (b) provide legal authority to that division to strategically enforce existing Washington State wage and hour laws in unincorporated King County and to authorize such enforcement in incorporated cities and towns via inter-local agreements.¹⁵⁹

¹⁵⁹ The recommended ordinance does not impose new wage protections. Rather, it would permit the County to enforce existing state wage protections (e.g., minimum wage; overtime; paid sick and safe time;

A. Phase 1: King County Should Provide Two-Year Contracts To Community Partners For Outreach, Education, and Data Collection Focused On Reaching Vulnerable Workers.

First, the County should direct funding to community organizations for outreach and education to workers in King County outside of Seattle. As with Seattle's successful COEF program, the County should provide its community partners with funding for two years.¹⁶⁰ The County should contract with these partners to use this funding to reach workers, provide education about their existing wage and hour rights under Washington law, and assist workers with reporting violations to L&I. Consistent with Seattle's model, these contracts should specify the scope of work for community partners but allow them to pursue their own outreach and education strategies without onerous reporting requirements.

The funded community partners should focus on reaching vulnerable groups of workers and informing them about their rights. As discussed above, vulnerable groups include low-wage, immigrant, BIPOC, women, and LGBTQ workers. In order to reach these groups, it is crucial that the County select community partners that reflect the full diversity of vulnerable workers and have deep connections with these communities. By selecting organizations based on these criteria, the County will ensure that selected partners are able to provide culturally-competent, accessible, and language-specific outreach and education services to these vulnerable populations of workers.

The County should also consider funding for services that help businesses comply with the law. Businesses owned by low-income or historically-disenfranchised communities often lack

and meal and rest breaks) for workers in unincorporated areas and create enforcement capacity for the benefit of workers employed in incorporated cities and towns that have executed the requisite inter-local agreements. Seattle workers currently receive this type of enforcement assistance via Seattle's Wage Theft Ordinance, SMC 14.20, and the Seattle Office of Labor Standards.

¹⁶⁰ Each organization must be funded at a sufficient level to reach the vulnerable worker populations and carry out its other required duties. However, the authors of this study do not have enough information to recommend specific dollar amounts for each such contract or grant. Accordingly, we leave this determination to further discussion among policymakers and stakeholders.

the expertise to ensure compliance with existing worker protections. At the very least, the County should provide education and assistance to these businesses in form of informational materials, presentations, and staff capacity to field inquiries. In addition, the Office should explore providing funding for legal aid or payroll services that can provide technical assistance to help these businesses comply with their legal obligations.

During the initial two-year period, the County should also collect data and information from community partners and other sources to better understand the nature of wage theft in King County outside of Seattle. In particular, the County should focus on collecting data about the types of violations that recur, the industries and employers involved, and the communities of workers that are most affected. Because community partners will be selected for their ability to connect with these affected communities, they will be best positioned to collect this data through their outreach and education work. Then, at the end of the two-year grant period, the County should analyze the data to identify common violations, high-violation industries, and communities that are most affected. Then, based on their findings, the County should determine whether to develop additional enforcement capacity at the county level to meet identified needs (i.e., Phase 2).

B. Phase 2: King County Should Create An Enforcement Division Within An Existing County Department To Strategically Enforce State And Local Wage Protections.

Assuming the work conducted during the first phase described above supports the need for additional enforcement capacity at the County level (as we expect it will), we describe below how the County can create administrative capacity that will be effective in combating wage theft. This new administrative capacity will be most effective if the County continues to collaborate with community partners, which is why we recommend that the County continue to fund and

contract with community partners on two-year cycles to provide outreach and education in Phase 2.

1. Enhanced Enforcement Capacity Would Benefit Low-Wage and Vulnerable Workers In King County.

All workers in King County are currently covered by a robust collection of state laws that are enforced by L&I. And we expect some incorporated cities and towns will follow Seattle's example in passing new wage protection laws. There is no doubt that workers in King County outside of Seattle would benefit from additional enforcement of these existing and new labor standards.

Washington State has “a long and proud history as a pioneer in the protection of employee rights.”¹⁶¹ Current state laws contain many important wage protections, but due to a lack of resources, they are not adequately enforced. For example, the Washington Minimum Wage and Labor Standards Act requires minimum wage, overtime pay, service-charge disclosures, paid sick and safe time, and recordkeeping.¹⁶² The Washington Industrial Welfare Act and related regulations require rest breaks and meal periods, and other health and safety protections.¹⁶³ State laws and regulations further mandate payment of wages at regular intervals, prohibit certain deductions from paychecks, and establish a right to double damages for willful violations of wages.¹⁶⁴

A County enforcement agency would be able to immediately help protect King County workers in unincorporated areas against wage theft under existing state laws and regulations. Such assistance could also be extended to the workers in incorporated areas via appropriate

¹⁶¹ *Drinkwitz v. Allied Techsystems, Inc.*, 996 P.2d 582, 586 (2000) (en banc).

¹⁶² See generally RCW 49.46.

¹⁶³ See generally RCW 49.12.

¹⁶⁴ See generally RCW 49.48, RCW 49.52, and RCW 39.12 and related regulations.

enabling ordinances or inter-local agreements.¹⁶⁵ Specifically, incorporated cities and towns (outside of Seattle) will likely be interested in obtaining County assistance to enforce additional local protections that are enacted in the future. The creation of a County enforcement resource may also encourage localities to adopt local protections that they would not otherwise have the administrative capacity to enforce.

The Burien Hazard Pay Ordinance, passed in 2021, is a good example of how a local wage protection ordinance could have been enhanced through County enforcement. The Hazard Pay Ordinance requires an additional \$5.00 per hour for all workers of large grocery stores located in the city.¹⁶⁶ Under Section 4 of the Hazard Pay Ordinance, workers may enforce their right to additional pay through an existing contract or collective bargaining agreement, or if none exists, by a private right of action. There is no provision for agency enforcement, presumably because as a small city, Burien does not have the necessary administrative capacity. This type of gap in wage enforcement could have been filled by a King County wage enforcement agency.

2. The County Should Enact Legislation That Creates A Wage Enforcement Division And Gives That Division Appropriate Authority.

The County Council should pass an ordinance that creates a new division within an existing County department for the purpose of enforcing labor standards. The Office of Equity and Social Justice is one possibility, but the Council should ultimately determine the appropriate home for this new division. By creating this division within an existing institution, the institution can serve as an incubator for growing county-level enforcement capacity, at least initially.¹⁶⁷ And

¹⁶⁵ The County would need to obtain legal advice on the most appropriate methods for extending such assistance to workers in incorporated areas of King County.

¹⁶⁶ Burien Resolution No. 757, enacted February 8, 2021, entitled “An Ordinance of the City Council of the City of Burien Protecting The Health, Safety, and Prosperity of Grocery Workers and the General Public During the Existing State of Emergency.”

¹⁶⁷ This does not preclude the County from converting this new division to an independent office in the future. In fact, it can lay the groundwork for doing so. For example, Seattle’s Office of Labor Standards

the efficiencies of placing this new division within an existing enforcement body will also lower startup costs.

The enabling ordinance should also grant this division the authority to investigate potential violations of existing Washington State wage and hour laws and local wage protection laws upon request from cities and towns. To do so, the ordinance should include language similar to Seattle's Wage Theft law that permits OLS to investigate and enforce such state requirements.¹⁶⁸ That is, the language should require employers to pay compensation owed to employees under State law as modeled in this example:

An employer shall pay all compensation owed to an employee by reason of employment.

"Compensation" means payment owed to an employee by reason of employment including, but not limited to, salaries, wages, tips, overtime, commissions, piece rate, bonuses, rest breaks, and promised or legislatively required paid leave.

The ordinance must also include language granting the new division authority to settle complaints and issue civil citations. Further, employers adversely affected by a civil citations must be granted the right to appeal such determination to the County's Board of Appeals.¹⁶⁹

The proposed ordinance should also grant the division powers to engage in strategic enforcement consistent with the best practices discussed in Section II.A. The following are proposed model language for each of those strategic enforcement powers:

(1) Power to investigate and enforce the law:

The Division has broad authority to take appropriate steps to enforce this Chapter. The Division shall have the power to investigate any possible violations of this Chapter by any employer or other person, and shall have such powers and duties in the performance of these functions as are defined in this Chapter and otherwise necessary and proper in the performance of the same and provided for by law.

started as a division within the Seattle Office of Civil Rights before it became an independent enforcement agency.

¹⁶⁸ SMC 14.20.

¹⁶⁹ See *generally* King County Code § 2.34.

(2) Discretion To Prioritize And Triage Complaints;

The Division has sole discretion to decide whether to investigate a complaint or otherwise pursue a possible violation of this Chapter.

(3) Authority To Conduct Company-Wide Investigations;

The Division may initiate investigations, including individual and company-wide investigations, to determine the extent to which any potential employer or other person is complying with this Chapter.

(4) Power To Initiate Directed Investigations;

The Division, at its discretion, may initiate an investigation of any employer including, but not limited to, situations when the Division has reason to believe that a violation has occurred or will occur, or when circumstances show that violations are likely to occur within a class of businesses because the workforce contains significant numbers of workers who are vulnerable to violations of this Chapter or the workforce is unlikely to volunteer information regarding such violations. An investigation may also be initiated through the receipt by the Division of a report or complaint filed by an employee or any other person.

(5) Authority To Assess Significant Penalties For All Impacted Workers.

Where the Division determines that a violation occurred, it shall order full payment of unpaid compensation and interest and may seek equitable relief.

For a first violation of this Chapter, the Division shall assess a liquidated damages penalty payable to aggrieved parties in an additional amount in accordance with the following scale of penalties:

- a) For employers with fewer than 26 employees: 25 percent of unpaid compensation;
- b) For employers with 26 to 75 employees: 75 percent of unpaid compensation;
- c) For employers with 76 to 200 employees: 125 percent of unpaid compensation;
- d) For employers with more than 200 employees: 175 percent of unpaid compensation.

For a subsequent violation of this Chapter, the Division shall assess a liquidated damages penalty payable to aggrieved parties in an additional amount of twice the unpaid compensation.

In settlement, the Division has discretion to impose, reduce, or forgo a liquidated damages penalty.

The enabling ordinance should also permit the division to enter into work-sharing agreements with incorporated cities and towns to enforce new worker protection laws that they may adopt.¹⁷⁰ The ability to enter into these agreements will allow the Division to serve as an enforcement resource for incorporated cities and towns throughout the County that would not otherwise have sufficient funds to operate such an agency.

Authority To Enter Into Work-Sharing Agreements:

The Division may, in the exercise of its authority and performance of its functions and services, agree by contract or otherwise to participate jointly or in cooperation with any one or more cities, towns, or other incorporated places in King County to enforce the laws of that city, town, or other incorporated place that concern compensation owed to an employee by reason of employment.

3. The County Should Provide The New Wage Enforcement Division With Adequate Staffing.

We recommend that the County provide the new labor standards enforcement division with sufficient additional staff for enforcement, communications, and outreach. This proposal assumes that current staff can help in areas of overlap, such as finance and administration. If this assumption is incorrect, additional funding will be required to create the needed positions.

To carry out the functions described in this paper, the County should fund, at the least, 5-6 FTEs in the following positions. As the work expands, it may be expected that additional positions will be needed.

¹⁷⁰ For example, as discussed above, Burien recently adopted an ordinance providing hazard pay to grocery workers, which does not have a provision for agency enforcement. Burien Resolution No. 757. By allowing the new division to enter work sharing agreements with cities and towns like Burien, the Division could serve as an enforcement resource for these localities.

- a. Division Chief (1 FTE): provide internal and external leadership and direction;
- b. Enforcement Investigators (2 FTEs): investigate worker complaints and, where allegations of wage theft are well founded, bring enforcement actions and resolve as required. One of these investigators should be designated as “Enforcement Supervisor.”
- c. Communications Specialist (1 FTE): generate informational and educational materials to educate workers and businesses about worker protections and the role of the agency; and to report on enforcement and other successes; and, generally, help generate a culture of compliance; and
- d. Outreach / Contract Oversight Coordinator (1 FTE): to liase with community organizations and businesses; and to oversee contracts with community organizations.