

Santa Clara County

Wage Theft Report



Shannon Gleeson, PhD • Ruth Silver Taube • Charlotte Noss



Santa Clara County Wage Theft Coalition

The Santa Clara County Wage Theft Coalition, formed in 2013, is composed of community-based and nonprofit organizations, including:

• **Asian Americans for Community Involvement:**

AACI's mission is to improve the health, mental health, and well being of individuals and their families. We do this by (1) providing an array of high quality health and human services; (2) sharing expertise about the Asian community's needs and best service delivery practices; and (3) providing Asian leadership in advocating on key health and human services issues.

• **California Immigrant Policy Center:**

CIPC is an organization that advances inclusive policies that build a prosperous future for all Californians using policy analysis, advocacy and capacity building to unlock the power of immigrants in California.

• **International Children Assistance Network:**

ICAN is a nonprofit organization with programs that focus on child development and the importance of the first 5 years. Our mission is to help children reach their potential and become compassionate leaders of tomorrow. Our programs aim to create strong family and community networks to support children as well as provide them with skills, confidence and opportunities to succeed in life.

• **Katharine & George Alexander Community Law Center:**

The Law Center provides pro bono legal representation to low income individuals in the area of workers' rights, educates law students, increases community awareness about workers' rights, and effects social change by working with legislators and law reform committees to effectuate changes in the law to improve the rights of low-income individuals.

• **Movimiento de Acción, Inspirando Servicio:**

MAIZ is an organization dedicated to creating a movement for social change that achieves the healthy well being of Mexicans and other marginalized communities in the United States and in Mexico and to develop leaders and use cultural advocacy in order to increase political participation in the San Jose Mexican community specifically among Women, Youth, and LGBTQI.

• **Mountain View Day Laborer Center:**

The Day Laborer Center connects workers and employers in a safe and supportive environment. We empower workers to improve their socio-economic condition through fair employment, education, and job skills training. We participate in advocacy efforts that support the day laborer community.

• **Pilipino Association of Workers and Im/migrants:**

PAWIS is a grassroots organization supporting the rights and welfare of Filipino (and all) workers and immigrants in Santa Clara County. PAWIS not only provides services to distressed migrant workers, but also organizes them to take action against root causes of their abuse and exploitation.

• **Restaurant Opportunities Center of the Bay:**

ROC the Bay is a local worker center dedicated to improve wages and working conditions for low-wage restaurant workers. We build power and voice for workers through workplace justice campaigns, promoting the high road to profitability, and original research and local policy work. We are part of ROC United, a national organization with over 13,000 restaurant workers, 100 high-road employers, and thousands of engaged consumers united for raising restaurant industry standards.

• **Services, Immigrant Rights, & Education Network:**

SIREN is an organization dedicated to empowering low-income immigrants and refugees in Santa Clara County through community education and organizing, leadership development, policy advocacy and naturalization services. We believe that all people regardless of legal status or nationality are entitled to essential services, human dignity, basic rights and protections, and access to full participation in society.

• **Vietnamese American Workers’ Rights Project:**

This is a project of the Legal Aid Society–Employment Law Center that is dedicated to educating, assisting, and representing Vietnamese American workers with work related legal problems. The Legal Aid Society - Employment Law Center is a nonprofit, legal services organization assisting California’s low-income working families and addressing issues that affect their ability to achieve self-sufficiency.

• **Working Partnerships USA:** Working Partnerships is a community-labor organization dedicated to addressing the root causes of inequality for workers and communities of color in today’s economy. We use research and policy campaigns, civic engagement and leadership development, and community-labor organizing strategies to build the capacity of workers and their communities to lead and govern.

• **Workplace Justice Initiative:** Workplace Justice Initiative works to advance the rights of low-wage and immigrant workers who are denied justice in their workplace, expanding upon successful models utilizing the law to organize workers.

• **WorkSafe:** Worksafe is a California-based organization dedicated to eliminating workplace hazards. We advocate for protective worker health and safety laws and effective remedies for injured workers. We watchdog government agencies to ensure they enforce these laws. We engage in campaigns in coalition with unions, workers, community, environmental and legal organizations, and scientists to eliminate hazards and toxic chemicals from the workplace.

The Coalition is also supported by governmental and private entities, including:

• The Santa Clara County Office of Women’s Policy has provided valuable support and assistance to the Coalition. The OWP is a leading voice in Silicon Valley on the needs of women and girls, serving as a catalyst for awareness and action on current and emerging issues that impact women’s health, safety and security. Through analysis, research and strategic collaboration, OWP works to ensure that programs

and services, and also systems and policy support women’s leadership, full equality and advancement in the home, at work and in the community.

• Justice at Work Law Group is a private law firm, primarily representing workers in wage theft cases in Federal and California Courts and administrative bodies. They seek to work proactively with small businesses to prevent wage and hour disputes from occurring and helps to resolve these disputes with employees and their representatives when mistakes have been made.

The Coalition came together to address wage theft in Santa Clara County. One of the Coalition’s main goals is to create an environment where workers earn their fair wages and responsible businesses do not face unfair competition.

The Coalition works to strengthen member organizations that support workers, to lift up worker stories, and to increase the visibility of these organizations in our community. The Coalition is building a sustainable workers’ rights movement by protecting those workers who speak out and raising awareness around risks that workers take when they come forward.

The Coalition members represent diverse ethnic communities, which are all impacted by wage theft. Coalition members focus on myriad issues and highlight the intersectionality between wage theft and other violations of workers and human rights such as health and safety violations, human trafficking, mental health, and child development.

**More information about the
Santa Clara County Wage Theft Coalition:
www.wagetheftcoalition.com**

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Executive Summary

Wage theft is the crime of stealing earned wages from workers. It occurs when a worker is paid less than minimum wage, is not paid overtime, is paid only in tips, or works off the clock. Wage theft is a national epidemic – affecting workers in industries that span the economy. According to a national study, the average low-wage worker loses 15% of her wages to wage theft each year.

Despite the economic success of Silicon Valley, wage theft is rampant in Santa Clara County. The San Jose office of the California Labor Commissioner handles approximately 300 enforcement claims from workers in the County each month. From 2012-2013, the almost 2,000 workers who filed claims with this office were awarded \$8.4 million in owed wages. This is an average of almost \$5,000 per worker – which amounts to approximately a quarter of the income they earn in a year.

Wage theft hurts workers, their families, their communities, and responsible businesses. It reduces the take-home pay for low-wage workers who already struggle to make ends meet, leading to food insecurity and unstable housing situations. Wage theft is a menace to public health as underpaid workers must forgo medical treatment or must work while sick to compensate. It robs local governments of taxes and can lead workers to turn to County assistance for support.

Current enforcement efforts are proving insufficient to confront this epidemic. Workers face challenges when they come forward to complain about unlawful working conditions. Nationally, almost half of workers surveyed experienced some form of illegal retaliation when they complained about unlawful working conditions. Although federal and state law provides protections for all workers regardless of their immigration status, undocumented workers remain especially vulnerable.

Additionally, workers are often unable to collect their owed wages. Of the \$8.4 million awarded to workers by the Labor Commission offices in San Jose and Salinas, workers could collect only \$2.8 million (33% of the total awarded). Even when workers obtain legal counsel, they still struggle to collect.

Due to this enforcement gap, local governments are increasingly playing an important role in protecting worker rights. For example, San Francisco, Chicago, Houston, and Miami-Dade have enacted local ordinances to combat wage theft. These ordinances make offenders ineligible to receive occupational permits and licenses. They create lists of companies with a documented record of wage theft, making them ineligible for government contracts.

Santa Clara County has a unique and important role to play in addressing wage theft. County leaders have the power to enact laws that combat wage theft, including ordinances that provide for the suspension of permits and the enactment of wage liens. The Santa Clara County Department of Environmental Health has existing Health Code authority to suspend the permits of wage theft violators until they come into compliance. The District Attorney has the power to prosecute egregious wage theft cases. The County Recorder can also record a wage lien for victims of wage theft, as it does with Mechanic's Liens.

Workers often turn to community organizations for assistance when they experience wage theft. Services at these organizations are crucial to support low-wage workers in filing complaints about working conditions. Advocates at these organizations also provide essential support for overburdened state and federal agencies. The County should provide support for the outreach, education, and assistance that these community based organizations and legal service organizations provide.

Finally, the Santa Clara County Wage Theft Coalition calls for the County to convene a working group of all County departments with constituent organizations and other enforcement agencies to address the issue of wage theft in the County. The working group should meet quarterly to coordinate efforts to address wage theft, educate workers and businesses, and strategize how to obtain compliance from the County's worst offenders. Together we can effectively address the crime of wage theft that affects us all.

Wage Theft is a Crime

Wage theft is the unlawful and illegal practice of stealing wages from workers. Federal, state and local laws set requirements regarding minimum working conditions. An employer who fails to comply with all of these legal mandates is engaging in wage theft.

Most often, an employer steals wages from workers by paying workers less than minimum wage, failing to pay overtime, or forcing workers to work off-the-clock. In California, the minimum wage is \$8.00 per hour; in San Jose, it is \$10.15 per hour.¹ Most employees are entitled to earn overtime premium wages, or time-and-a-half their regular hourly rate, after they work eight hours in a day or 40 hours in a week.² Time that workers spend preparing for work or cleaning up after their shift ends should be paid.³

Nelson has worked as a caregiver for 8 years, most of that time at a group care home as a live-in caregiver. He worked with individuals who have mental and severe physical disabilities, most with limited mobility that made the everyday activities of daily life difficult. This work is very stressful and time-consuming, especially if the patients have a hard time expressing what they need and when they are sick. The caregivers are around them all the time; they attend to everything the clients need: feeding them, showering them, cleaning and changing their diapers, assisting them in taking their medications, and more. Even in the middle of the night, when they wake up continually, caregivers also have to wake up and attend to them. Nelson says: “I love what I do. I like taking care of people. But as a caregiver, the owners are oppressing many of us. We are overworked and underpaid. I worked almost 24 hours around the clock, yet I was only paid for 8 hours a day. Although I was paid minimum wage for those eight hours, I was never given overtime.” When Nelson filed a case with the Labor Commission, they determined that he was owed over \$62,000 in back wages. He is still awaiting a final ruling and the collection of any funds.

Sometimes, employers issue paychecks late, or without funds.⁴

Maria expresses frustration with her employers frequent use of bounced checks, “She doesn’t say, ‘Don’t cash it yet.’ Of course, if she doesn’t say, ‘Don’t cash it,’ you get excited. When you get there, ‘Oh, there are no funds.’ And then we say to her, [makes noises]. It’s like that. Instead of saying sorry, she even gets mad at you. Would I say to my family in the Philippines, ‘Don’t eat for now because I haven’t gotten paid yet?’ I can’t say that to my family, right? I’m the one that they’re counting on. Well, you’re working, right? You’re working so that you have something to send home. And then you even have a bounced check? ‘I didn’t give you a bounced check!’ It’s 35 dollars if you have a bounced check, so she should have told us that it would bounce so that we would not try to cash it.”

Some employers steal tips from workers or force workers to share their tips with non-tipped workers.⁵ Employers also deny workers access to legally required meal and rest breaks.⁶

Other common mechanisms impacting wage theft are paying “off-the-books” in cash, the misclassification of employees as independent contractors, and misuse of the practice of subcontracting.⁷

These unlawful practices are also illegal. It is a crime to defraud any person’s labor or to obtain his or her labor fraudulently.⁸ If an employer willfully fails to pay wages that are due immediately, they are subject to penalties and may be guilty of a misdemeanor.⁹ It is also a misdemeanor to require an employee to sign a wage release without making payment of the wages.¹⁰ There is potential criminal liability for violations of the workers’ compensation code.¹¹



The District Attorney's Office is empowered to prosecute cases of wage theft and to bring civil enforcement actions.¹² California employers have been prosecuted for refusing to pay an employee for vacation pay earned and due,¹³ for failing to maintain a semimonthly payroll for his employee,¹⁴ for issuing paychecks with insufficient funds,¹⁵ for willfully failing to make required payments to an employee pension fund,¹⁶ and for failing to secure workers' compensation insurance for an employee.¹⁷ Employers have been charged with felonies for unlawfully taking a portion of an employee's wages¹⁸ and sentenced to prison for violating the limit on the use of employee bond money.¹⁹

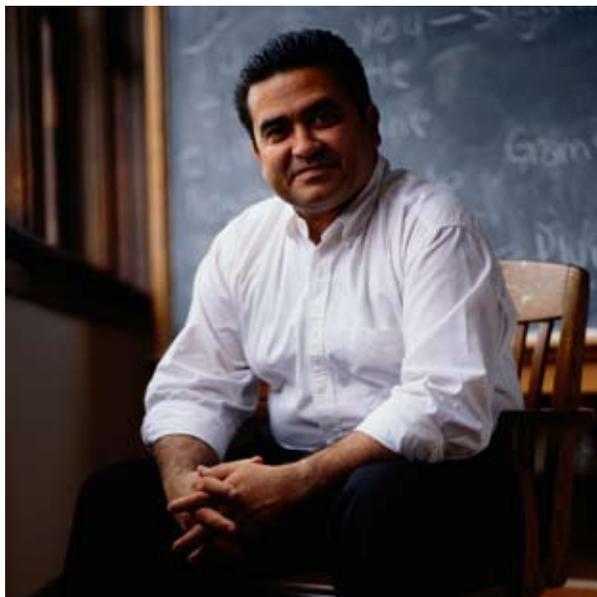
Recently in San Francisco, an employer pled guilty to 487(a) of the Penal Code, felony grand theft. He

was sentenced on April 21, 2009 to five years of felony, grand theft, 112 days in the county jail, and over \$19,000 in restitution to employees, and he was ordered to obtain worker's compensation and unemployment insurance for his employees as a condition of probation. In another case, an employer was sentenced to one year in the county jail related to theft of labor and failure to secure worker's compensation insurance among other violations. He was convicted of a felony grand theft charge related to the thefts of labor. He was ordered to pay over \$80,000 in restitution. In a third, ongoing case, an employer has been charged with 57 felony counts related to wage theft, filing false instruments, workers' compensation fraud and offering other fraudulent documents.

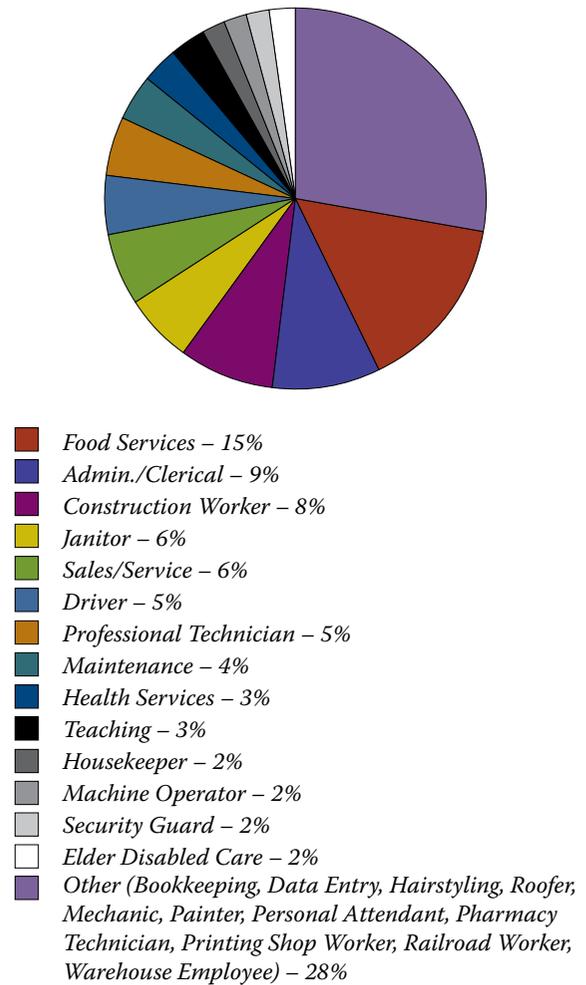
Wage Theft is a Devastating Epidemic

According to a groundbreaking national study, the average low-wage worker loses approximately \$2,634 – or 15 percent of their earnings – each year because of wage theft.²⁰ This study, based on a survey of 4,387 workers in Chicago, Los Angeles, New York, found that two-thirds of workers experienced at least one pay related violation in the previous workweek. The majority of these wages were stolen by failing to pay minimum wage (58 percent) and overtime (22 percent), failing to provide breaks (10 percent) and requiring unpaid, off-the-clock work (8 percent).

“Wage theft is not incidental, aberrant or rare, or committed by a few rogue employers at the periphery of the labor market. It takes place in industries that span the economy – including retail, restaurants and grocery stores; caregiver industries such as home health care and domestic work; blue collar industries such as manufacturing, construction and wholesalers; building services such as janitorial and security; and personal services such as dry cleaning and laundry, car washes, and beauty and nail salons.” - National Employment Law Project. Winning Wage Justice: An Advocate’s Guide to State and City Policies to Fight Wage Theft. January 2011.



Employment Clinic Clients by Industry (2007-2011)
Sample Size: 461 cases



Wage theft victims range from undocumented workers who fear deportation if they report violations to skilled construction workers who are forced to kick back parts of their paycheck on government projects. Kim Bobo. Wage Theft in America: Why Millions of Working Americans are not Getting Paid-and What We Can Do about It. September 2011.

Data indicate that wage theft is rampant in the South Bay. According to state and federal agencies, employers in Santa Clara County steal millions of dollars in wages from their employees each year.²¹ The federal enforcement agency, the Department of Labor–Wage and Hour Division, also handles wage theft claims from workers in Santa Clara County. According to data on compliance actions, employers agreed to pay \$1,026,367 in back wages for minimum wage violations, \$6,599,994 in back wages for overtime violations, and \$40,612 in civil monetary penalties.²²

The state agency responsible for enforcement of state labor law, the Division of Labor Standards Enforcement (“Labor Commissioner”), operates sixteen regional offices around the state. In one year, the Labor Commissioner offices in San Jose and Salinas awarded \$8,413,242 to workers through hearing awards for wage theft violations.²³ According to other data, in one year there were 1,967 workers who filed claims at the San Jose office.²⁴ They were awarded an average of \$4,786 on their claims for unpaid wages. This indicates that low-wage workers in Santa Clara County have up to one-quarter of their annual income stolen by their employers.

Data indicate that the wage theft epidemic is worse in Santa Clara County than in other regions of the state. The San Jose office of the Labor Commissioner receives an average of 294 claims each month, the highest number of all of the sixteen regions. Additionally, this Labor Commissioner office awards an average \$1,000 more per worker than the statewide average. Therefore, not only are there more workers filing claims in Santa Clara County than the rest of the state, but more wages on average are stolen from each worker in the county.

In response to serious concerns from religious leaders, advocates, and workers regarding persistent mistreatment and harassment of vulnerable workers, the Santa Clara County Commission on the Status of Women and the Human Relations Commission convened a public forum in May 2012 for vulnerable workers to voice their concerns, to hear from local and national experts who monitor labor conditions, and to provide the Commission and policy makers

with a broader understanding of the working conditions of vulnerable workers in the County. The two Commissions convened over 100 individuals from diverse backgrounds. A Filipino worker provided compelling testimony that he was forced to work long hours for little pay and that many employers exploit workers because “they are undocumented.” Ruth Silver Taube of the Katharine & George Alexander Community Law Center’s Workers’ Rights Clinic, who testified as an expert, stated: “Almost 40% of the workers we saw at the Workers’ Rights Clinic from 2007 to 2011 were victims of wage theft. As a result, many of these clients are dependent on County assistance. Businesses should not be making a profit through wage theft. It is unfair competition.”

Data shows that wage theft is prevalent in the restaurant and construction industries. The Restaurant Opportunities Centers United published a multi-site study of the restaurant industry in 2011, which reveals the hidden costs of low-wage jobs and low road workplace practices. Many workers from the eight sites (New York, Chicago, Metro Detroit, Los Angeles, Maine, Miami, New Orleans, and Washington DC) reported overtime and minimum wage violations, lack of health and safety training, and failure to implement other health and safety measures in restaurant workplaces.²⁵ The study also found that restaurant employers who violate labor laws are more likely to violate health and safety standards in the workplace—such as failing to provide health and safety training or forcing workers to engage in practices that endanger the health and safety of customers.²⁶ In Los Angeles, many workers surveyed (44.1%) experienced overtime violations and slightly more than a quarter (26.7%) reported working “off the clock” without being paid.²⁷

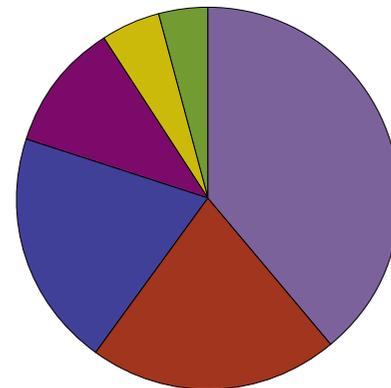
Day laborers who work in the construction industry are often not paid at all for their work.²⁸ Because employment is unstable and insecure, monthly earnings are volatile, with the median hovering around \$700 per month. Half of all day laborers report that they have experienced wage theft every two months. Workplace injuries are also common – one in five workers suffer a work-related injury on the job.

Workers come to the Mountain View Day Laborer Center looking for help in recovering legitimately owed wages, from abusive employers who have not paid them for their labor. Director Maria Marroquin says: “The workers arrive at the Center tired, frustrated and almost without hope of being paid. They have only their faith in God, which helps them continue believing that they will eventually recover what they need to support their families. They wait, and wait, for the law, which is always slow. And once they win their cases, they wait more – because they cannot recover what they are owed.”

Marco is a day laborer, who sometimes gets work from the parking lot in front of Home Depot. He was picked up by Jose in a blue pick-up truck and taken to a worksite. He worked painting a house in Palo Alto and was paid \$100 for his work that day. Jose told him that, if he came back the next day, he'd pay him another \$100 a day. So Marco showed up and painted houses for two weeks. Every day, Jose said “I’ll pay you at the end of the week.” Then, at the end of the week, Jose said “I’ll pay you at the end of this job.” Then, at the end of the job, Jose disappeared. He owed Marco almost \$2,000. Now he no longer answers his phone when Marco calls.

No wonder, then, that the network of legal advocates in Santa Clara County is over-strained. The Katharine and George Alexander Community Law Center at Santa Clara University is the only pro bono legal resource for low-wage workers available in San Jose. The Workers’ Rights Clinic, operated once a week at the Law Center, sees approximately 15 workers each week.²⁹ In a survey of clients conducted from April 2010 to June 2012, almost half of the workers who participated reported wage and hour violations.³⁰

KGACLC Employment Clinic Clients by Issue (2007-2011)



- Wage/Hour – 39%
- Discrimination – 21%
- Termination – 20%
- Unemployment Insurance – 11%
- Harrassment – 5%
- Workers Compensation – 4%

The 237 workers surveyed reported:

- Paid less than they were initially promised (33%)
- Paid less than the minimum wage (20%)
- Denied a rest break or having it shorted (51%)
- Denied a meal break or having it shortened (45%)
- Problems getting paid or paid late (49%)
- Forced to work overtime against their will (33%)

Multivariate survey analysis reveals that restaurant and construction workers were significantly more likely to report ever having experienced a wage and hour violation.³¹ The Law Center advises or refers approximately 300 clients each year. The Law Center’s Skills program and the Workers’ Rights program also directly represents workers in their wage claims at the Labor Commissioner’s office or in court. The Law Center has recently obtained several significant awards, ranging from \$50,000 to \$150,000, on behalf of their clients.

The Golden Gate University, Women's Employment Rights Clinic in San Francisco also represents about ten Santa Clara County workers each year, mostly caregivers in group home facilities and housecleaners.³² Wage violations are especially rampant in group-home facilities for the elderly and people with disabilities. Caregivers in these facilities typically work 24 hour shifts and are paid a flat daily or monthly rate that ultimately falls far below the minimum wage, does not include overtime, and can often include difficult living and sleeping conditions. Caregivers at these facilities are often awarded as much as \$130,000, which is multiple times the amount that they are actually paid for their work.

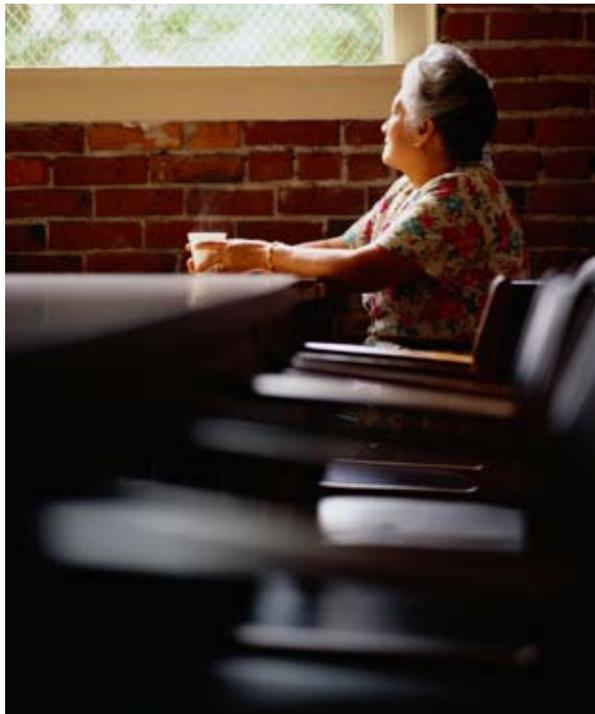
Community groups such as the Pilipino Association of Workers and Im/migrants ("PAWIS") assists workers who have experienced wage theft, advocating with them and helping them access services.³³ They find that employers utilize a variety of schemes to steal wages from caregivers, including paying below minimum wage; nonpayment of hours worked; excessive deductions for food, housing, and medical insurance, sometimes without the provision thereof; and payment with bounced checks. Despite the widespread incidence of these findings, only a handful of respondents file claims against their employers for fear of retaliation. Of those workers who have filed claims, the average amount of owed wages was \$82,750.

Finally, private firm lawyers who represent low-wage workers in San Jose reaffirm the urgent need for resources to address wage and hour violations in Santa Clara County.³⁴ For example, in 2013, the Justice at Work Law Group firm received 96 calls from individuals requesting help with employment issues, 64 of whom reported wage and hour issues. Of the 50 cases that the firm retained, 44 were for wage and hour issues.

Low wage workers are mostly women and vulnerable to wage theft!

"Farmworker women put food on our tables. They plant, pick, and pack fruits and vegetables, among other crops and plants. It is estimated that more than 600,000 women are responsible for feeding us... They are often victims of wage theft."

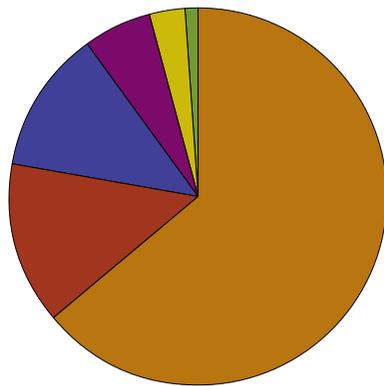
– Monica Ramirez, Writer and Advocate



Widespread Impact of Wage Theft

Wage theft disproportionately impacts Black and Latino workers in Santa Clara County. According to the latest census, the population of Santa Clara County is 26.9% Hispanics or Latinos and 2.6% African American. However, 64% of the Workers' Rights Clinic's clients seen by the clinic at the Katharine and George Alexander Community Law Center were Hispanic or Latino, and 6% were black.³⁵

**KGACLC Employment Clinic Clients
by Ethnic Group (2007-2011)**
Number of Clients: 1,365



- Hispanic – 64%
- Asian/Pacific Islander – 14%
- White – 12%
- Black – 6%
- Other – 3%
- Native American – 1%

Several factors influence a worker's vulnerability to wage theft. Undocumented and immigrant workers are especially vulnerable.³⁶ Almost half of the workforce in Santa Clara County is immigrant labor, but they are concentrated predominantly in the agricultural, manufacturing, personal service, and high tech industries – industries where wage theft is especially rampant.³⁷

Alex, a carwash worker in Los Angeles sought help from WorkSafe, a statewide organization in California that focuses on the right of every worker to a safe and healthy place of employment. He explains, "Three years ago I suffered a workplace injury, when a car hit me while I was washing a car. The injury caused severe pain in my neck. I was so afraid to report the injury or go to the doctor because the owner of the company told me that he would fire me. In fact my supervisor told me that it was my fault and said that I would need to pay for the damage caused to the car. He made me take a week off of work, which was unpaid. I never went to the doctor because I was afraid of losing my job. I was afraid of losing my job because he had fired other workers who complained about tips or other labor problems. The supervisor also told us that he would call immigration if anyone complained. The supervisor knew that a lot of people were without status."

A week later, Alex returned to work. "When I received my paycheck I noticed that it was short \$500. I asked my supervisor why it was short and his response was that he was taking the money out of my paycheck to pay for the damage caused to the car. I could not believe it. Here I was with an injured neck and could not get medical help because I was too intimidated by the supervisor. When he took the money out of my check it had a huge impact on my family because we needed that money to pay for food and help support my family. I continued to work for the employer for another couple months and left shortly after that. While there I saw some very abusive treatment. I saw people get their wages stolen. For example the supervisor would throw parties for the workers and make carne asada. He would take money from workers' paychecks to pay for these parties

even if the workers did not show up. The owner was very abusive and mistreated all the carwash workers. We workers never complained because we did not know to whom we could complain. No one at the company ever did anything to help us and we did not know about our rights. We also were afraid of complaining because the supervisor told us that he would fire us or call immigration. The fear of retaliation was very much part of the culture and no one complained to any agencies.”

Several studies have documented the heightened risk that foreign-born, undocumented, Latino, and limited-English proficient workers face regarding the epidemic of wage theft.³⁸

Wage theft hurts workers, their families and communities, responsible businesses, the County itself, and the taxpayer. Workers themselves are harmed by wage theft. They can experience increased stress, which results in fatigue and sleep disturbances.³⁹ Sleep deprivation leads to decreased concentration and lower cognitive performance, which can cause mistakes on the job.⁴⁰ Workers experiencing wage theft continue to work hard each day but are not appropriately compensated for their time. Stressful work-related experiences, especially repeated stress over time, can damage immune defenses and vital organs, which can result in more rapid onset and progression of cardiovascular disease and may accelerate aging.⁴¹

Loss of income due to wage theft can result in increased homelessness, overcrowding, hunger, decreased mobility, and/or difficulty accessing health care and paying medical bills.⁴² Income is one of the strongest and most consistent predictors of health and disease. The poorest communities in the U.S. have the worst health status, and high-income earners can expect to live at least 6.5 years longer than low-wage workers.⁴³ When cash flow is low, food is often one of the items that is cut from the budgets.⁴⁴

Nationally, one third of food-insecure families have to skip meals, cut portions, or pass on food at some point in the year because they lack money.⁴⁵ Wage theft can also lead to an inability to pay rent – which can lead to living in unhealthy temporary housing conditions without safe drinking water, hot water for washing, effective waste disposal, adequate food storage, and insect and rodent infections.⁴⁶ Wage theft can also cause individuals to live in overcrowded conditions, which increases the risk of poor sanitation, exposure to environmental noise, and residential fire.⁴⁷

Wage theft causes significant harm to Santa Clara County. Worker victims of wage theft cannot make ends meet individually for their families, high-road employers face unfair competition from employers who engage in wage theft, and government loses revenue. It is a public health menace. It negatively impacts workers' ability to meet their basic needs, to pay the rent, to buy food for their families, and to pay for health care. It can lead to homelessness and cause increased stress and anxiety.

Workplace violations can have a negative impact on the lives of the families and children of these workers. Most of the clients seen at the Workers' Rights Clinic at the Katharine and George Alexander Community Law Center have children in the local public schools.⁴⁸ California as a state ranks 45th in the nation for economic well being of children.⁴⁹ Over a third (35%) of California's children have parents who lack secure employment. Over half (54%) of California's children live in households where the cost of housing is over a third of the family's budget. Children in food insecure households experience two to four times as many individual health problems (unwanted weight loss, fatigue, headaches, irritability, inability to concentrate, and frequent colds) compared to other children.⁵⁰ Parents reporting stress due to spillover of work to family life are more likely to suffer from mood, anxiety, and substance dependence – with all the attendant consequences to their families.⁵¹

In many cases, government subsidies like food stamps or general assistance are required to supplement household budgets in order to bridge gaps in the family's income. One study of restaurant workers found an increased reliance on social assistance programs, resulting in an "indirect subsidy" to employers engaging in wage theft and fewer public resources available to those in need.⁵² Another study found that increasing the state minimum wage would reduce the cost to California's public assistance programs by between \$2.7 and \$5.6 billion.⁵³

Workers use various strategies to protect their children in an effort to "avoid problems for everyone," as one worker explained.⁵⁴ However, at a statewide immigration conference, workers talked frankly about the hard impact that wage loss placed on their families and their ability to provide for these children.

Parents often also described their own difficulty coping with the effects of depression stemming from ordeals with their employers and the impact this had on their ability to be there for their families. These experiences placed strains also on marriages and other familial relationships as families lost their homes, had to relocate, and had to scramble to find work after being terminated for demanding justice. In addition, workers rely on their families for support during the claims-making process – for rides to

agency hearings and even calling on their children to help translate when necessary. Families also helped provide workers with food, housing, and loans in times of need while awaiting restitution that sometimes never came.⁵⁵

Local, state and federal government experience a significant economic cost of wage theft.⁵⁶ They experience revenue losses from unpaid payroll taxes, penalties, and judgments. Unpaid wages also affect consumer behavior, impacting local businesses and limiting sales tax revenues. Unscrupulous employers also pose unfair competition for responsible employers. An employer who pays "off-the-books" (also called "under the table") in cash means that an employer does not pay the estimated 30% of additional expenses on wages for things such as payroll and related taxes.⁵⁷ This not only deprives workers of credit for work and prevents them from filing their own taxes, but it also robs federal, state, and local governments of much-needed revenue.

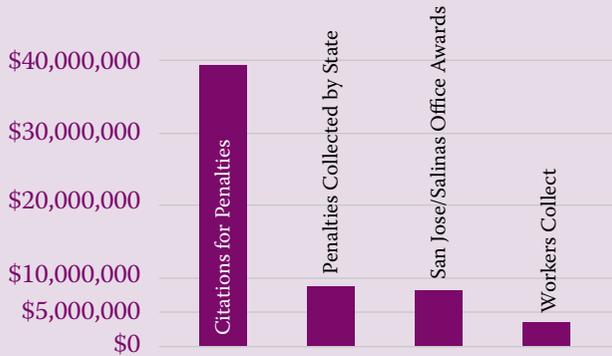
Employers often misclassify an employee as an independent contractor (thus filing an IRS 1099 Form rather than a W-2 Form), which allows employers to sidestep their responsibility for wage and hour protections. Like the common practice of cash payment, "1099-ing" a worker helps employers evade paying payroll and related taxes, undercutting fair business competition.⁵⁸ Misclassification especially impacts workers in industries such as construction, day labor, home health care, janitorial work, and even port trucking.⁵⁹ Finally, subcontracting, while it can be a legitimate business practice, is often used to break the chain of responsibility between the workers and the prime contractor or businesses. Then, if workers are not paid appropriately, the prime business seeks to escape responsibility for those working conditions. This illegitimate subcontracting is rampant in cleaning services, painting companies, warehouses, and temporary labor service providers.⁶⁰



Challenges to Effective Enforcement

Perhaps one of the most shocking aspects of wage theft is how insufficient current enforcement efforts are. In 2012-2013, the Labor Commission offices in San Jose and Salinas awarded \$8,413,242 to workers through hearing awards for wage theft violations. Of this amount, workers could collect only \$2,817,589.⁶¹ Another arm of the Labor Commissioner, which conducts workplace wide investigations, awarded \$39,772,344 in penalties for labor violations in 2012-2013, but collected only 20 percent of these penalties. An even smaller amount (10 percent) of penalties was collected for minimum wage and overtime violations. Ultimately, these losses diverted over \$31 million away from state coffers.⁶²

Unpaid Wage Theft Awards and Penalties



Even when workers have obtained legal counsel, they are still often unable to recover their owed wages. For example, between April 2012 and December 2013, clients of the Katharine and George Alexander Community Law Center were awarded \$391,964 in back wages but were only able to collect forty percent of that money. The remaining \$237,268 is still owed to those workers.

The California Department of Labor Standards Enforcement processes the vast majority of wage theft claims in the state. A May 2013 report issued by the agency reports that, under Labor Commissioner Julie Su, “our field investigations assessed 462% more in minimum wages and 642% more in overtime wages than in 2010. Time to hearings were also reduced, and

the agency hit the highest amount of hearing awards in the last 5 years, highest total wages assessed and civil penalties in nearly a decade, and highest minimum wages and overtime wages assessed on record.⁶³

Workers may try to resolve workplace violations with their employer before seeking legal counsel.⁶⁴ Workers with less than a high school degree were significantly less likely to communicate their complaint directly to their employer.⁶⁵ Based on a survey of workers’ rights clinics in the San Francisco Bay Area, the vast majority of workers had confronted their employer before seeking legal assistance, with disappointing results:⁶⁶

The workers surveyed who confronted their employer reported:

- Complaint ignored (38%)
- Threatened (8.1%)
- Issue resolved, then resumed (14%)

Many workers were leery that such a confrontation would lead to positive results. Indeed, among those workers surveyed who chose to avoid a confrontation with their employer reported:

- Were afraid it would affect their job (17%)
- Didn’t think it would do any good (19%)

Those workers who are brave enough to come forward have mixed results. It should, therefore, be of little surprise that many more workers do not speak up about workplace violations. Instead, they either continue to work under deplorable conditions or leave their employment in search of greener pastures. There are many reasons why workers may not come forward to seek help. Lack of worker education and language barriers can pose significant challenges.⁶⁷ Finally, many workers wait until they have left that employment before they complain about the working conditions.⁶⁸

Many wage theft victims report being retaliated against – being fired or having their hours cut – when they complain about their employer’s failure to pay wages.⁶⁹ The voices of the workers interviewed illuminate the challenges claimants face in trying to seek justice for their unpaid work. Often, employers seek to discourage workers from complaining. Workers are forced to choose between losing their jobs and accepting whatever the employer is offering to pay them.

One worker, Reynaldo, explained his experience with wage theft and the fear of employer retaliation. “On our weekends and holidays, count the 10-5 schedule [on top of our normal weekday schedule]. No one is on duty at night. That’s 10 at night until 5 in the morning. On the weekend, it’s working straight because no one comes in, right? That’s 17 hours. But she pays us only for 8 hours. And then she makes us sign that. She says that if we don’t sign what she wants us to sign, then she opens to the door and tells us to leave.”

Frank filed a successful wage claim with the Labor Commission. When the employer failed to pay the judgment, Frank sought assistance from the Law Center. It referred him to the Wage Justice in Los Angeles, which agreed to help him collect. The employer showed up at Frank’s house for 3 days in a row. On the second day the employer brought a fake Social Security card and green card that did not belong to Frank and threatened to send these cards to immigration and have Frank deported. On the third day, the employer made threats to call immigration if Frank did not drop his efforts to collect and threatened to make Frank and his family pay. Frank is afraid to go outside for fear the employer will harm him because the employer previously threatened to harm another worker who made a wage claim and told him that he would plant drugs in his car. The other worker dropped his claim.

In fact, almost half (43%) of the 4,387 workers surveyed nationwide have experienced some form of illegal retaliation like firing or suspension.⁷⁰

Oscar worked for several years for a construction company where he should have been paid prevailing wage but was not. The moment he spoke up, he was fired immediately. It’s now been a year since he won his case and the employer was fined \$333,000. Unfortunately, he has yet to see a cent of that money. He says: “I’m proof that we must strengthen protections for workers and ensure not one more person endures what me and my family have faced.”



Employer retaliation comes in multiple forms, and impacts not only workers but also their friends and relatives.⁷¹

Working as a dishwasher, Jorge received on average of \$5/hour, paid in cash, with no regular rest or meal breaks. Fearing retaliation, Jorge left his job before filing his claim, and he referred his cousin to the position. After consulting at the Katharine and George Alexander Community Law Center clinic, Jorge filed a claim against his employer. A week after Jorge filed his claim, his cousin was fired. Although the California Labor Commissioner ultimately issued a judgment in his favor, he has not received any of the money owed to him. The offending employer remains in business, and advocates continue to receive reports of similar wage and hour abuses.

Employer retaliation looms large in workers' decisions as to whether to speak up and can also haunt workers long after they have even won their cases. Several workers have mentioned a secret "blacklist" of group care home workers who are not hired when they fight for wages that are unjustly stolen from them.⁷²

Gabriela, who at one point was being paid \$250 a month, successfully won a highly publicized case against a group care home owner. She not only became known by local caregivers whom she inspired to fight for their own rights, but also by local employers who condemned her as a threat to their businesses. It has been three years since she won her case, but until now she is having a hard time finding a new job and hears about a "blacklist" of which her name is at the top.

Effective Labor Standards Enforcement as a Path to Immigrant Integration and Justice for All

Members of PAWIS and the National Alliance for Filipino Concerns highlighted the ways in which the current U.S. immigration system treats workers like disposable labor import/export products, tears families apart, and increases these vulnerabilities through increased flexibilization and contractualization of labor policies, as well as through immigration enforcement mechanisms that run counter to the goals of workplace protections. Testimony also highlighted the challenges facing immigrant workers at non-union hotels and ethnic grocers. In theory, federal⁷³ and state⁷⁴ statutes are clear about the wage and hour protections available to all workers regardless of their immigration status. Yet undocumented workers nonetheless face particular challenges and may be wary of coming forward.

Santa Clara County prides itself on being a region that promotes immigrant integration through initiatives such as the Office of Human Relations Immigrant Relations and Integration Services. The 2004 Summit on Immigrant Needs and Contributions highlighted the particular challenges all immigrant workers face at the workplace and convened a working group on Economic Empowerment: Wages and Working Conditions, which concluded five specific findings and related recommendations that ring true a decade later.⁷⁵ These included a call for broad policies aimed at improving the income levels of all county residents, which would help a wide array of immigrant workers, who are disproportionately poor. The working group also recommended additional effective legal representation to assist immigrant workers, the creation of materials that are linguistically and culturally appropriate, an ongoing outreach campaign in high-immigrant community locations, and a central hub for organizing legal expertise and collaborative work. Additional specific recommendations pointed to the rampant violations in subcontracted industries, those targeting misclassified independent contractors, and the need to place a firewall between workers' rights enforcement and pernicious immigration enforcement.⁷⁶

What Local Enforcement Mechanisms Can Do

The Santa Clara County Wage Theft Coalition is not alone in seeking a local mechanism for protecting the wage and hour rights for workers. Local ordinances in San Francisco (2006), Seattle (2011), Chicago (2013), and Houston all permit revocation of business permits, licenses, and certificates.⁷⁷ Each of these cities has created a new claims or administrative review process with specific penalties. One important component to assist with enforcement is cooperation of other local agencies in revoking or suspending permits for noncompliant employers. For example, the San Francisco municipal code permits the city to “create and impose liens against any property owned or operated by a person who fails to pay a penalty assessed by administrative citation.”⁷⁸ Similarly, the San Francisco Department of Public Health Environmental Health Division uses its existing authority to gain compliance from employers who refuse to pay wage judgments by initiating permit revocation hearings when there is an outstanding judgment for unpaid wages.⁷⁹ The Houston Wage Theft Ordinance provides that if an employer is included in a wage theft database and currently holds or wishes to apply for or renew a license or permit issued by the city (such as restaurants or food services), the director or licensing official or board shall revoke or refuse to issue or renew any permit for a period of 5 years.⁸⁰

Local ordinances can also address the insidious, yet far too common, occurrence of employer retaliation. For example, San Francisco added additional penalties, Seattle specifically prohibited immigration-based threats, and Massachusetts includes a presumption of retaliation if adverse action occurs within a certain period of time after a complaint is filed.⁸¹

Local ordinances also help raise the enforcement minimums set by federal and state legislation.⁸² Both San Francisco and Chicago have imposed fines that are higher than those imposed by their respective state legislation. Seattle has also imposed stricter criminal penalties, and San Francisco also has stricter penalties for repeat offenders.⁸³ According to the Department of Labor Wage and Hour Division, of the 182,718 nationwide compliance actions published since FY 2007, 7,820 include repeat violators.⁸⁴

Local ordinances can encourage more timely compliance, as is the case in San Francisco and Miami-Dade.⁸⁵

Some local ordinances address the costly fiscal burden that wage theft poses for local governments by holding offending employers liable, as was done in San Francisco and Miami-Dade.⁸⁶

In many jurisdictions, police can also play an important role in addressing “theft of service claims.”⁸⁷

Local efforts to address wage theft have spread across the country and are ongoing. Most recently, on November 20, 2013, the city of Houston unanimously passed an ordinance that will provide local enforcement mechanisms through the Office of Inspector General to penalize employers who have a criminal conviction of wage theft. The Texas Wage Theft Act, signed by Republican Governor Perry in 2011, did a number of things to help address the issue. For example, the Act empowers local law enforcement to investigate wage theft and closed a loophole that let employers who partially paid their workers off the hook. However, challenges remain related to coordination of law and enforcement to prosecute cases and training detectives and officers who often have serious resource constraints.⁸⁸ The Houston ordinance now makes offenders ineligible to receive occupational permits and licenses, and a public database on the city’s website will list those companies with a documented record of wage theft, making them ineligible for city contracts and subcontracts.⁸⁹ In this Down With Wage Theft Campaign, advocates from all sides of the economic and partisan spectrum united to address the matter. For example, the President of the Houston Chapter of Associated General Contractors supported the proposal by explaining, “It’s very hard to be competitive, this is a tough market.... there’s a lot of people trying to get work, people from the home building industry which really hit hard times coming into our industry so people are taking work a lot cheaper, and those companies that do have hourly workforces, that do pay some sort of benefits, they obviously can’t compete. It’s very difficult to compete ...”⁹⁰



The success in San Francisco is instructive for Santa Clara County. Advocates and agency staff highlight the creation of the Office of Labor Standards Enforcement, funded and staffed by almost sixteen investigators which is integral to ensuring maximum enforcement of minimum wage and other labor standards in the city.

- Since its creation in February 2004, the city agency found that back wages, interest and penalties were owed in two-thirds of their cases.
- The city agency has recovered over \$6.5 million for 2,761 employees who were denied minimum wage and overtime pay by employers in the city.
- The city has recovered over \$1.7 million in penalties through agency enforcement actions.
- In 99% of cases where the city concluded that back wages were owed, a settlement was reached that paid all of the owed minimum wages to the workers.

- Ten percent of city complaints were referred to other agencies, mostly the state enforcement agency. From 2010-2013, the state agency office in San Francisco determined that workers were owed back wages in 86% of their cases, and awarded \$12,303,534 in unpaid wages, penalties, and interest to those workers.⁹¹

Local mechanisms to address wage theft could go a long way in assisting these categories of vulnerable workers in seeking justice. Currently, the City of San Jose requires employers within the city limits to pay their workers \$10.15 an hour. San Jose is now the fifth city in the nation to do so, in addition to other major cities such as San Francisco, Santa Fe, Albuquerque, Washington, D.C., and now also SeaTac, Washington.⁹² Voters passed the San Jose minimum wage ordinance on November 6, 2012, raising the minimum wage above the state. However, the ordinance did not establish an effective enforcement mechanism.⁹³ As the largest city and the county seat of Santa Clara County, this is a crucial enforcement gap.

What Local Officials Can Do

Counties have the power to enact laws to affect wage theft – including the suspension of permits and the enactment of wage liens. The California Constitution gives counties and cities broad authority to enact laws.⁹⁴ The California Courts have upheld these powers.⁹⁵ Most licensing or permitting ordinances are still lawful although they directly impact the enforcement of state laws enacted to preserve the health, safety, and welfare of state and local cities.⁹⁶ For example, a Sacramento ordinance that suspended or revoked the retail license of businesses selling cigarettes to minors was found to be lawful. Local ordinances can discourage activity prohibited by the state as long as they do not expand or reduce the degree to which the activity is criminally prosecuted.⁹⁷

The legislative history of the state wage and hour laws establishes that Counties and Cities may enact

ordinances to combat wage theft. A county ordinance is only invalid if it duplicates, contradicts, or enters an area fully occupied by state law to the exclusion of local regulation. This limitation does not apply to wage and hour laws, as the legislature specifically established that the state laws do not “occupy the field” at the time of their passage. Therefore, the State Legislature contemplated, and authorized, local regulation of working conditions.⁹⁸ In fact, what state law does is to establish a floor beneath which local jurisdictions may not fall in imposing penalties¹⁰⁰ for wage and hour violations.⁹⁹ This leaves local jurisdictions free to enact stricter penalties. This is a clear expression of the intent of the Legislature to permit local governments to impose stricter penalties for wage and hour violations.¹⁰¹ Therefore, Santa Clara County may lawfully enact an Ordinance to combat wage theft.



Findings

(1) Workers do not know their employment rights and are afraid, with good reason, of the consequences of speaking up (i.e. retaliation).

(2) Employers engage in wage theft because they operate in industries where there is a culture of non-compliance, they lack knowledge of their responsibilities, they have engaged in a cost/benefit analysis that weighs in favor of violation, and/or they lack the skills or resources to comply with employment law.

(3) The agencies that enforce wage and hour laws face severe limitations on their ability to effectively ensure compliance with employment laws. Collecting judgments for unpaid wages can be extremely difficult for low-wage workers.



Recommendations for Local Action

I. General Recommendations

- Implement a system for flagging those businesses to which the County issues permits that are “wage theft violators” – that is, employers who have been found to be violation of state and/or federal labor and employment laws within the last three years.
- Screen all businesses receiving a County benefit or recognition to ensure that wage theft violators are not eligible.
- Prohibit County departments and commissions from entering into contracts or engaging in any business arrangement with any individual or entity that engages in wage theft.
- Permit workers with wage theft judgments to record a wage lien with the County Recorder similar to the existing Mechanic’s Lien.
- Pass an ordinance authorizing all departments that issue permits to suspend those permits issued to wage theft violators.
- Use opportunities to create public awareness and enhance public recognition of responsible employers.
- Identify points of contact in each department with workers, especially low-wage workers, and provide know-your-rights information to workers.
- Convene a working group of County departments that meet quarterly to coordinate efforts to address the problem of wage theft, develop education campaigns, and strategize about how to obtain compliance from the County’s worst violators.

II. Specific Agency Recommendations

A. County Department of Environmental Health

1. Fact Sheets Describing Health Impacts of Wage Theft: The Santa Clara County Department of Environmental Health has existing Health Code authority and should publish a fact sheet that describes the health impacts of wage theft.
2. Applications for Permits to Include Labor Law Checklist for Business Owners: The Santa Clara County Environmental Health Department should develop a Labor Law Checklist for business owners, to include in its permit packet, that will help educate employers and employees on wage law requirements.
3. Restaurant Recognition programs: The Santa Clara County Environmental Health Department should hold a Restaurant Appreciation Month, which also integrates labor compliance into its selection criteria.
4. Permit Suspensions: The Santa Clara County Department of Environmental Health has existing Health Code authority to suspend permits and should suspend health permits where there is a judgment against an employer for a violation of wage and hour laws until the employer comes into compliance.

B. District Attorney

The District Attorney Should Prosecute Egregious Wage Theft Cases: The District Attorney’s Office is empowered to prosecute cases of wage theft under the relevant criminal statutes and to bring civil enforcement under Business and Professions Code 17200 et seq. In either criminal or civil enforcement action, obtaining restitution for the victims is a central component of any resolution. The Santa Clara County District Attorney should prosecute criminal and/or civil enforcement actions in egregious cases including those involving repeat violators or multiple victims and cases in which the wage theft violations are accompanied by violations of other statutes (e.g. threats to workers, workers compensation violations, unlicensed contractors.)

The District Attorney should certify U visas for victims of wage theft.

C. County Recorder

The County Recorder should record a wage lien (like a Mechanic's Lien) for victims of wage theft. Currently, a mechanic's lien may be recorded on real property at the County Recorder's Office. Every person supplying labor, equipment, or materials to a construction project may record a mechanic's lien to protect himself or herself from general contractors or property owners who may be inclined not to pay for the work performed or supplies provided.

Before recording a lien, a contractor must serve the owner with a preliminary 20-day notice. The notice provides the owner with information about the contractor, including the nature of the services or materials provided to the project, an estimate of the total price of the goods or services to be provided, and who hired the contractor. If the lien is recorded after 20 days, the contractor will lose its right to claim recovery of the value of the labor or goods that were provided more than 20 days before the notice was given.

A contractor or laborer who is not paid when the work is completed must then record the mechanic's lien at the County recorder's office in the county where the property is located. The lien must be recorded after the contractor or laborer has finished work on the project and no more than 90 days after the entire project is completed. To be valid, the mechanic's lien must (a) include the nature and value of the goods or services provided and (b) be signed and verified by the laborer or contractor. The claimant must file suit to foreclose on the lien no more than 90 days after recording. Failure to sue renders the lien "null and void and of no further force and effect." At trial, the court will decide the amount and validity of each lien. Mechanic's liens take priority over all liens, including mortgages and construction loans, that are recorded after work or improvement commenced.

The mechanic's lien should be expanded to include all victims of wage theft, not just workers on construction projects.

D. County Counsel

The County Counsel's Impact Litigation and Social Justice Section should conduct litigation in egregious wage theft cases. The Impact Litigation and Social Justice Section conducts affirmative litigation on behalf of the County, drafts local ordinances, and develops novel policies and programs to advance the County's goal of securing social and economic justice for all its residents. County Counsel should conduct wage theft litigation since wage theft is a social and economic justice issue. It impacts the County because it forces victims to seek County assistance, it constitutes unfair competition for businesses in the County, and it deprives the County of revenue.

III. Support for Community Based Organizations/Day Laborer Centers and Legal Service Organizations that Fight Wage Theft

Due to fear or ignorance of government enforcement agencies, workers often first report instances of wage theft to advocates at community organizations or day laborer centers.

For example, PAWIS is an organization of Filipino workers that provides assistance to members who are victims of wage theft. Filipino workers commonly call PAWIS first when they are victims of wage theft. PAWIS then contacts legal services organizations.

Similarly, other community organizations like ICAN, AACI, SIREN, MAIZ, the Mountain View Day Laborer Center, and other organizations like Working Partnerships, Restaurant Opportunities Center, the NAACP, and WorkSafe are often the first to know about wage theft. Legal service organizations such as the Katharine & George Alexander Community Law Center and the Workplace Justice Initiative provide advice and representation to these community organizations and assist workers who file wage claims. The County should provide support for the outreach, education, and assistance that these community based organizations and legal organizations provide.

Endnotes

¹ Cal. Dept. of Industrial Rel., Minimum Wage Order, MW-2014, *available at* <http://www.dir.ca.gov/lwc/MW-2014.pdf>; City of San Jose Minimum Wage Ordinance, 2013, *available at* <http://www.sanjoseca.gov/minimumwage>.

² Cal. Lab. Code § 510.

³ Industrial Welfare Commission, Wage Orders 1-16l Cal. Code Regs., tit. 8 §§ 11010-11160.

⁴ Cal. Lab. Code §§ 203.1, 204; Cal. Civil Code § 1719.

⁵ Cal. Lab. Code § 351; Wage Order 5-2001.

⁶ Cal. Lab. Code § 226.7; Wage Orders 1-16.

⁷ Cal. Lab. Code § 226.8.

⁸ Cal. Penal Code §§484, 532(a).

⁹ Cal. Lab. Code §§ 203, 216(a), 226.6.

¹⁰ Cal. Lab. Code § 206.5.

¹¹ Cal. Lab. Code §§ 132(a) (illegal retaliation), 3550 (posting requirements), 3700.5, and 3710.2.

¹² Cal. Bus. & Prof. Code § 17200 *et seq.*; Cal. Lab. Code §§ 215 (regarding the timing, method, and place of wage payments), 216 (refusing to pay wages when demanded), 225 (withholdings from wages), 226.6 (itemized pay stubs), 354 (unlawful deductions), 408 (bond posting requirements), 553 (misdemeanor for violation of any provision regarding overtime, meal periods, alternative workweeks, makeup work time, and rest days), 1175 (payroll records and permits), and 1199 (minimum wage); Cal. Lab. Code § 227 (misdemeanor or felony for failure to make required benefit payments).

¹³ *People v. Bishopp*, (1976) 56 Cal. App. 3d Supp. 8.

¹⁴ *Ephraim v. Jamestown Judicial Dist. Court*, (1953) 120 Cal. App. 2d 741, 742.

¹⁵ *See, e.g. People v. Ayub*, (1988) 202 Cal. App. 3d 901, 903, *People v. Hampton*, (1965) 236 Cal. App. 2d 795, 798.

¹⁶ *See, e.g. Cairy v. Superior Court*, (1987) 192 Cal. App. 3d 840, 842, *People v. Alves*, (1957) 155 Cal. App. 2d Supp. 870 (same).

¹⁷ *People v. Doctor*, (1967) 257 Cal. App. 2d 105, 106 (misdemeanor for violating Labor Code section 3710.2).

¹⁸ *People v. Incho Hwang*, (1994) 25 Cal. App. 4th 1168.

¹⁹ *People v. Keefer*, (1956) 146 Cal. App. 2d 726; *see also People v. Vandersee*, (1956) 139 Cal. App. 2d 388 (criminal charges for violation of Labor Code section 405 relating to property put up as a bond by an employee).

²⁰ Bernhardt, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, National Employment Law Project (2009).

²¹ These data are tabulated for all zip codes contained entirely within Santa Clara County, *available at* <http://www.melissadata.com/lookups/CountyZip.asp?fips=06085>. Data released 4/7/10 (updated 2/14/14) for all completed compliance actions since 2007, *available at* http://ogesdw.dol.gov/views/data_summary.php.

²² *Id.*

²³ These data were obtained through a public records request to the Division of Labor Standards Enforcement (March 10, 2014).

²⁴ These data were obtained through a public records request to the Division of Labor Standards Enforcement (2006).

²⁵ Restaurant Opportunities Center, *Behind the Kitchen Door: A Multi-site Study of the Restaurant Industry* (2011), *available at* <http://rocunited.org/2011-behind-the-kitchen-door-multi-site-study/>.

²⁶ *Id.*

²⁷ Restaurant Opportunities Center - Los Angeles, *Behind the Kitchen Door: Inequality & Opportunity in Los Angeles, the Nation's Largest Restaurant Industry* (2012), *available at* <http://rocunited.org/roc-la-behind-the-kitchen-door/>.

²⁸ Abel Valenzuela Jr., et al. *On the Corner: Day Labor in the United States*. January 2006.

²⁹ Information from Ruth Silver Taube, Workers Rights Supervising Attorney at the Santa Clara University School of Law Katharine and George Alexander Community Law Center, *available at* <http://law.scu.edu/kgaclc/> (2/20/14).

³⁰ Shannon Gleeson, *Rights in Theory, Rights in Practice: Unpacking the Individual and Institutional Elements of Enforcing Worker Rights*, Labor and Labor Movements Mini-Conference: Labor and Global Solidarity, American Sociological Association Annual Meeting, New York, NY (2013).

³¹ *Id.* These workers come from a wide variety of industries, including Restaurant, Maintenance, Caregivers, Store Clerks, Laborers, Beauty Salon, Painter, Landscaper, House Cleaner, Motel Maid, Fabricator, Driver, Security Guard, Auto Tech, and Computer Repair.

³² Information from Hina Shah, Associate Professor at Golden Gate University, Women's Employment Rights Clinic, *available at* [76](#) (2/14/2014).

³³ Michael Tayag, *The Caregiver Research (CARE) Project: A study of wage theft within the Santa Clara County caregiving industry*, Pilipino Association of Workers and Immigrants (2014) (reporting on an ethnographic and community-based participatory research study involving interviews of 24 Filipino caregivers for the elderly and disabled); *see also* Michael Tayag, *By the People, For the People: The role of community-based participatory research in building leadership and capacity of workers*, Undergraduate Honors Thesis, Stanford University (2013).

³⁴ Information from Huy Tran at the Justice at Law Group, located at 84 West Santa Clara Street, Suite 790, San Jose, California (2/3/14).

³⁵ Presentation by Ruth Silver Taube at the Vulnerable Workers Public Forum (5/10/12).

³⁶ *Id.* It is important to note that clinic staff do not inquire about the legal status of clients. Gleeson (2013) constructs a conservative measure to estimate the undocumented population in this survey. Respondents were asked to identify, at different points in the survey: (1) where they were born, (2) whether they are a citizen of the United States, and (3) whether they are legal permanent residents. Thirty-seven percent of individuals did not answer affirmatively to each question, and were classified as undocumented. Similarly, 36 percent of respondents said "no" to a final question asking whether they were authorized to work in the United States.

³⁷ California Immigrant Policy Center, *Looking Forward: Immigrant Contributions to the Golden State* (2010) (finding that in Silicon Valley, immigrants comprise nearly half of the labor force (46%) and contribute about 44% of the regions GDP. Immigrant workers make up about 73% of the farming, fishing and forestry industries, 62% of the production industry, and 58% of the food preparation and service jobs).

³⁸ *See, e.g.* National Employment Law Project, *Winning Wage Justice: Summary of Research on Wage and Hour Violations in the United States* (January 2013), *available at* <http://www.nelp.org/page/-/Justice/2012/Winning-WageJusticeSummaryofResearchonWageTheft.pdf?nocdn=1>; Ruth Milkman, Ana Luz González and Peter Ikeler, *Wage and Hour Violations in Urban Labour Markets: A Comparison of Los Angeles, New York and Chicago*, INDUSTRIAL RELATIONS JOURNAL 43 (5): 378–398 (Sept. 1, 2012); Annette Bernhardt, Michael W Spiller and Diana Polson, *All Work and No Pay: Violations of Employment and Labor Laws in Chicago, Los Angeles and New York City*, SOCIAL FORCES 91 (3): 725–746 (2013).

³⁹ San Francisco Department of Public Health, Work Environment Program, *Wage Theft and Health Fact Sheet* (2012), *available at* http://www.sfpbes.org/work_environment.htm.

⁴⁰ K. Sparks, et al., Well-Being and Occupational Health in the 21st Century, JOURNAL OF OCCUPATIONAL AND ORGANIZATIONAL PSYCHOLOGY 74:489-508 (2001); Spurgeon, A., et al., *Health and Safety Problems Associated with Long Working Hours*, JOEM 546: 367-75 (1997).

⁴¹ B.S. McEwen, *Protective and Damaging Effects of Stress Mediators*, Dialogues in Clinical Neuroscience 8(4): 367-81 (2006); A. Steptoe & M. Marmot, *The Role of Psychobiological Pathways in Socio-Economic Inequalities in Cardiovascular Disease Risk*, EUROPEAN HEART JOURNAL 23(1): 13-25 (2002).

⁴² S.R. Collins, et al., *Issue Brief: Wages, Health Benefits, and Workers' Health*, THE COMMONWEALTH FUND (Oct. 2004).

⁴³ Robert Wood Johnson Foundation, *Overcoming Obstacles to Health in 2013 and Beyond*, REPORT TO THE COMMISSION TO BUILD A HEALTHIER AMERICA (2013).

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⁶⁵ *Id.*

⁶⁶ Survey of 453 workers at the Katharine and George Alexander Law Center in San Jose (N=237), the East Bay Community Law Center in Berkeley (N=58), the Centro Legal de la Raza in Oakland (N=61), and the Hastings Law School clinic in San Francisco (N=97).

⁶⁷ Among the full sample of workers in four San Francisco Bay Area workers' rights clinics, 41% overall answered that they had "tried going directly to a government agency first," compared to 50% of those at the KGACLC. Multivariate analyses of this full sample reveal that undocumented claimants were statistically less likely to have gone directly to a government agency (36, versus 44%, $p=.1$) before seeking help at a workers' rights clinic. Workers who had been paid in cash (11%) were also less likely to have gone to a government agency (log odds = $-.74$, $p=.05$).

⁶⁸ Claimants who were still employed at the job where their claim arose (only 21% of claimants) were also less likely to knock on the door of a government agency first (log odds = $-.75$, $p=.00$), reiterating concerns that at-will workers in particular may have regarding employer retaliation.

⁶⁹ Presentation by Ruth Silver Taube at the Vulnerable Workers Public Forum (5/10/12).

⁷⁰ Bernhardt, et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities*, National Employment Law Project (2009).

⁷¹ Shannon Gleeson, *Between Support and Shame: The Impacts of Workplace Violations for Immigrant Families*, UC-Wide Immigration Conference, We Asked For Workers And Families Came: Children, Youth, And Families In Migration, International Institute Program on International Migration, University of California-Los Angeles (2/22/13).

⁷² Michael Tayag, *By the People, For the People: The role of community-based participatory research in building leadership and capacity of workers*, Undergraduate Honors Thesis, Stanford University (2013).

⁷³ Department of Labor, *Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Plastics Decision on Laws Enforced by the Wage and Hour Division* (Nov. 2007), available at <http://www.dol.gov/whd/regs/compliance/whdfs48.pdf>.

⁷⁴ Cal. Lab. Code §1171.5

⁷⁵ Immigrant Relations and Integration Services, *Bridging Borders In Silicon Valley, Summit On Immigrant Needs And Contributions*, Santa Clara County (2004), available at <http://www.immigrantinfo.org/borders/index.html>.

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⁷⁷ San Francisco, Cal., Mun. Code § 12R.7(b) (2006) ("Where prompt compliance is not forthcoming, the Agency may . . . request that City agencies or departments revoke or suspend any registration certificates, permits or licenses held or requested by the Employer or person until such time as the violation is remedied."); Seattle Mun. Code § 5.55.230(A) (2011) ("The Director [of Finance and Administrative Services] . . . has the power and authority to refuse to issue, revoke or refuse to renew any business license or amusement device license under the provisions of this chapter . . . [if] the applicant or licensee has been convicted of [wage] theft . . . within the last ten years [or] . . . subject within the last ten years to a . . . final [wage] judgment not satisfied within 30 days [or] . . . subject within the last ten years to a final and binding citation and notice of assessment from the Washington State Department of Labor and Industries . . . not satisfied within 30 days . . . The period of non-issuance, revocation or non-renewal shall be at least one year."); Chicago, Ill., Mun. Code § 4-4-320(a) & (b) (2013) ("The commissioner [of business affairs and consumer protection], for good and sufficient cause, may deny [suspend, or revoke] an application for any license . . . if, during the five-year period prior to the date of this application, the applicant admitted guilt or liability or has been 'found guilty' or liable in any judicial or administrative proceeding of committing or attempting to commit a willful violation, or two or more violations which do not include a willful violation, of the Illinois Wage Payment and Collection Act, 820 ILCS 115/1, or any other federal or state law regulating the payment of wages; or a violation of . . . any other federal or state law regulating the collection of debt.").

⁷⁸ S.F. Mun. Code § 12R.17(d) (2006).

- ⁷⁹ San Francisco Office of Labor Standards Enforcement, *Minimum Wage Ordinance, Annual Report FY 2012-2013* (Dec. 6, 2013), available at <http://sfgsa.org/modules/showdocument.aspx?documentid=11225>.
- ⁸⁰ Houston, Tex., Art. XII, Ch. 15, City of Houston Code of Ord. §§ 15-5 (2)(c), 15-6(2) (2013).
- ⁸¹ S.F. Mun. Code § 12R.16(b) (2006); Cal. Lab. Code § 98.6(a) (prohibits retaliation against an employee for exercising her rights under wage and hour laws; contains no statutory penalty or liquidated damages but includes reinstatement and compensatory damages (lost wages); tort remedies under California Civil Code § 3294 include punitive damages, pain and suffering, back pay, and reasonable attorney's fees and costs); Seattle, Wash., Mun. Code § 12A.08.060(B)(6) (2011) (“[A]mong the circumstances that may be considered in determining whether the person intends to avoid payment for services are that he or she . . . in retaliation for asserting any claim to wages, communicates to the person providing the services, directly or indirectly, explicitly or implicitly, the willingness to inform a government employee that the person is not lawfully in the United States, or threatens, intimidates, or takes any other adverse action against the person . . .”); Mass. Wage and Hour Anti-Retaliation Laws, Mass. Gen. Laws c. 149 § 148A; Mass. Gen. Law c. 151 §§ 19 (1), (5).
- ⁸² S.F. Mun. Code §§ 12R.7 & 12R.16; Chicago Mun. Code § 4-4-350 (2012).
- ⁸³ Seattle Mun. Code §§ 12A.02.070(A)& 12A.08.060(A) (2011).
- ⁸⁴ U.S. Dept. of Labor, Data Catalog, available at http://ogesdw.dol.gov/views/data_summary.php.
- ⁸⁵ S.F. Mun. Code § 12R.17(a) & (b) (2006) (“If the person or persons responsible for the violation fail to correct violation within the time period specified on the citation . . . the Director of the Office of Labor Standards Enforcement may issue subsequent administrative citations for the uncorrected violation(s) without issuing a new notice . . . [and] assess a ten (10) percent late fee . . .”); Miami-Dade-Dade County, Fl., Code § 22-2(2)(b)-(c) (2010) (“If the County finds that any respondent employer has failed to comply with the Hearing Examiner’s order within forty-five (45) days after written notice from the County, the County shall . . . order the employer, in addition to wage restitution ordered, to pay the prevailing complainant employee an amount equal to the applicable interest rate which accrues on the full amount of treble damages from the date upon which the finding of wage violation was made until the date upon which the amount is paid in full; and . . . to pay to the Board of County Commissioners an amount equal to the applicable interest rate which accrues on the assessment of costs from the date upon which the Hearing Examiner’s order is issued.”).
- ⁸⁶ S.F. Mun. Code §§ 12R.16(b), 12R.7(c) (2006); Miami-Dade-Dade County, Fl., Code § 22-5(1)(b) (2010).
- ⁸⁷ Rita J. Verga, *An Advocates Toolkit: Using Criminal ‘Theft of Service’ Laws to Enforce Workers’ Right to Be Paid*, *New York City Law Review* 8: 283 (2005).
- ⁸⁸ Workers Defense Project, *Wage Theft Fact Sheet* (2014), available at <http://www.workersdefense.org/programs-2/workplace-justice/wage-theft/wage-theft-fact-sheet/>.
- ⁸⁹ Down with Wage Theft Campaign, *Houston City Council Passes Anti-Wage Theft Ordinance* (Nov. 20, 2013), available at <http://downwithwagetheft.org/2013/11/20/houston-city-council-passes-anti-wage-theft-ordinance/>.
- ⁹⁰ Houston Interfaith Worker Justice Center, *Houston, We Have a Wage Theft Problem: The Impact of Wage Theft on Our City and the Local Solutions Necessary to Stop It* (May 2012), available at <http://stopwagetheft.files.wordpress.com/2012/05/2012-houston-wage-theft-report.pdf>.
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- ⁹³ <http://www.sanjoseca.gov/minimumwage>
- ⁹⁴ California Constitution, Article XI, §7 (“A county or city may make and enforce within its limits all: local, police, sanitary, and other ordinances and regulations not in conflict with general laws.”)
- ⁹⁵ *Candid Enterprises, Inc. v. Grossmont Union High School District*, 29 Cal.3d 878, 885 (1985).
- ⁹⁶ *Cohen v. Board of Supervisors of the City and County of San Francisco et al.*, 40 Cal. 3d 277 (1985).
- ⁹⁷ *Prime Gas v. City of Sacramento*, 184 Cal. App. 4th 697 (2010).

⁹⁸ Cal. Lab. Code §§ 1171-1206 (2012); see also Cal. Lab. Code § 1206, Leg. Counsel Dig., Chaptered Bill Text, AB 469 §11, Chapter 655, Filed with Sec’y of State Oct. 9, 2011 (see Appendix A, 13).

⁹⁹ Cal. Lab. Code § 1206.

¹⁰⁰ Cal. Lab. Code § 1205(b).

¹⁰¹ Records of each committee hearing and vote pertaining to § 1206 demonstrate that the intent of the Legislature is to allow local jurisdictions to enact stricter penalties. The bill contained language that “...nothing preempts or limits a local law that prohibits the same or similar conduct, imposes more severe penalties for failure to comply with wage-related payment requirements, or has more accelerated timelines for the payment of wages or penalties ... [and] the Labor Code provisions governing wages paid, hours worked and working conditions of employees are not to be deemed to restrict the exercise of local police powers in a more stringent manner.” Leg. Counsel Dig., Bill Analysis, AB 469, Assembly Committee on Judiciary, Apr. 26, 2011, p. 8 (see Appendix, p. 4. The bill was amended in its final version because the Judiciary Committee felt that Labor Code §1205(b) already permitted local jurisdictions to enact stricter penalties and that AB 469’s language was redundant. Leg. Counsel Dig., Amended Bill Text, AB 469, §9, Apr. 14, 2011 (see Appendix, p. 5).



County of Santa Clara
Office of Women's Policy