

UNPAID & UNAWARE

WAGE THEFT AND LABOR RIGHTS ENFORCEMENT IN SAN DIEGO CITY AND COUNTY

KEY FINDINGS:

JULY 2024

- 1) Wage theft** was a rampant problem for the workers in our study. Of 843 hourly employees surveyed, 87% experienced wage theft during the previous 12 months. Moreover, about half regularly* experienced wage theft.
- 2) Minimum wage violations** were widespread among survey participants who worked in the City of San Diego, where the minimum wage is higher than the state minimum. Over 30% of the hourly employees working in the city were paid less than the 2023 minimum of \$16.30. Of the hourly employees working outside of the city, where the 2023 minimum wage was \$15.50, almost one in ten were paid under this amount.
- 3) Sick day violations** were common among survey participants. Of the more than 900 workers surveyed (both hourly and salaried), approximately a third either did not get any sick days or were retaliated against for taking them. In addition, over half of respondents did not know how many paid sick days they could earn at their job, and most of those did not know if they could earn them at all.
- 4) Lack of knowledge** about wage theft and how to seek remedies was pervasive among survey participants. Of the participants who reported having experienced at least one illegal practice, 87% did not know they had experienced wage theft. Even more alarming is the fact that 82% of those that reported they had *regularly** experienced violations did not recognize it as wage theft. Moreover, almost 90% of workers did not know where to file a complaint. Similarly, 90% had never heard of the City or County Offices for Labor Standards Enforcement.

*Regularly includes anyone who had minimum wage violations, which occur with every hour of work, and/or answered that they *often* experienced one or more of the wage theft practices listed on page 4 of this report.

NOTE: The information in this report is based on a survey conducted in November and December 2023 of 942 workers, 92% of whom were also students. Respondents were asked about their experience working in San Diego County in the previous 12 months. Most jobs were located in the City of San Diego (71%), with the remainder in the county but not in the San Diego city limits. The quotes are taken from ten in-depth interviews conducted with survey participants. See the Methods and Sample section for more detail.



Every day in our county, workers lose essential income because employers fail to pay them the money they have earned. This *wage theft* is a result of employers violating many of the basic protections enshrined in federal, state and local laws. Workers have the legal right to minimum wage, rest breaks, overtime pay, timely payment of their wages, and earned sick days among other protections.

It is estimated that nationwide employers steal \$50 billion dollars a year from workers' pockets by failing to comply with these laws.¹ This study documents the fact that San Diego employers are no exception to this pattern. Our previous study, *Confronting Wage Theft* (2017)², also made clear that the California state enforcement system is overwhelmed and unable to sufficiently address the wage theft problem in San Diego. The California legislature, in recognition of the state's limited capacity to deal with the massive problem of wage theft, passed [AB 594](#), empowering local prosecutors to enforce the breadth of state labor laws, not only local mandates. This state law went into effect on January 1, 2024, and provides an opportunity for broader enforcement. In addition, in response to labor and community advocates, the governments of the City and County of San Diego have each established offices designed to help workers face the challenges presented by wage theft and we encourage an expansion of these efforts in response to information provided here and elsewhere on the need for more local enforcement and education.

In 2022, the City of San Diego established the Office of Labor Standards Enforcement (OLSE) by consolidating offices, which had been previously established to ensure compliance with local mandates. In 2006, the City of San Diego began to enforce labor standards following the passage of the City's [Living Wage Ordinance](#), aimed at raising wages for employees of city contracted services. Enforcement efforts expanded in 2014 with the adoption of the [Prevailing Wage Ordinance](#), which guaranteed wage standards on public works projects. In 2016, city residents approved the [Earned Sick Leave and Minimum Wage Ordinance](#) raising standards for all workers in the city. The City OLSE, housed in the Compliance Department, has been focused on enforcement of protections created

under these three regulations and on education. While the City OLSE does payroll monitoring for the first two ordinances, the enforcement for the third has primarily occurred through a worker complaint system. However, few workers have come forward. There were just 34 complaints in fiscal year 2022 and 39 complaints in FY2023³. This is a tiny fraction of the estimated 130,270 minimum wage violations in San Diego per year.⁴ It is clear from our report that workers are generally unaware of this avenue for potential redress. In terms of education, the City's OLSE has largely focused on employers. Although raising employer awareness in order to boost compliance is important, the City should also invest more in employee rights education, given that the complaint-based system depends on workers' understanding of both their rights and how to file complaints defending those rights. Lastly, the City OLSE has committed to increasing proactive investigations of minimum wage and earned sick leave violations, which they have conducted in very limited numbers to date.⁵ A robust program of proactive investigations is necessary for effective enforcement.

In 2021, San Diego County's Board of Supervisors created the Office of Labor Standards and Enforcement (OLSE). The County OLSE has also focused on education and enforcement of local measures. The County passed a series of laws and policies focusing on different industries and groups of workers including: [Working Families Ordinance](#), [Sub-Contractors Transparency Ordinance](#), [Right of Way Ordinance](#), and [Board Policy B-74: Janitorial, Landscaping, and Security Services](#). These measures focus on protecting workers who either work for firms contracted by the County, work on county-owned leased property or work in the unincorporated areas of the County. In contrast, the [Good Faith Restaurant Owner's](#)

[Program](#) and the [Workplace Justice Fund](#) support workers throughout San Diego County regardless of municipal boundaries. The County is enforcing these laws by using the leverage it has over businesses to collect on unpaid wage theft judgements (which are the result of successful complaints to the State Labor Commissioner's Office). For example, the County has the power to withhold or revoke health permits for restaurants, building permits for construction projects, and contracts with service providers until businesses pay the money they have been found to owe workers.⁶ While the County has rapidly ramped up its efforts to support victims of wage theft, they have focused on recovering unpaid judgements and taking complaints from workers employed by contractors and in specific geographic areas rather than investigating complaints from workers throughout the County.

The County OLSE also conducts education and outreach to ensure that employers know their responsibilities and

workers know their rights. The County OLSE has partnered with community-based organizations to help with their outreach and enforcement efforts. Lastly, the County OLSE has convened community and labor organizations and employers through the Fair Workplace Collaborative. This collaborative space allows employer and worker-based groups an opportunity to engage with the office and provide input regarding the offices' programmatic efforts and strategic enforcement impacts.

Regional efforts to enforce wage theft protections are increasing, especially at the county level where various initiatives have been launched in the past two years. However, the magnitude of the problem far outstrips these programs. Following our findings, we make recommendations to both the City and County of San Diego to more effectively address wage theft for local workers.



WAGE THEFT

Our survey of over 900 San Diego County workers included 843 hourly employees, who are protected by a series of labor laws. Of those 843, 87% reported that employers had stolen their wages in at least one way during the past year. Moreover, 49% of the sample reported that their earnings were regularly stolen by their employers. Regularly includes those who suffered minimum wage violations, which affect pay for every hour worked, and those who responded that they *often* experienced one or more types of wage theft listed below.

In addition to a minimum hourly wage (which is set by the City of San Diego for people working in the City and at the California state level for all other workers in the County), state and federal laws establish a series of requirements to ensure that employees are paid for the time they work. This study demonstrates that many workers in San Diego regularly experience violations of those laws. Our survey examined twelve types of wage theft, ten general protections described below, followed by two types of theft related to tipped workers.



SURVEY RESPONDENTS EXPERIENCED HIGH LEVELS OF WAGE THEFT: HOURLY EMPLOYEES (N=843)

IN THE LAST 12 MONTHS . . .

Type of Wage Theft	Experienced	Experienced Regularly*
Experienced one or more types of wage theft below	87%	49%
Unpaid off-the-clock work	58%	9%
Employer-created conditions that prevented rest breaks	55%	18%
Worked over 6 hours without a meal break	47%	11%
Not paid for reporting to work	29%	5%
Not paid overtime for working >8hrs/day or >40 hrs/wk	26%	5%
Minimum wage violation	25%	25%
Denied rest breaks	23%	4%
Late or bounced checks	20%	2%
Had to falsely report untaken breaks	16%	3%
Illegal deductions from pay	6%	2%
Tip theft (Tipped workers N = 309)	45%	23%
Management takes workers' tips	39%	19%
Wages reduced because of tips	14%	6%

*"Experienced regularly" is included in the "Experienced" percentage

The three industries where we found the highest rates of workers experiencing violations were the food and drink/hospitality sector at 89.4% (of 299 respondents in this industry), healthcare and caregiving at 88.6% (of 42 respondents in that industry) and construction, which only had 7 respondents working in the industry but 100% of them reporting violations. Other studies have found high rates of violations in the food and drink sector.⁷ The County OLSE's dashboard, based on wage theft judgements resulting from complaints filed at the San Diego office of the California Labor Commissioner, shows large concentrations of wage theft cases in the accommodation/food and drink sector as well as construction.⁸

MINIMUM WAGE

THE LAW: By state law, workers in California must be paid at least minimum wage, which was \$15.50 per hour¹⁰ at the time the survey was conducted. The City of San Diego requires a higher minimum wage than the state's rate, which was \$16.30 per hour¹¹ at the time of the survey.

THE SURVEY: In our sample, one-quarter (25%) of hourly employees reported not receiving the minimum wage applicable to the location of their work. Specifically, 31% of respondents working in the City of San Diego were not receiving the city's minimum wage, and 9% of respondents working elsewhere in San Diego County were not receiving the state's minimum wage.

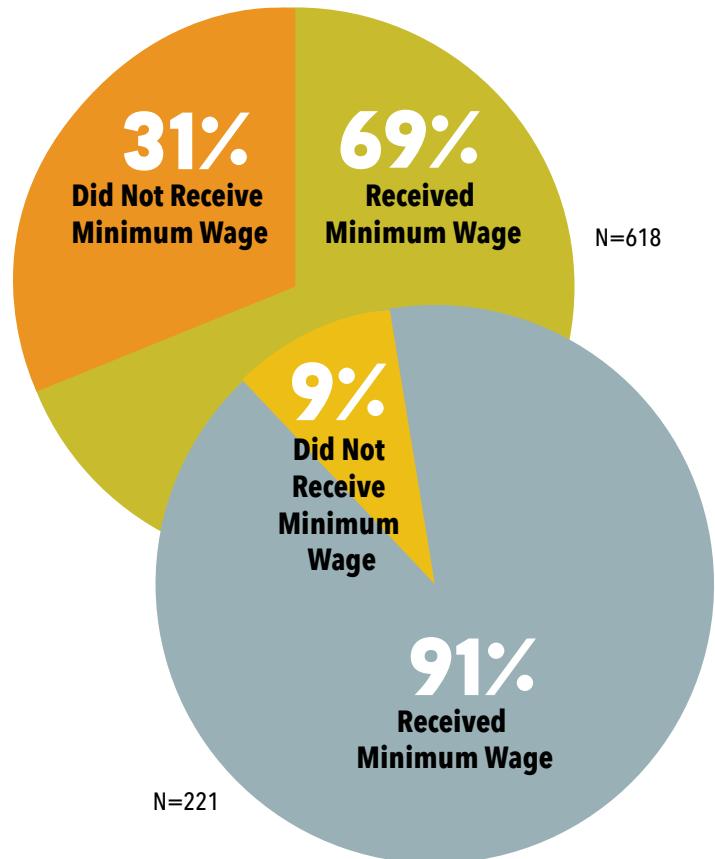
We asked respondents both where they worked and their hourly pay. We then analyzed separately for those working in the City of San Diego, where the minimum wage was \$16.30 at that time, and the rest of the County where the minimum was \$15.50. All together, 25% of the 839 hourly workers who answered these questions were experiencing minimum wage theft. Most of these were working in the City, where there was a higher minimum wage, with 31% of these respondents being paid under the required amount. In the rest of the County the violation rate was closer to 10%.

Our survey finding of minimum wage theft in San Diego County, excluding the City of San Diego, is consistent with the findings of a study of California workers conducted for the US Department of Labor, which estimated that 10.9% of California workers in low-wage positions (which are disproportionately held by students and young people) experienced minimum wage violations in the past month.¹² A study by the Economic Policy Institute put the rate among Californian minimum-wage-eligible workers closer to 20%.¹³ Our survey found evidence of comparatively higher minimum wage theft violations for those working in the City of San Diego (31%). The fact that the reported rate of violations is three times higher in the City, compared to elsewhere in the County, suggests a need for an intensified outreach campaign and increased enforcement in the City of San Diego.

The vast majority of respondents were low wage workers, with 80% of hourly workers making under \$20 an hour.⁹ The financial insecurity caused by low wage employment, leaves workers even more vulnerable to the impacts of wage theft. As Jessica, a 28 year-old library technician explained, "Like most Americans, I live paycheck to paycheck." Jessica described that missing out on even a small amount of owed pay is "...still pretty significant."

MANY RESPONDENTS DID NOT RECEIVE THE REQUIRED MINIMUM WAGE

CITY OF SAN DIEGO



COUNTY OF SAN DIEGO

*On January 1, 2024, after our survey, California State's minimum wage was increased to \$16 per hour and the City of San Diego's minimum wage was increased to \$16.85 per hour. Minimum wages often rise on January 1, so be sure to keep yourself updated.

In an extreme case, Sara described being told she would only be paid in food during her training period at a Subway. She was told the training period could last an indefinite amount of time. Sara worked for five days before leaving the job. During that time she worked mostly by herself and received little training. The restaurant paid her no wages.

Some San Diegan workers are clearly losing much needed income to minimum wage violations, which are estimated to cost all California workers \$2 billion dollars annually.¹⁴

OFF-THE-CLOCK WORK

THE LAW: Employees must be paid for time they work, whether or not it is within regular work hours and whether or not it is voluntary.¹⁵

THE SURVEY: Over half (58%) of hourly employees responding to the survey reported working unpaid off-the-clock either before or after their recorded work hours, and 9% said it was a regular part of their jobs. Off-the-clock work was the most common form of wage theft reported.

In interviews, workers described completing various types of work tasks outside of paid hours, including setting up, answering texts, taking online trainings, and completing administrative duties.

Avery, a fitness coach at a gym, explained, "You only get paid by the class. So, let's say the first class that I coach is at 5:30 AM in the morning, but then I have to be there at 5 to open the gym, set up, etc...I wouldn't get paid [for that]."

Off the clock work can include falsified clocking out by employers. Karin, a 24-year-old parking attendant, described an instance of such intentional wage theft, "so we had a phone that we use to clock in and out, like we add our ID and our phone number to clock in and out. So one night I had clocked out at 1:30am cause I worked until very late and when I checked the time sheet, the time had changed from 1:30am to 7:30pm. So that was the first time when I was like, wait a second, you guys are actually trying to steal my time from me."



REPORTING TIME PAY

THE LAW: Employees who report to work for scheduled shifts must be paid for at least half of their usual number of hours (and no less than two hours), even if they are sent home sooner.¹⁶

THE SURVEY: Over a quarter of hourly workers surveyed (29%) said they had been sent home without at least the minimum 2 hours of required pay after arriving for a scheduled shift, and 5% said it happened often.¹⁷

Reporting Time Pay offsets costs to workers sent home after arriving for a scheduled shift, including time and expenses due to commuting, childcare costs, and lost earning opportunities through other jobs. In our interactions with workers, it was clear that many were unaware of this law.

OVERTIME VIOLATIONS: MORE THAN 8 HOURS PER DAY OR 40 PER WEEK

THE LAW: Under state law, employers must pay 1.5 times the regular wage for all hours an employee works over 8 hours in a day or over 40 hours in a week.¹⁸

THE SURVEY: In our sample, one in four (26%) said they had worked overtime without being paid the required time-and-a-half rate during the past year, with 5% experiencing this type of wage theft often.

ILLEGAL DEDUCTIONS

THE LAW: California employers may not withhold or deduct wages for damages, cash shortages, nonpayment by customers or required uniforms or tools.¹⁹

THE SURVEY: In our sample, 6% of workers were charged for damages, breakages, non-paying customers, or cash register shortages within the past year, and 2% said it happened often.

The survey may have undercounted the violations because the survey question did not mention payments for uniforms or work tools, which are usually but not always illegal. Also, this was the category, other than tips, where there were the most "I Don't Know" responses (at 11%). The high rate of unsure responses indicates that many of those surveyed are either unsure of what employers are allowed to deduct from their pay or are unsure of what is being deducted, showing a need for clearer information on pay stubs.

STOLEN TIPS

THE LAW:

- Employers (owners, managers, and supervisors) cannot keep any portion of tips left for employees by customers.²⁰
- Employers cannot reduce wages because of tips earned, or credit tips against employees' wages.²¹

THE SURVEY: Among the 309 tipped workers surveyed, tip theft was extremely common. Forty-five percent of tipped employees had experienced tip theft in the last year. Half of these (23%) reported they often experienced at least one of these tip violations.

- Over one-third of tipped respondents (39%) said managers have taken parts of their tips in the past year, half of these said it happened often.
- Among tipped respondents, 14% had their paychecks reduced because of the amount of tips they earned, and again almost half of those said that it happened often.

In addition, a very large number of workers don't know whether their tips are being stolen, so the reported frequency may be a substantial undercount. The number of "*I don't know*" answers to these two questions is striking. Overall, 35% of tipped respondents did not know if they were subject to either or both of these forms of tip theft.

In a 2015 report that focused on restaurant workers, *Shorted*, we described how the tip system is open to abuse because it is inconsistent and unclear to workers.²² It is often impossible to know what one is owed in tips, since tips are usually pooled and then divided by management or paid out by another worker (for instance the server or bartender). Enforcement of these laws depends on complaints, which aren't possible if workers don't know if or how much of their tips are being illegally withheld.

Sometimes workers inadvertently discover their tips were stolen, like in the case of Cam, a barista that also worked catering jobs. Cam saw the invoice for an event she worked that listed tips at \$100. She explained, "when we asked him [the boss] 'Oh by the way, did we make any tips? Can we get those tips?' he said we didn't get any tips. But, like since we saw the invoice, we knew that that was not true."

BREAK VIOLATIONS

Under California law, employers must have a system in place to allow employees to take meal and rest breaks, although it's not illegal for employees to skip the rest breaks.

MEAL BREAKS

THE LAW: Employees must receive an uninterrupted 30-minute meal break if working more than 5 hours. This break does not need to be paid. Employees may waive this right, but only if they work no more than 6 hours.²³ In order to legally provide the break, employers must relieve employees of all duties during the entire 30 minutes. The penalty for failing to provide required meal breaks is an extra hour of pay to the worker per violation.²⁴

THE SURVEY: Almost half (47%) of hourly workers surveyed reported working more than 6 hours without having an uninterrupted meal break in the past year; 11% said it happened often.

Meal breaks are meant to ensure that workers have at least 30 minutes to eat and relax, when they work for 5 hours or more. Employees may voluntarily decide not to take the break, if they are leaving work before six hours and do not want to stay longer. But if someone works six hours they must take a meal break *during* that period.



47% OF WORKERS SURVEYED REPORT NOT HAVING MEAL BREAKS

A hotel worker named Janet said she often skipped her 10-minute breaks and lunches on days the hotel was busy because there was no one there to cover for her. She also explained that she was instructed to report that she had taken her lunch even when she had not taken it.

PHANTOM MEAL BREAKS: FRAUD, WAGE THEFT, AND BREAK VIOLATIONS



Additionally, 16% of the hourly employees surveyed said their employers have made them falsely report taking breaks. For 3%, this happened often.

These cases could be triply illegal: labor code violations, wage theft, and fraud. These workers are not being allowed their breaks, which is a violation. In addition, if workers report they have taken a meal break but work through it, they could be working a half hour they are not paid for. Finally, workers are being instructed to provide a falsified written record.

Some workplaces have time-clocking systems that require employees to report their meal break in order to clock out at the end of the shift – whether or not they actually took the break. In other cases, employers clock workers out for required breaks but make them keep working.

As Jane, a 31-year-old cashier explained, "I've encountered in this employment and other employments, where managers and supervisors will, I guess, talk you into not taking your break. And not only that, but push you into lying, 'Hey, well, you know, you can just put that you took your break,' and you're working through your break."

Besides depriving workers of needed rest and sustenance, and possibly robbing them of the wages for time fraudulently recorded as breaks, employers are creating false records that protect them from potential wage violation claims.

10-MINUTE REST BREAKS

THE LAW: Workers in California must be allowed to take a paid 10-minute rest period for every 4 hours worked. Although workers can choose to skip breaks, employers cannot discourage or prevent the breaks. The penalty is one hour of extra pay per each workday that the rest break was not permitted.²⁵

THE SURVEY: Almost a quarter of hourly employees (23%) reported they had been denied rest breaks in the past year, with 4% saying it happened often. Over half (55%) of hourly employees reported that their employer created conditions that prevented them from taking their breaks (for example, no one was assigned to cover their duties), with 18% saying this happened often.

Both federal and state law enshrines rest breaks as a necessary element of the workday. Rest breaks allow workers to maintain their well-being. A ten minute pause in a four hour period is a bare minimum for physical, mental and emotional recuperation.

Employers are required to relieve workers of their duties so that they are able to take their breaks. By not providing the conditions for workers to take a break, like sufficient staffing, employers create a culture where workers are reluctant to insist on breaks for fear of overwhelming their co-workers, missing out on tips, or appearing lazy.

Adam, who worked as an instructional assistant at a children's center explained how understaffing forced him and his coworkers to forgo 10-minute rest breaks. He said this was compounded by the fact that "there's never really supervisors around to give the breaks or ask for breaks" and it was often too hectic for the instructional assistants to try to cover each other without "approval" by a superior. He added, "It doesn't just affect us. I feel like it's also a disservice to the kids we work with."

PAID SICK TIME

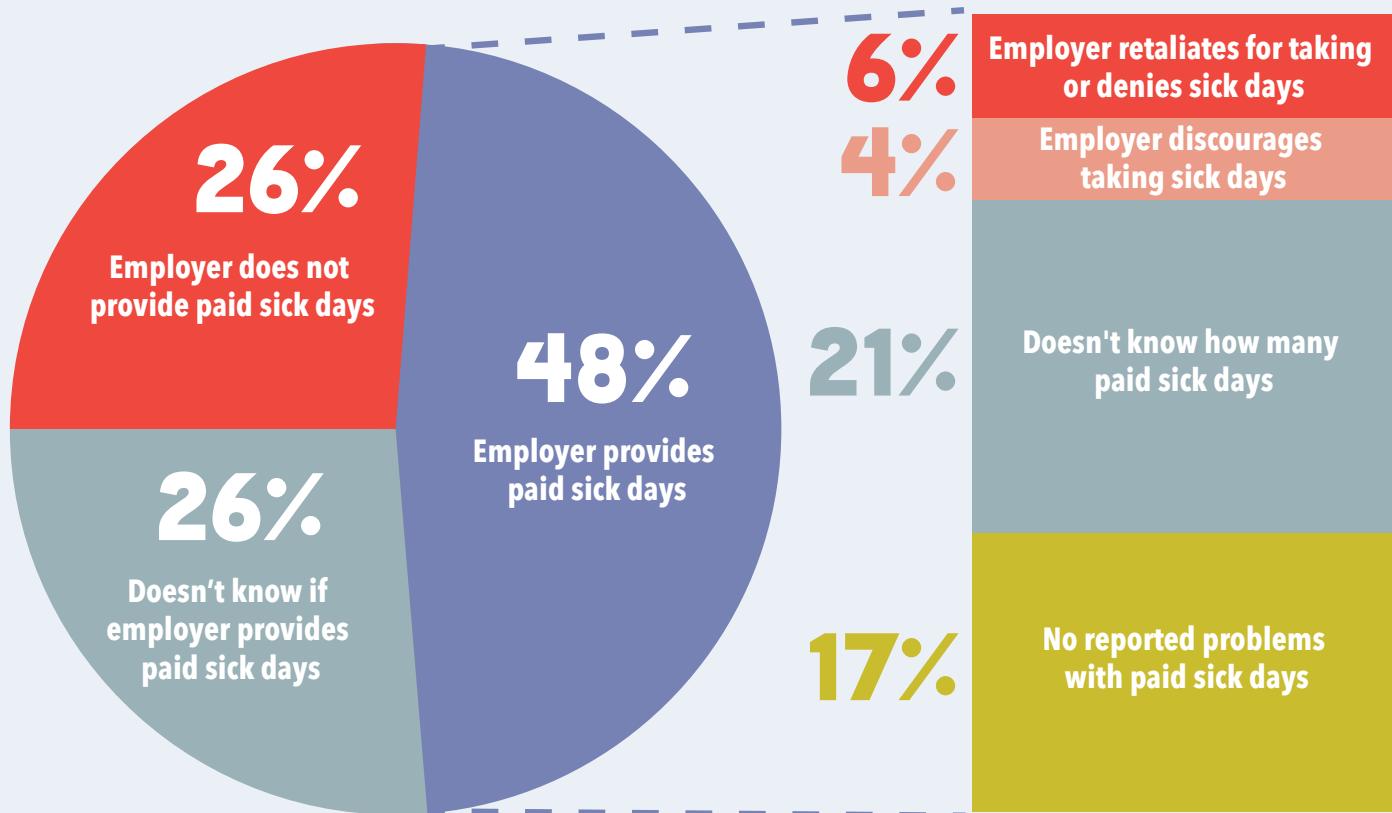
THE LAW: By state law, workers in California were entitled to earn a minimum of three paid sick days²⁶ (paid time off for illness or to care for family members) per year²⁷, at the time this survey was conducted.* Workers in the City of San Diego have the ability to earn a minimum of five paid sick days per year.²⁸ Under both regulations employers are required to inform workers of how many sick days they earn and are prohibited from disciplining them or discriminating against them for taking the days. Employers face a \$50 penalty per day, up to a maximum of \$4000, for violating paid sick leave regulations.²⁹

*California State's minimum sick day law increased to five earned sick days per year effective January 1st, 2024.

THE SURVEY: Respondents to the survey faced many barriers to accessing paid sick leave. About a third of the 907 employees (both hourly and salaried) faced clear violations. Slightly over a quarter (26%) of respondents reported not getting any sick days and another 6% received sick days but were retaliated against for taking them. In addition, 26% reported they did not know if they got any sick days. Of the 48% of respondents who said they did get paid sick days, most of these did not know how many they got and/or faced repercussions when asking for the days.

Employees surveyed reported low rates of access to paid sick time. Not only does this not allow workers time to rest and recuperate but it can result in the sick workers' direct contact with customers or clients, as employees show up to work because they need the wages or because they risk being reprimanded or retaliated against for missing work.

RESPONDENTS FACED MANY BARRIERS TO ACCESSING SICK DAYS



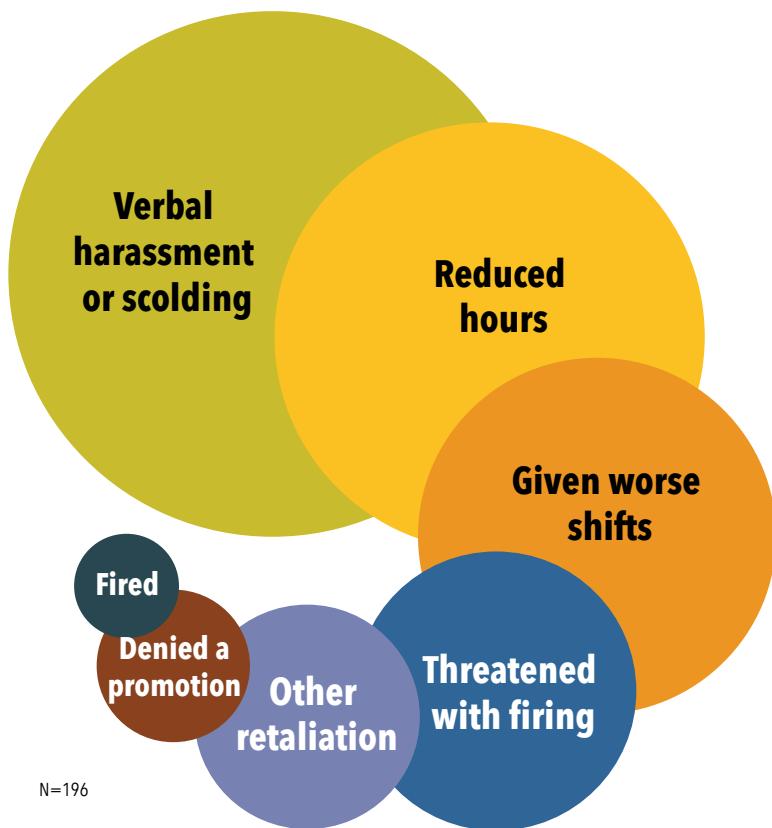
N=907

The percentage of respondents who have the unencumbered right to their sick days was no higher than 17% as shown above, but may have been as low as 14%. Of the 152 respondents that appeared to have no issues with paid sick leave (they got paid sick days, knew how many days they were allowed, and were able to take the days without repercussions), almost 20% reported getting fewer sick days than legally mandated in the place they work (minimum of five in the City or three outside the City³⁰). However, since paid sick days are earned at a rate of one hour for every 30 hours worked, we cannot conclusively say this is a violation without knowing how many hours and days each respondent had worked in the year.

The fact that so many workers lacked knowledge about their sick days is alarming. Of the over 900 employees in the survey, over half (52%) did not know if they had sick days and/or how many they could earn in a year.³¹ Employers are required to inform workers of their sick day policy, prominently display a poster of the right to earned sick days in the worksite, and provide pay stubs (or a separate document along with the paycheck) that show workers how many sick days they have accumulated.



WAYS RESPONDENTS WERE DISCOURAGED FROM TAKING SICK DAYS



In addition to how many sick days one is officially allowed, is the matter of whether workers can actually take sick days. Almost one-quarter (22%) of respondents reported that their employer discouraged them from or retaliated against them for taking sick days, with 15% reporting types of retaliation that are clear violations of the California state and San Diego city paid sick days statutes.³² Of the 196 reporting the type of discouragement or retaliation they faced: 45% had their hours reduced, 35% were given worse shifts, 14% were threatened with firing, 8% were denied a promotion, 3% (or 7 people) were fired. All of these types of retaliation, and especially firing, have much wider effects in that they serve as a warning that discourages other workers from asking for their sick days.

In an open response "other" category, ten people wrote in that they were not allowed their sick days unless they found someone to cover their shift or were just denied sick days. For example, one anonymous survey respondent reported that their employer made "people come in if they can't find a cover when sick." The requirement for the employee to find coverage in order to take a sick day is prohibited by law.

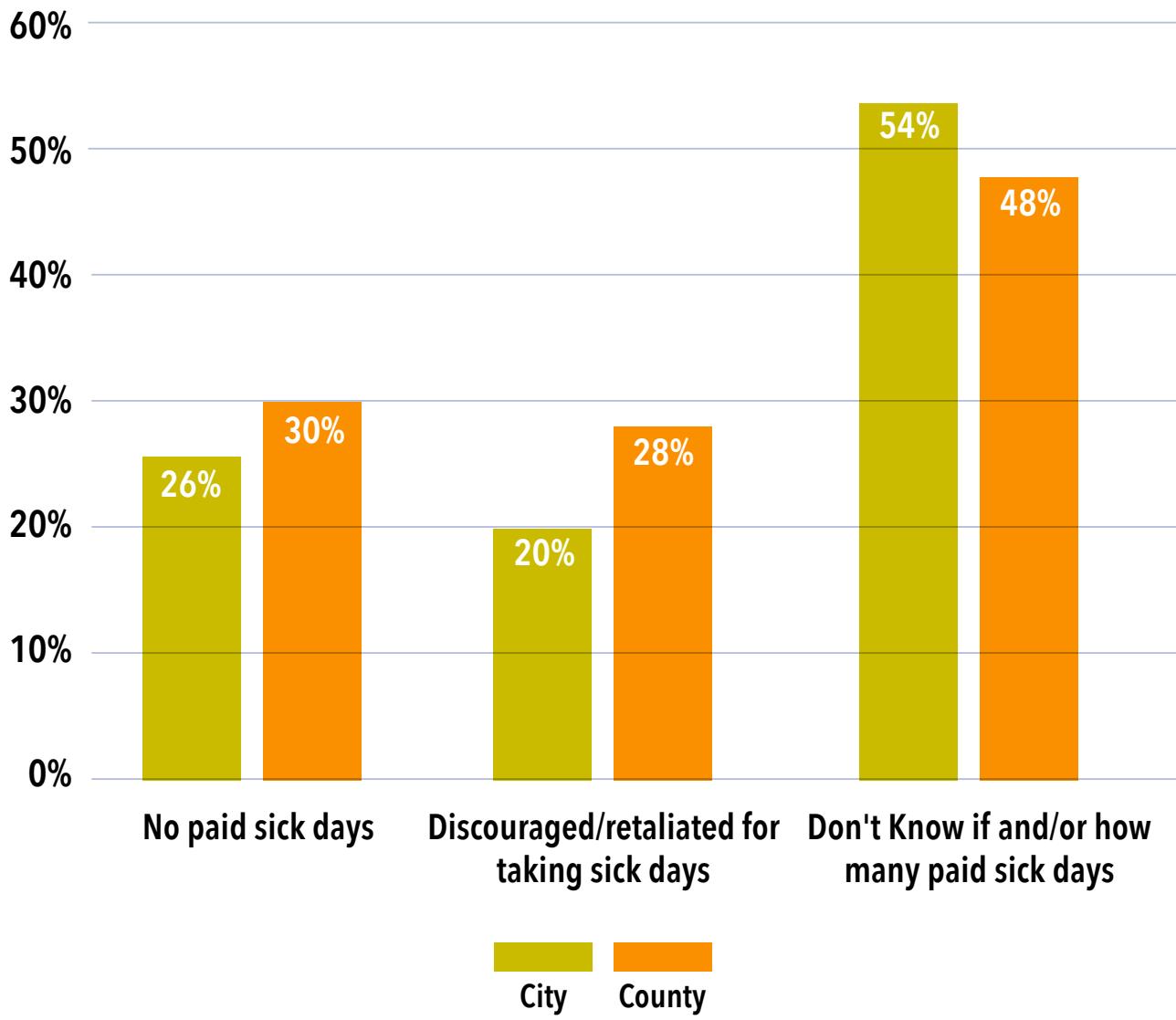
In addition, over half of the almost 200 respondents to this question said they were verbally harassed or scolded for calling in sick.

SICK DAYS IN THE CITY AND COUNTY

We also analyzed the data separately for the City and the rest of the County, since there are two sets of standards and two enforcement agencies. Here, as above, we can see that over a quarter of each group lacks any sick days. Facing discouragement and retaliation for using sick days, was reported by 20% of all respondents working in the City and nearly 30% working in the County. And when we added together those that did not know if they had any sick days with those that did not know how many sick days they can earn in a year, the percent rises to more than a half of respondents working in the City and almost a half of all other respondents.

Without clear knowledge about what one is entitled to and the ability to ask for it, workers' rights to paid sick days and other protections are undermined. Providing information about sick days and allowing workers to take them without negative consequences are necessary elements of the law and must be enforced.

BARRIERS TO ACCESSING SICK DAYS FACING SURVEYED WORKERS IN THE CITY AND IN THE REST OF THE COUNTY



LACK OF KNOWLEDGE AND NEAR ABSENCE OF COMPLAINTS

Very few workers realized they were victims of wage theft, even fewer knew where to complain about violations, and still fewer had actually filed complaints. A complaint-based system requires workers empowered by both knowledge of their rights and the processes to defend those rights as well as protection from retaliation for doing so. The current reality repercussions for complaining, and lack of knowledge to do so, makes proactive investigations an essential complement to ongoing efforts to educate workers.

WORKERS LACK KNOWLEDGE ABOUT WAGE THEFT

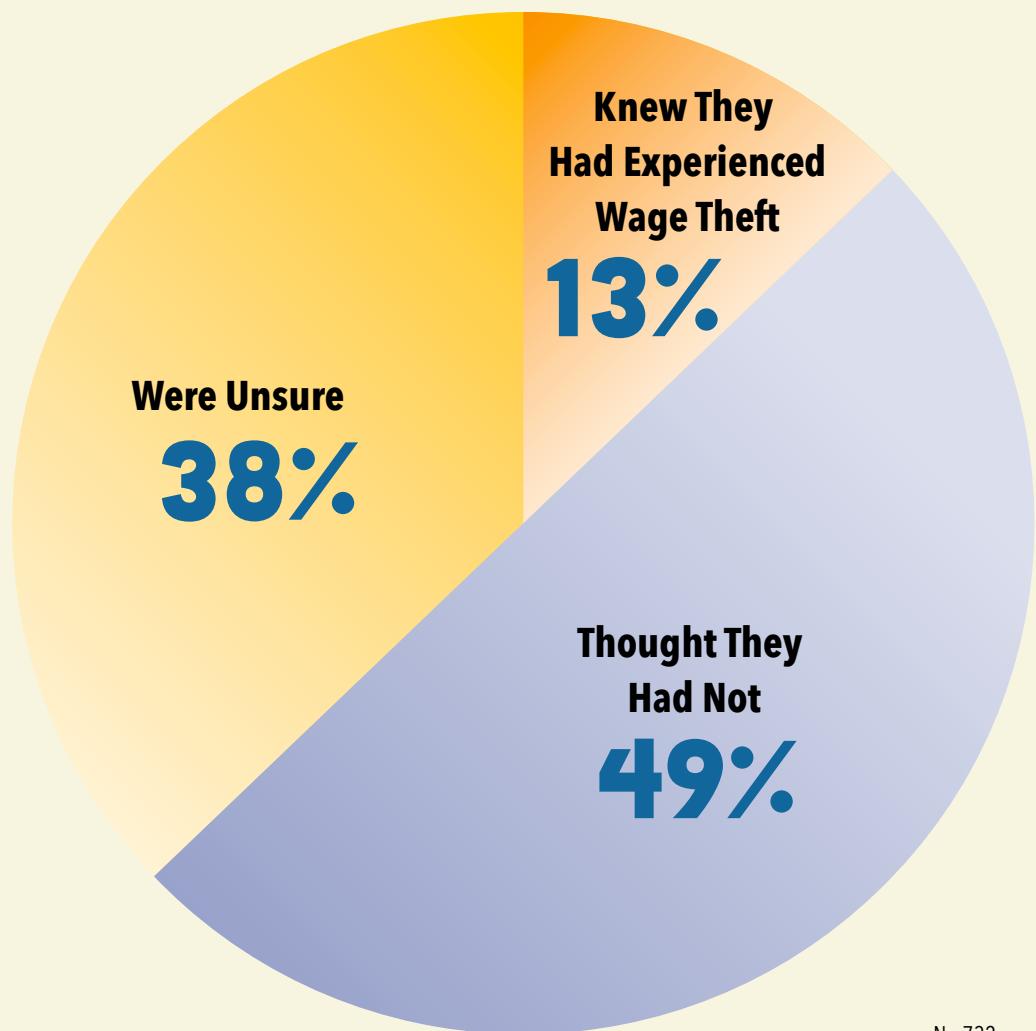
Lack of knowledge regarding wage theft was pervasive among survey respondents. Of 732 hourly employees who reported their wage being less than the required minimum and/or experiencing at least one wage theft practice in the previous 12 months, only 13% knew they had experienced wage theft. To the question: "Have you experienced wage theft?", about half answered no and the remainder did not know.

Of the 212 workers who were experiencing minimum wage violations—wage theft that occurs every hour on the job—87% were unaware that they were victims of wage theft. In addition, of the 411 hourly employees who reported *regularly* experiencing violations, that is either minimum wage violations and/or often experiencing another type of wage theft, 82% were unaware that they had experienced wage theft, with more than half of these reporting that they had not.

Whether respondents did not know that they were being cheated out of money they were entitled to, or were unfamiliar with the term wage theft, these numbers highlight the lack of knowledge many workers face regarding their rights.

Notably, of the 111 respondents who did not experience any of the types of wage theft we inquired about in the survey, only one person answered yes to the question of whether they had experienced wage theft, although 87% answered I don't know.

**AMONG RESPONDENTS REPORTING VIOLATIONS,
THERE WAS LITTLE KNOWLEDGE THAT THEY
WERE EXPERIENCING WAGE THEFT**



N=732

Confusion regarding workplace legalities was explicitly expressed in multiple interviews. When speaking about herself and her coworkers, Jane, a cashier said that "We find ourselves asking questions regarding work laws, regulations, on the job, when we have an opportunity, or when problems or issues arise. And I've always noticed that people seem very confused. We don't have answers."

WORKERS RARELY COMPLAIN TO BOSSES OR SUPERVISORS

Very few respondents complained even to their supervisors. Only 11% of the respondents who had experienced wage theft complained to their supervisors or boss. Of those 70 people who complained, 37% reported being retaliated against, more than half of those (58%) received fewer hours of work, 35% were given worse shifts, 35% had their duties changed, two were threatened with firing and three were actually fired. These forms of retaliation are all violations of the law. In addition, 42% of respondents were verbally reprimanded after complaining. Retaliation not only injures the complainant, but has a chilling effect on other workers' ability to assert their rights. The State of California, in recognition that retaliation undermines workers' ability to assert their rights, recently passed [SB 497](#) to strengthen retaliation protections.

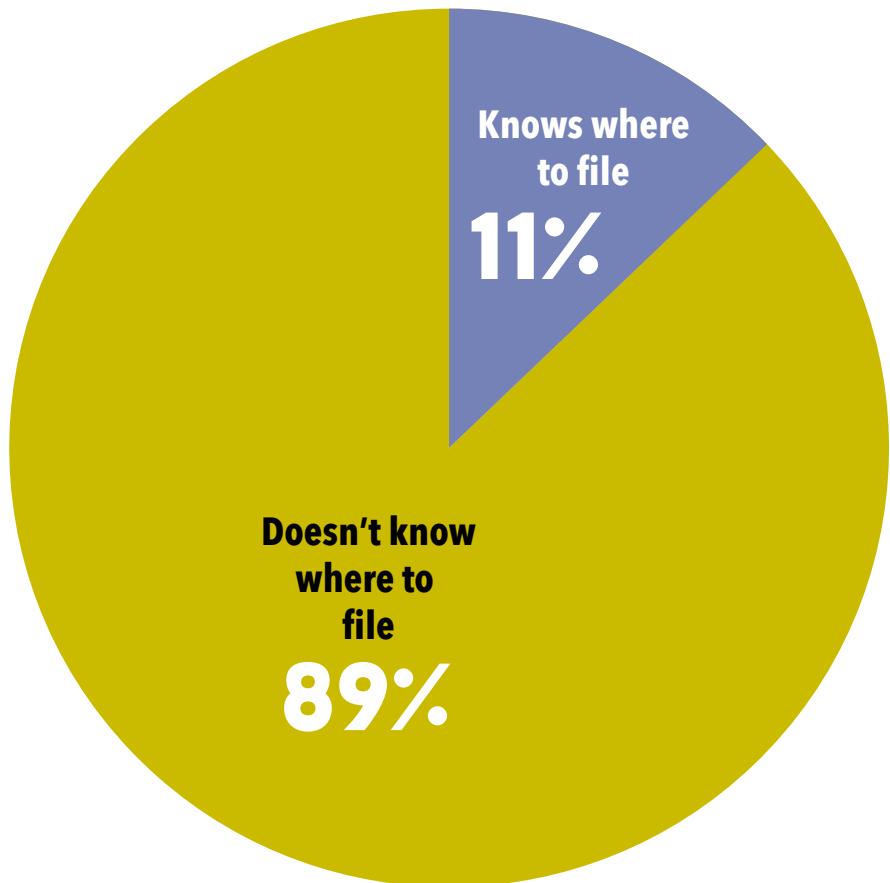
Janet, a hotel worker who complained to her bosses about receiving work texts that required immediate responses during her off hours, explained "After that conversation, and after I set that boundary via text, I did notice that my managers, both of my managers, were being extremely, I would say the word harassment, they would be harassing me as far as to walking with me from post to post, regarding a time duration of how long I took, getting from the clock to my designated workstation."

WORKERS LACK KNOWLEDGE ABOUT COMPLAINT FILING PROCESS

The vast majority of respondents also lacked knowledge about who to turn to for help with wage theft problems. When asked, *Do you know where to file wage theft complaints*, 89% of 917 respondents said **no**. When survey respondents were asked if they had heard of any of the enforcement agencies, the majority (63%) said they had not heard of any of the four listed in the question (shown below). Moreover, knowledge regarding local enforcement agencies was particularly low, as nearly 90% of respondents had not heard of the county office and about the same percentage had not heard of the city department - two entities that have been established specifically to help San Diegans address violations.

Per state and city laws, employers are required to display workplace protections and complaint process information where workers can easily see them throughout their shift.³³ Our findings suggest that employees are not receiving the necessary information. It is unclear if employers are not prominently displaying the posters, or if the posters are not effective. Of the required state and city posters regarding minimum wage and paid sick leave, only the City of San Diego's earned sick days poster provides a phone number that employees can call regarding violations. The City's minimum wage poster and the State of California's two posters only have a website, and only in small font at the very bottom of the posters. None had QR codes.

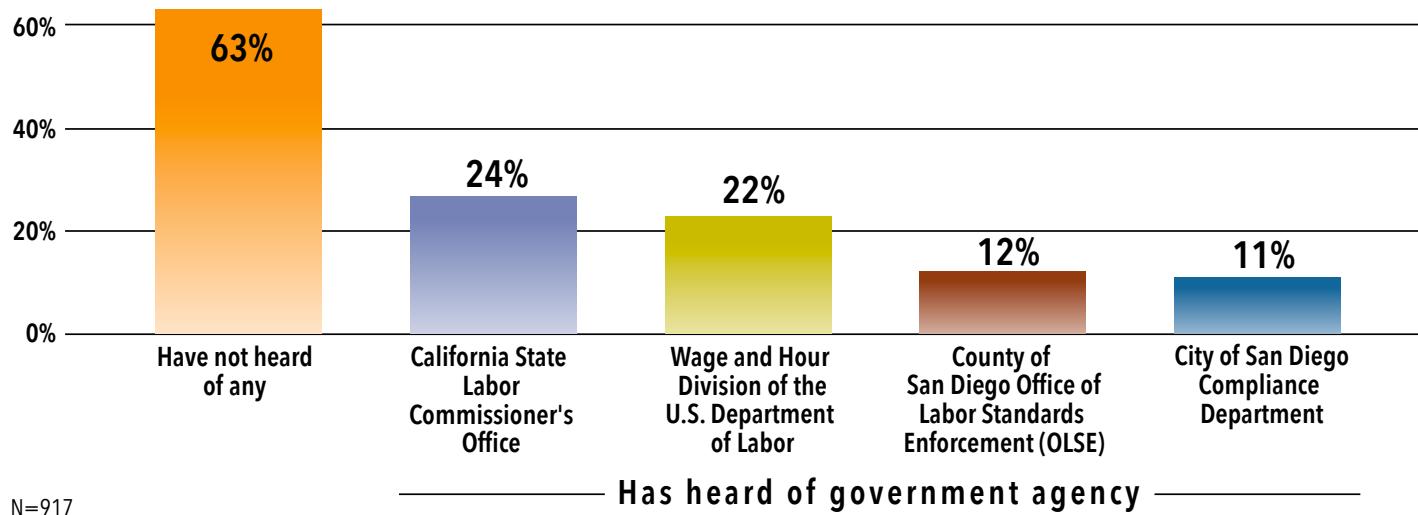
FEW SURVEYED WORKERS KNEW WHERE TO FILE WAGE THEFT COMPLAINTS



N=917

Of the 917 workers asked if they had heard of any of the listed government agencies, 63% had not heard of any of the agencies. About a quarter had heard of the State's Labor Commissioner and slightly fewer had heard of the federal enforcement agency. Only 12% had heard of the County OLSE and 11% percent had heard of the City Office, mostly the same people.

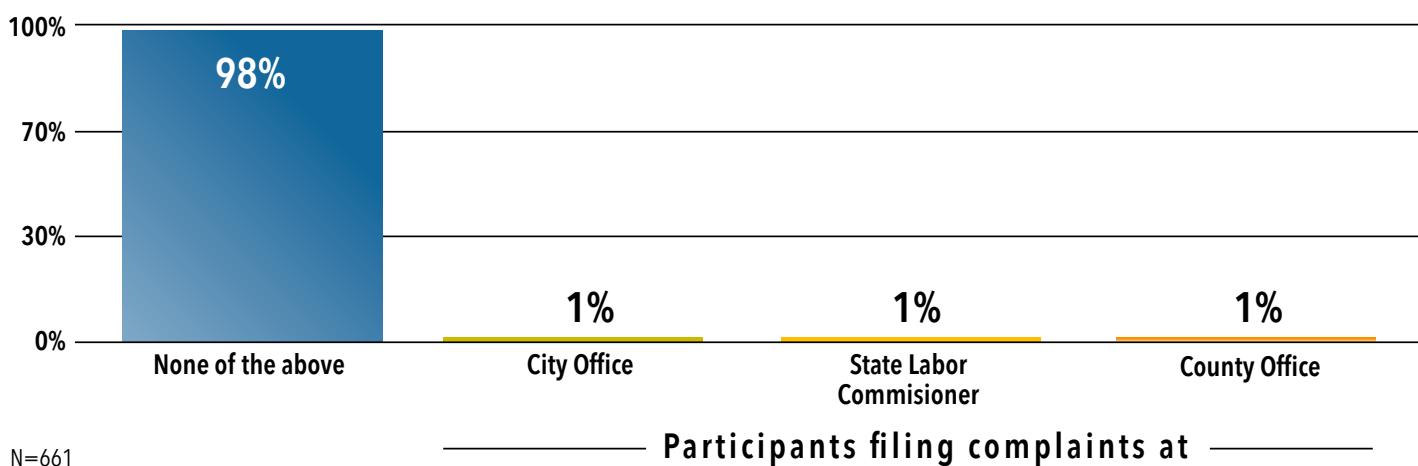
SURVEYED WORKERS HAD LIMITED KNOWLEDGE OF GOVERNMENT AGENCIES



NEAR ABSENCE OF FORMAL COMPLAINTS

It is likely that the lack of knowledge about wage theft and complaint mechanisms explains the low number of respondents who filed formal complaints. Despite the high level of wage theft infractions, only sixteen survey participants filed formal complaints, just 2% of the 661 workers who had answered an earlier question indicating that they had experienced at least one of the violations investigated by this report.³⁴ Those sixteen workers filed a total of twenty complaints, suggesting that once an individual has enough information to file at one agency, they may have the information to file at another.

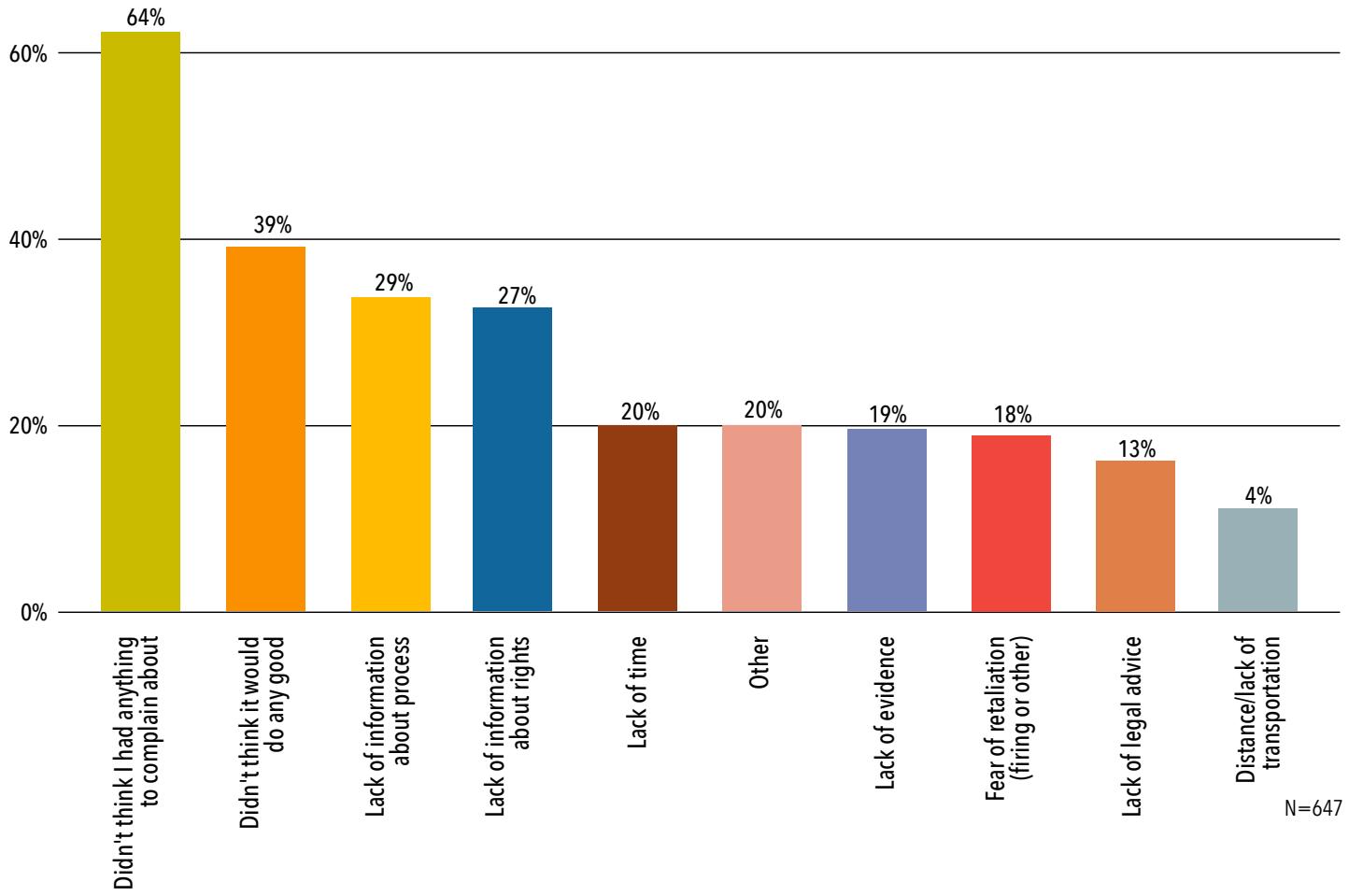
DESPITE STOLEN WAGES, RESPONDENTS VERY RARELY FILED FORMAL COMPLAINTS



Of the sixteen people who complained, just six were still at their job when they filed a formal complaint. Consistent with the findings of our earlier report, *Confronting Wage Theft*,³⁵ we found that most people only file complaints after leaving their job. Of the six who still were at their job at the time of the complaint, two of them experienced retaliation from their employer in the form of fewer hours.

We asked the rest of the respondents whose answers to earlier questions indicated that they had experienced a violation, why they did not file a formal complaint. Respondents could give more than one answer. Three of the top four responses indicated a need for more knowledge. The number one reason for not filing, at 64%, was "I didn't think I had anything to complain about," echoing the early finding that respondents did not realize they had suffered wage theft. Reasons three and four were lack of knowledge regarding their rights and the filing process, at 29% and 27%, respectively. Another major problem was a lack of confidence in the process with 40% reporting that they didn't think filing would do any good.

REASONS RESPONDENTS DID NOT FILE COMPLAINTS (AMONG RESPONDENTS WHO SUFFERED WAGE THEFT)



Fear of retaliation is another reason workers do not complain to their employers or to government agencies. Adam, an instructional assistant at a children's center, had not spoken to a manager or boss about instances of wage-theft, attributing some of it to his own personality, but also stating that he feared retaliation of reduced hours and more difficult assignments. This anecdote and other studies³⁶ make clear that enforcing anti-retaliation aspects of labor laws is a crucial part of enabling workers to complain.

POLICY RECOMMENDATIONS

In 2023, the Assembly enacted AB 594 which allows for local enforcement of state labor laws. It facilitates stronger partnerships between the state labor agencies and local enforcement offices allowing them to align their goals and strategies to protect workers. To extend this effort, state policymakers should make AB 594 permanent, but amend the law to prioritize repairing the harm done to workers by wage theft over incarceration of offenders. State lawmakers should also make the California Workplace Outreach Project (CWOP) a permanent program. CWOP provides grants to community organizations that are trusted messengers so they can share information about wage theft, heat safety, and other labor standards to the most vulnerable workers in our economy.

Fighting wage theft and ensuring workers know their rights and how to assert them requires a robust and coordinated approach using both enforcement and education tactics to maximize the effectiveness of different agencies. Currently, workers experience a patchwork of protections and differing levels of access to protections. Enforcement offices should work together to fill gaps where they exist. Workers will be better served if existing agencies—regional, state and federal labor agencies—leverage their resources to create an effective strategic enforcement model.³⁷ The strategic enforcement model involves consistent, robust, and coordinated efforts to fight wage theft.

RECOMMENDATIONS FOR LOCAL GOVERNMENTS

IMPLEMENT A STRONG & EFFECTIVE ENFORCEMENT MODEL

Randomly inspect high risk businesses and worksites by conducting unannounced payroll audits and investigations. We define high risk businesses and worksites as industries with low wages and high rates of reported labor violations.

Focus on conducting enterprise-wide enforcement in businesses with multiple work locations. When wage theft occurs in larger businesses, it is not usually the result of one manager or one site making a decision. Usually businesses have the same practices across sites. If investigators find violations at one establishment they should investigate all locations of that business.

When assigning citations the violations should be assessed for every employee affected by the violation of labor standards.

Historically, enforcement agencies have assessed a single relatively small penalty for violations of compliance measures like the posting of notices of employees' rights. A more robust system would assign penalties for each employee who should have had access to this information.

Ensure that all responsible parties are held accountable. Enforcement investigations usually focus on the employer named in the complaint. Sometimes these employers are actually contractors or subcontractors working for another business. Contractors and subcontractors often underpay, misclassify, or withhold benefits from workers they hire to fulfill the contracts. When a business's model depends on contracting out a substantial part of its work and selecting contractors based on the lowest bid it is often based on an understanding that those contractors and subcontractors violate labor standards. Therefore, enforcement agencies should not only investigate and hold the contractor or subcontractor responsible, but also investigate the business that contracted out the work initially.

CO-ENFORCE WITH COMMUNITY PARTNERS

Local jurisdictions should adopt a co-enforcement model.³⁸ Co-enforcement involves enforcement agencies partnering with worker centers and community-based organizations to support workers' rights and reduce workers' fear of retaliation when reporting violations. Using this model, worker centers and other community based organizations conduct outreach and education to hard-to-reach populations (e.g. immigrants, people with limited English language skills, workers in low wage industries), help workers file complaints, and they help agencies to identify high-violation industries in their area. Worker-centered outreach and education should involve a diversity of methods including, but not limited to, know-your-rights training, site visits, providing information using social and traditional media ads, and distributing written materials to workers at community events including those hosted by elected officials to talk with their constituents.

Work with labor and community advocates to establish worker councils that focus on reducing wage theft. Worker councils allow representatives, who are workers selected by workers, to develop policy recommendations designed to improve working conditions and to highlight other ways governments can use their powers in support of workers. Worker councils can also help with workplace training, as well as outreach and education regarding resources available to fight wage theft.

DISINCENTIVIZE WAGE THEFT

State and local legislators should set meaningful financial penalties. If we want to change the exploitative behaviors and practices of employers towards workers, especially in the largest or most profitable sectors, owners and managers need to believe that they are highly likely to be caught. When they are, the penalties need to be substantial and not easily incorporated as the cost of doing business. This may be accomplished by ensuring penalties escalate for each repeated offense or are scaled to match the revenue of the businesses. To be meaningful to workers, employers should not only be required to pay workers the wages that were already lawfully due, but they should have to pay penalties that compensate workers for the time, effort, and risk associated with filing complaints.

Revoke business licenses for repeat offenders or failure to pay judgments. When an employer or owner has been part of more than one investigation that finds that they have been committing wage theft and especially if they have failed to pay judgments in those investigations, they should lose their business license.

CREATE ONGOING FUNDING

Ensure budgetary support to enforcement agencies. Local legislators need to ensure they have the staff and funding needed to support robust and proactive enforcement of labor standards. Local governments should allocate a portion of the business licensing fees they can collect to create a stable and dedicated funding source to fund offices for labor standards enforcement. Ensuring that labor standards are enforced protects good businesses by taking away the competitive advantage that bad actors give themselves by breaking the law.

Develop worker justice funds. Local legislators should allocate a portion of any business licensing fees to create a worker justice fund. Worker justice funds advance money to workers who file and win wage theft claims but have not been able to collect the money owed to them. Worker justice funds can also provide financial support to workers who file a report of wage theft and then lose income as a result of retaliation.

IMPROVE ENFORCEMENT TOOLS

Employer acknowledgement of all relevant labor laws and standards. To create an additional mechanism for holding employers accountable to state and federal labor laws, local legislators should require employers to sign an affirmation that they understand all applicable labor standards. This acknowledgement would be filed with a local enforcement office and should be an enforceable agreement. Local agencies could then levy penalties for violating this agreement which could include monetary penalties, loss of the business' operating license, or revocation of other permits.

Create a coordinated, data sharing ecosystem. Since employers often operate across local jurisdictions, local enforcement agencies should coordinate their work to fight wage theft by collecting, sharing, and analyzing data on wage theft complaints including the specific firms that have been found to be in violation of local labor laws, the most common industry types, worker demographics, complaint details, and resolutions. These data should also be included in annual reports available to the public.

Increase labor standard visibility. Enforcement agencies need to ensure easy-to-access information in a variety of languages about state, federal and local labor standards (i.e., minimum wage, paid sick leave eligibility, laws on breaks, overtime, anti-retaliation rights, etc.). In addition to providing fact sheets and videos explaining worker's rights and how to assert them on their websites, enforcement agencies should use a broad array of communications methods. As with co-enforcement, agencies should themselves dedicate resources to spreading the word that wage theft is a crime and advising the public on how to report it. Communication methods should include radio spots, billboards, social media posts and ads, news stories as well as electronic flyers distributed via e-bulletin boards at schools, libraries, religious institutions, etc. that point people to the offices and the websites for more information.



METHODS AND SAMPLE

This report is based on a survey of 942 adults conducted in November and December of 2023. All respondents had worked in the County of San Diego over the previous 12 months and they were asked to limit their responses to their job during this period. The statistics in this report are based on an analysis of those survey responses.

Of the 942 survey participants, 23 identified as independent contractors. While the independent contractors reported wage theft violations at higher rates than employees, we excluded them from the wage theft and sick days analysis because they are not technically covered by all of the labor protections investigated in the survey. Similarly, we excluded the 76 salaried workers from the wage theft analysis because they are not necessarily entitled to all of the labor protections covered there. The salaried workers were, however, included in the paid sick days statistics since they are entitled to paid sick days. For both the paid sick days and minimum wage violations, we conducted an additional analysis of the data separately for those who worked in the City of San Diego (71% of survey participants) and those who worked outside of the City of San Diego but in the County of San Diego (29%), since city law required higher minimum wage and more paid sick days.

This survey is based on a convenience sample and we do not claim that it is representative of all workers in the City or County of San Diego. The vast majority, 92%, were not only workers but students as well. We found no significant difference in rates of wage theft between students and non-students. As a result of concentrating our recruitment among students, our sample was largely made up of younger workers. We also found no significant difference in practices experienced by age group. Women were overrepresented in the sample at two-thirds of respondents. Women are overrepresented among college students, and are more likely to complete surveys. Again we found no significant difference in their experience of wage theft, although other studies have found that both women and young workers are more likely to experience wage theft, largely due to industry concentrations.³⁵ As expected our sample overrepresents the food/drink and hospitality sector as compared to the portion of hourly workers in the County working in this field. Of the hourly employees surveyed, 35.5% were in the food/drink service and hospitality industries compared to 21.5% of hourly employees in

San Diego County. Our study, like studies in other parts of the country, shows that wage theft is particularly high in the food service sector.⁴⁰ The retail and education sectors were also strongly represented in the survey, as they are among hourly workers in San Diego. Our sample was 16.4% retail, almost equal to the percentage for hourly employees in San Diego County, which is 16.9%. Our sample also overrepresented education at 16.1% as compared to 11.7% in the County, a sector with relatively lower rates of wage theft. Our race/ethnicity breakdown was very similar to that of hourly workers in San Diego County.⁴¹ We offered the survey in both Spanish and English but only 15 participants took the survey in Spanish, since our recruitment was mainly on college campuses. Immigrants and non-English speakers are also more likely to experience wage theft but are underrepresented in the survey.⁴²

While the survey is not generalizable, we do offer the experiences of more than 900 workers as evidence that wage theft and paid sick day violations are serious problems in our region. The survey results demonstrate that labor rights violations are common and which practices are relatively more prevalent. Moreover, this study makes abundantly clear that workers lack knowledge about what wage theft is and how to remedy it, even among those receiving higher education.

Most survey participants (73%) were recruited through 46 classroom presentations conducted by a team of San Diego State University graduate students. In addition, some professors distributed an online request to their students, which accounted for an additional 13% of surveys. The research team also distributed the survey link through flyers, social media posts and community organizations, accounting for the final 15% of survey participants. The study, therefore, focuses on the experiences of students who account for 883 of the 942 survey participants. About two-thirds of the students attended SDSU (598), with the remainder attending UCSD (79), and seven of our community colleges (198). A handful of participants attended other local and non-local colleges.

To supplement our quantitative research, we conducted 10 in-depth interviews with survey participants. The quotes included in this report are from those interviews.

CITATIONS

1. Brady, Meixell and Ross Esienbrey. *An Epidemic of Wage Theft is Costing Workers Hundreds of Millions of Dollars a Year*. Economic Policy Institute (2014).
2. Esbenshade, Jill, et. al. *Confronting Wage Theft*. Center on Policy Initiatives and San Diego State University (2017).
3. *Fiscal Year 2023 Earned Sick Leave and Minimum Wage Enforcement*
Fiscal Year 2022 Earned Sick Leave and Minimum Wage Enforcement
4. Galvin, Daniel, et. al. *Wage Theft Violations in California: Minimum Wage Violations 2014-2023*. Rutgers University (May 2024).
5. <https://www.sandiego.gov/sites/default/files/fy22-summary-report-of-activities.pdf>
6. The County OLSE has also worked with the County's Department of Purchasing and Contracting to implement anti-wage theft policies to prevent contractors with wage theft investigations and violations from doing business with San Diego County www.sandiegocounty.gov/content/dam/sd/olse/OLSE%202023%20Annual%20Framework%20Update.pdf
7. Cooper, David and Teresa Kroeger, *Employers Steal Billions from Workers Paychecks Each Year*. Economic Policy Institute (2017).
8. County OLSE *Wage theft dashboard*
9. Ninety-two percent of respondents were hourly employees. (We did not ask the salaried workers about pay.) We consider wages below \$20 to be low wages. According to [MIT Living Wage calculations](#) and the [Economic Policy Institute's Family Budget calculator](#), a single person in San Diego County needs to make a little over \$29 an hour in order to have a modest but adequate standard of living. In recognition of the high cost of living in California, [beginning April 1, 2024, employers are required to pay fast food workers \\$20 an hour](#).
10. California Department of Industrial Relations, "Minimum Wage."
11. The City of San Diego. "Minimum Wage." <https://www.sandiego.gov/compliance/minimum-wage>
12. Eastern Research Group Inc., *The Social and Economic Effects of Wage Violations: Estimates for California and New York* (2014).
13. Cooper, David and Teresa Kroeger, *Employers Steal Billions from Workers Paychecks Each Year*. Economic Policy Institute (2017).
14. Cooper, David and Teresa Kroeger, *Employers Steal Billions from Workers Paychecks Each Year*. Economic Policy Institute (2017).
15. "Work not requested but suffered or permitted to be performed is work time that must be paid for by the employer. For example, an employee may voluntarily continue to work at the end of the shift to finish an assigned task or to correct errors. The reason is immaterial. The hours are work time and are compensable." U.S. Department of Labor. "Fact Sheet #22: Hours Worked Under the Fair Labor Standards Act (FLSA)."
16. California Department of Industrial Relations. "Reporting Time Pay."
17. The survey question was: "Have you ever arrived to work and were told to go home because there was not enough work AND you were NOT paid for at least half of what you were scheduled to work (with a minimum pay of 2 hours)?"
18. California Department of Industrial Relations. "Overtime."
19. California Department of Industrial Relations. "Deductions."
20. California Department of Industrial Relations. "Tips and Gratuities."
21. *Ibid.*
22. Esbenshade, Jill, et. al. *Shorted: Wage Theft, Time Theft and Discrimination in San Diego's Restaurant Industry*. Center on Policy Initiatives and San Diego State University (2015).
23. California Department of Industrial Relations. "Meal Periods."
24. *Ibid.*
25. California Department of Industrial Relations. "Rest Periods/Lactation Accommodation."
26. The laws allow employees to be on an accrual policy, where they must be able to earn at least one hour of paid sick leave for every 30 hours of work. Alternatively, employees may be on an up-front policy, where the full amount of sick leave is immediately available at the beginning of the year (California Department of Industrial Relations). "California Paid Sick Leave: Frequently Asked Questions." https://www.dir.ca.gov/dlse/paid_sick_leave.htm
27. California Department of Industrial Relations. "California Paid Sick Leave: Frequently Asked Questions." https://www.dir.ca.gov/dlse/paid_sick_leave.htm
28. City of San Diego Compliance Department, Minimum Wage and Earned Sick Leave, <https://www.sandiego.gov/compliance/minimum-wage>
29. <https://law.justia.com/codes/california/code-lab/division-2/part-1/chapter-1/article-1-5/section-248-5/>
30. Beginning January 1, 2024, all workers in California are entitled to five earned sick days.
31. The 52% includes some people who also reported being retaliated against or discouraged from taking sick days, and so is slightly higher than what appears in the chart above, where we did not double count respondents.
32. The 22% of those reporting discouragement and harassment includes the 10% shown in the chart above, plus those who reported repercussions when they call in sick but in response to an earlier question reported that they did not know if they got paid sick days or did not get them and so appear in the pie chart in these categories.
33. State of California, Department of Industrial Relations, <https://www.dir.ca.gov/wpnodb.html>, City of San Diego Compliance Department, <https://www.sandiego.gov/compliance/minimum-wage>
34. This 661 does not include violations of minimum wage, which came later in the survey.
35. Esbenshade, Jill, et. al. *Confronting Wage Theft*. Center on Policy Initiatives and San Diego State University (2017).
36. Esbenshade, Jill, et. al. *Confronting Wage Theft*. Center on Policy Initiatives and San Diego State University (2017).
37. https://smrl.rutgers.edu/sites/default/files/Documents/Centers/WJL/24_1_24_OSH%20Strat%20Env.pdf
38. https://smrl.rutgers.edu/sites/default/files/Documents/Centers/WJL/Toolbox_Tool12_Intro_to_Co-enforcement_final.pdf
39. Bernhardt, Annette. *Broken Laws, Unprotected Workers*. National Employment Law Project, 2009.
40. Bernhardt, Annette. *Broken Laws, Unprotected Workers*. National Employment Law Project, 2009.
41. Galvin, Daniel, et. al. *Wage Theft Violations in California: Minimum Wage Violations 2014-2023*. Rutgers University (May 2024)
42. Galvin, Daniel, et. al. *Wage Theft Violations in California: Minimum Wage Violations 2014-2023*. Rutgers University (May 2024).



WAGE THEFT AND LABOR RIGHTS ENFORCEMENT IN SAN DIEGO CITY AND COUNTY

Principal Investigator and Lead Author: Jill Esbenshade, PhD

Co-authors: Avery Cardosi, Ulises Magallon Estrada, Danielle Gannon

Policy Recommendation Team: Kyra R. Greene, PhD, Keara O'Laughlin, Derrick Robinson, PhD

Report Editor: Jessica Cordova

Research Team: Vic Amador, Staci Burns, Avery Cardosi, Danielle Gannon, Yvette Garcia, Allison Hall, Sara Liaquat, Jacob Lund, Ulises Magallon Estrada

Report designer: Anoki Casey

Acknowledgments

We thank Alor Calderon from the Employee Rights Center of San Diego and Ruth Silver-Taube, Supervising Attorney, Workers' Rights Practice, Katharine & George Alexander Community Law Center, Santa Clara University School of Law, and Santa Clara County Office of Labor Standards Enforcement, Legal Advice Line, for advising on state labor law and employment policy.

We gratefully acknowledge the individuals, organizations and foundations who support the Center on Policy Initiatives. We would like to specifically recognize the following funders who provide general operating support that makes community-led research possible: The California Endowment, The California Wellness Foundation, The James Irvine Foundation, Satterberg Foundation and Unitarian Universalist Veatch Program at Shelter Rock.