

MINIMUM WAGE ORDINANCE

ANNUAL REPORT FY 2012-2013

*San Francisco Office of
Labor Standards Enforcement*



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San Francisco voters passed the Minimum Wage Ordinance on November 4, 2003, making San Francisco one of the few cities in the country with a local minimum wage higher than the state or federal minimum. As we approach the 10th anniversary of the enactment of the landmark ordinance, I am pleased report that the Office of Labor Standards Enforcement (OLSE) had a banner year for minimum wage enforcement in Fiscal Year 2012-2013, building on a strong track record of protecting workers in our community from wage theft and leveling the playing field for law abiding employers.

HIGHLIGHTS FROM FISCAL YEAR 2012- 2013

- **Increase in Unpaid Wages Recovered:** The OLSE recovered \$1,483,048 in back wages and interest for workers whose employers violated the Minimum Wage Ordinance in Fiscal Year 2012-2013, an increase of 32% over the prior fiscal year.
- **Dick Lee Pastry Case Resolved:** The OLSE worked with the City Attorney's Office to resolve the largest Minimum Wage Ordinance case in the City's history, recovering \$525,000 in back wages, interest, and penalties from Dick Lee Pastry.
- **Interagency Collaboration:** As co-chair of the newly formed Wage Theft Task Force, I worked closely with other City agencies, labor, and community and business representatives to study wage theft, develop new interagency collaborations, and identify recommendations for curbing wage theft in the City. The OLSE also strengthened the partnership with the California Division of Industrial Relation's Bureau of Field Enforcement (BOFE) and collaborated to investigate potential violations.
- **Deepening Community Partnerships:** The Board of Supervisors more than doubled the amount of funding available for community outreach on labor laws, and the OLSE issued a request for proposals to expand the Wage Theft Prevention Education and Outreach Program in February 2013. The OLSE is now working to build a dynamic partnership with a collaborative of six community-based organizations and educate San Francisco workers about their rights and identify labor law violations.

LOOKING FORWARD

- **Wage Theft Task Force (WTTF) Recommendations:** I will to follow up on the WTTF's recommendations for improving the City's response to wage theft and developing interagency coordination.
- **Focus on High-Risk Industries:** The OLSE will continue to support outreach among workers who are at high risk for wage theft, particularly residential home care and food service workers, and we will address reported violations in those industries.

I am proud to work with a talented staff on enforcing the Minimum Wage Ordinance. The OLSE's success during the last fiscal year is due in large part to their tenacious pursuit of the facts behind each minimum wage complaint and their dedication to resolving complex cases in a timely manner. I will continue to work with my staff and all of our City, State, and community partners to continue to hold violators accountable, and protect workers and responsible employers in San Francisco in the years to come.

Donna Levitt

Manager, Office of Labor Standards Enforcement

December 6, 2013

Minimum Wage Ordinance Background

STATUTORY AUTHORITY

The voters of San Francisco passed the Minimum Wage Ordinance (MWO or Ordinance) as Proposition L on November 4, 2003. The Ordinance was encoded as Chapter 12R of the San Francisco Administrative Code and went into effect on January 1, 2004.

MINIMUM WAGE ORDINANCE OVERVIEW

The minimum wage was set at \$8.50 in 2004 and is adjusted annually for inflation.

The Ordinance raised the minimum wage for employees in San Francisco from the California statewide minimum wage of \$6.75 per hour to \$8.50 per hour as of February 24, 2004.

Unlike California or federal minimum wages, the San Francisco minimum wage is adjusted annually. To prevent inflation from eroding the value of the wage, the Ordinance specifies that each year the minimum wage shall increase by an amount corresponding to the prior year’s increase, if any, in the Consumer Price Index for urban wage earners and clerical workers for the San Francisco-Oakland-San Jose, CA metropolitan statistical area. The increases to the minimum wage are as follows:

YEAR	SAN FRANCISCO MINIMUM WAGE
2004	\$8.50/hour*
2005	\$8.62/hour*
2006	\$8.82/hour
2007	\$9.14/hour
2008	\$9.36/hour
2009	\$9.79/hour
2010	\$9.79/hour
2011	\$9.92/hour
2012	\$10.24/hour
2013	\$10.55/hour

** Non-profit organizations and businesses with fewer than 10 employees were exempt from the San Francisco Minimum Wage in 2004, and they were subject to a lower minimum wage of \$7.75 in 2005.*

The MWO applies to all employees who work 2 or more hours in a week.

Employees who perform at least two hours of work for an employer within the geographic boundaries of the City in a particular week and are entitled to the earn state minimum wage according to Labor Code 1197 are entitled to the San Francisco minimum wage.

Employers must post the minimum wage notice and maintain payroll records

Employers are required to post an official notice of the San Francisco minimum wage rate at their workplace or job site. The notice must be posted in all languages spoken by at least 5% of employees. The Office of Labor Standards Enforcement (OLSE) updates the notice annually with the adjusted minimum wage, and mails it to businesses that are registered in San Francisco. Employers must also retain payroll records for four years and allow the OLSE access to such records.

The OLSE enforces the MWO and may require employers to pay back wages and penalties.

The OLSE is authorized to enforce the MWO and is given authority to investigate any possible violations of the Ordinance. The Ordinance provides that after an Administrative Hearing determines that a violation has occurred, the OLSE may order appropriate relief including, but not limited to:

- reinstatement of employee(s),
- the payment of any back wages unlawfully withheld (including interest), and
- the payment of an additional sum as an administrative penalty in the amount of \$50 to each Employee or person whose rights under this Chapter were violated for each day that the violation occurred or continued.

The OLSE may also require the employer to pay civil penalties to the City of up to \$50 per worker per day the violation occurred or continued to cover the City's costs of investigation.

In practice, the OLSE is almost always able to settle cases with the employer for back wages, interest, and civil penalties without taking a MWO case to an Administrative Hearing.

If employers do not comply with OLSE's Determinations, the OLSE may bring civil action.

Where prompt compliance is not forthcoming, the OLSE may take any appropriate enforcement action to secure compliance, including initiating a civil action. The Ordinance also provides for the City Attorney or other representative of employees to pursue civil litigation to remedy MWO violations.

The MWO also states that when employers are noncompliant, the OLSE may request that City agencies or departments revoke or suspend any registration certificates, permits or licenses.

The OLSE may issue administrative citations

The OLSE may issue administrative citations and assess administrative penalties for the following violations:

- Failure to maintain or retain payroll records
- Failure to allow the OLSE to inspect payroll records
- Retaliation against employees
- Failure to provide appropriate notice of: a) the minimum wage rate, b) the investigation to, c) the employer's contact information

An employer may appeal these citations through an Administrative Hearing process.

The OLSE protects complainants' confidentiality

The MWO directs the OLSE to keep the identity of individuals who report MWO violations confidential, to the maximum extent permitted by applicable laws. Only when the employee consents may the OLSE disclose his or her name and identifying information as necessary, typically during an administrative hearing process.

The Ordinance requires OLSE to conduct outreach.

The MWO requires that the OLSE establish a community-based outreach program and partner with community-based organizations to educate employees about San Francisco's minimum wage.

The MWO does not allow for tip credit.

In California, employers may not use tip credit to offset the required minimum wage. Employers must pay their employees the full minimum wage rate, regardless of tips.

The MWO is enforced for all employees, regardless of immigration status.

In California, employees are entitled to the applicable minimum wage, and other labor protections, rights, and remedies, regardless of immigration status.

Enforcement Overview

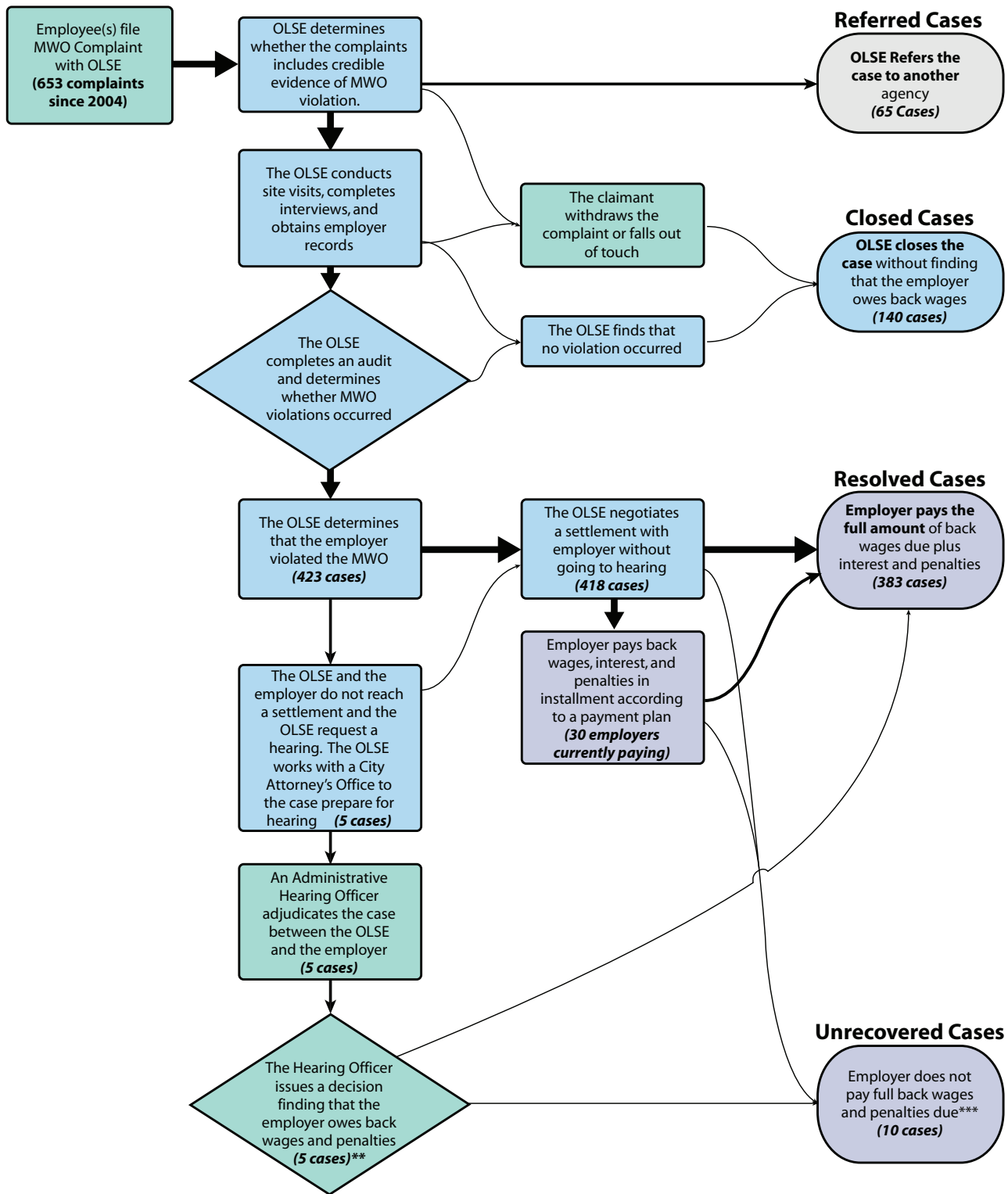
The OLSE's enforcement of the Minimum Wage Ordinance is driven by employee complaints. When an employee submits a complaint to the agency, and an initial review suggests that the allegation merits further investigation, the OLSE assigns a Compliance Officer to the case. The compliance officer guides the case through the investigation and remediation processes (outlined in the diagram on the following page) and serves as the point of contact for claimant(s) and the employer for the duration of the case. The OLSE's compliance officers have the language skills and cultural competencies to develop working relationships with employees and employers in a wide range of communities. Staff members come from diverse cultural backgrounds, and 10 of the OLSE's 18 staff members are fluent in another language, including Spanish, Cantonese, Mandarin, Tagalog, and Thai.

A defining feature of the OLSE's enforcement process is that the OLSE investigates potential violations against all employees of an employer suspected of violating the MWO. When the OLSE initiates an investigation, the compliance officer conducts a site visit to observe business operations and conduct interview other employees who may be similarly situated. The compliance officer also interviews the employer or manager and witnesses and requests the employer's payroll records for all individuals employed during the audit period (typically three years). The compliance officer then completes an audit to identify any MWO violations against employees during the audit period. The OLSE's approach results in robust enforcement and provides strong protections for workers who are reluctant to file a complaint themselves.

When the OLSE does find MWO violations, the agency works to recover back wages , interest, and penalties owed to all employees for the three year period preceding the complaint and to bring the business into compliance with the MWO going forward. In the vast majority of cases, the OLSE is able to reach a settlement with the employer for back wages, interest, and penalties without proceeding to an Administrative Hearing. Since the MWO went into effect, the OLSE has only taken five cases to an Administrative Hearing.

The OLSE's typical MWO cases follow the steps outlined on the following page.

Typical OLSE Minimum Wage Ordinance Case Processes*



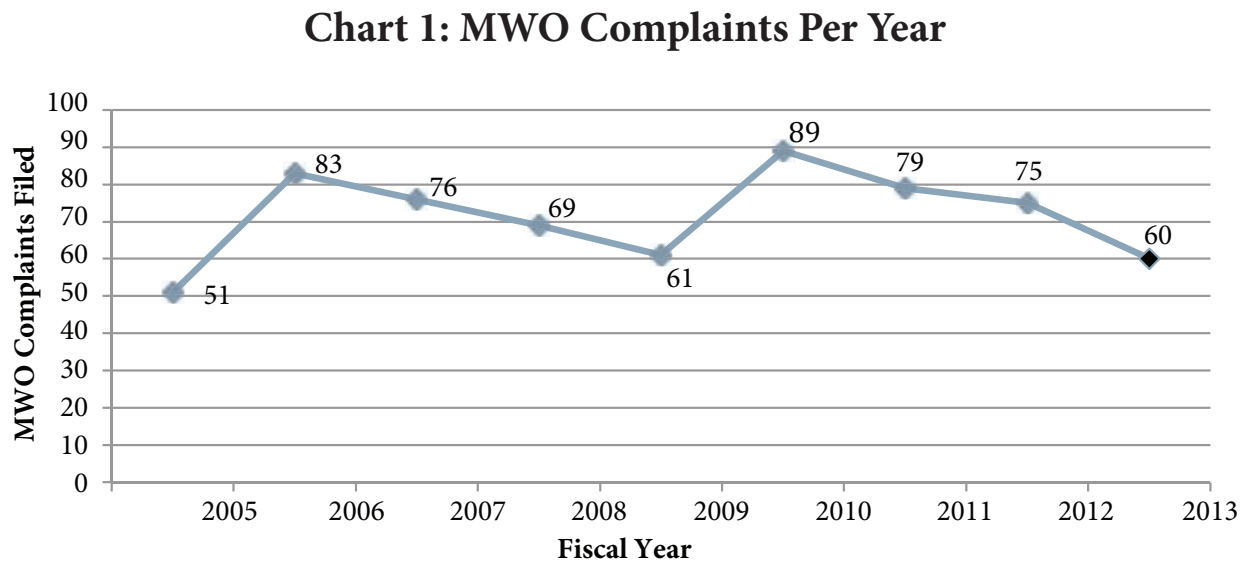
*This chart depicts typical OLSE MWO case processes. A handful of cases have departed from these normal progressions, such as cases that cases that the City Attorney affirmatively litigated.

** Administrative Hearing Offices have upheld OLSE's Determinations and found that the employer owes back wages to employees in all of the five cases that OLSE has taken to an Administrative Hearing.

*** 9 out of 10 of these employers have closed their businesses and/or declared bankruptcy, and the OLSE and partner agencies were unable to recover back wages

MWO Complaints in FY2013

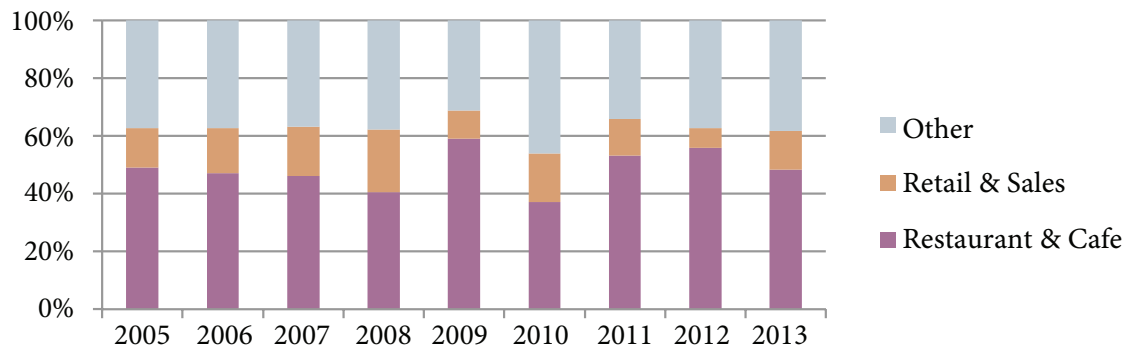
The OLSE received 60 complaints alleging minimum wage violations in Fiscal Year 2012-2013 (FY2013), which is fewer than in any year since 2005. The number of complaints has fluctuated between 51 and 89 per year, and it is unclear whether the decline since the peak in FY2010 is the result of random variation or whether it is influenced by improved compliance, economic trends, or other factors.



MWO COMPLAINTS BY INDUSTRY SECTOR

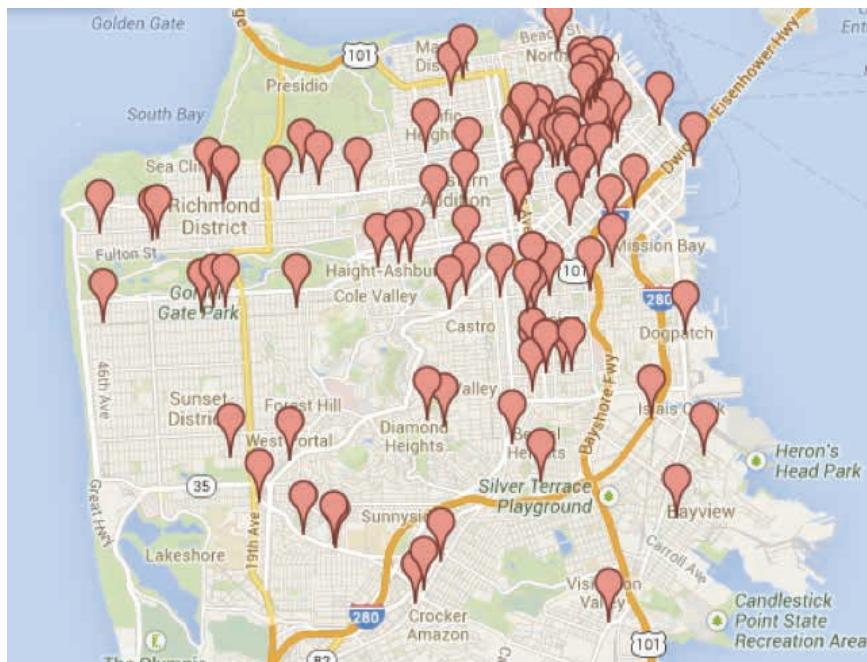
Half of the MWO complaints that the OLSE received in FY2013 came from employees who work in restaurants and cafés, making that business class by far the largest source of complaints. The sources of MWO complaints for FY2013 are consistent with sources for prior years. Since the MWO went into effect in 2004, employees of restaurants and cafés have consistently brought more complaints to the OLSE than any employees of any other industry. Employees of restaurants and cafés have filed 48% of all the MWO complaints received since 2004. Employees of retail and sales businesses have been the next largest source of complaints, filing 14% of all MWO complaints. The remaining complaints came from employees in a range of business classes, including janitorial services (4%), health care (4%), hotels and apartments (4%), day labor services (3%), manufacturing (3%), bars and taverns (3%), and other service sector classes comprising 2% or less.

Chart 2: MWO Complaints by Business Class FY 2005-2013



LOCATION OF MWO COMPLAINTS

Minimum Wage Ordinance violations affect workers across San Francisco, and the OLSE receives complaints from employees who work in every neighborhood. The following map pinpoints the location of employers named in the 100 most recent MWO complaints.



Enforcement Accomplishments FY2013

INCREASED BACK WAGES RECOVERED

In FY2013 the OLSE helped workers recover \$1,483,048 in back wages and interest, 32% more than in the prior fiscal year, and more than twice as much as in FY2011. The amount collected in FY2013 represents 23% of the \$6,573,572 total back wages and interest recovered for employees since the Ordinance went into effect in 2004.

This jump in back wages and interest recovered is largely attributable to one unusually large case. After the Chinese Progressive Association referred employees from Dick Lee Pastry to the OLSE, the OLSE's compliance officers worked with the City Attorney's Office to recover \$436,778 in back wages for employees of Dick Lee Pastry. This was the largest MWO recovery in the OLSE's history and represented a major victory for the 7 employees who had been paid less than \$4 per hour.

The amounts recovered in MWO cases vary widely, depending on the number of workers affected, the severity of the underpayment, and the period of the violation. A total of 70 employers paid back wages and interest to resolve MWO cases during FY2013, and the amounts paid ranged from \$131 to \$436,778. The median amount paid was \$7,019. In comparison, 60 employers paid back wages and interest in FY2012, and the median amount paid during that year was \$6,751.

INCREASED PENALTIES RECOVERED

As shown in Chart 4, the OLSE also recovered a higher amount of penalties and citations in FY2013 than in the prior two fiscal years.

MORE WORKERS PAID BACK WAGES

A total of 349 San Francisco employees recovered the wages they were owed under the MWO in FY2013.

Of these, 161 received the initial (often only) payment of wages owed. Because the OLSE sometimes agrees to settlements with extended payment plans, another 188 workers received installment payments from employers who began repaying the back wages owed in prior years.

Chart3: Back Wages and Interest Recovered

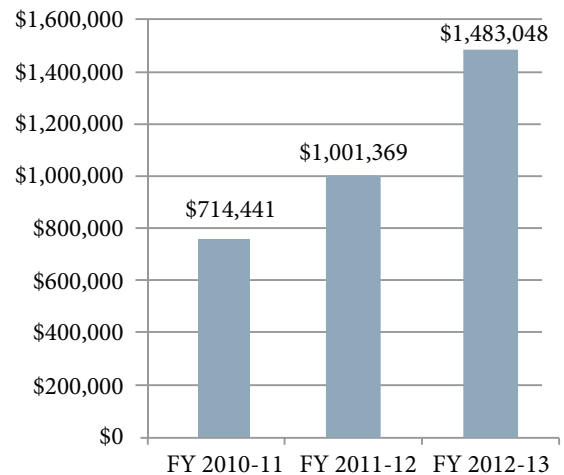
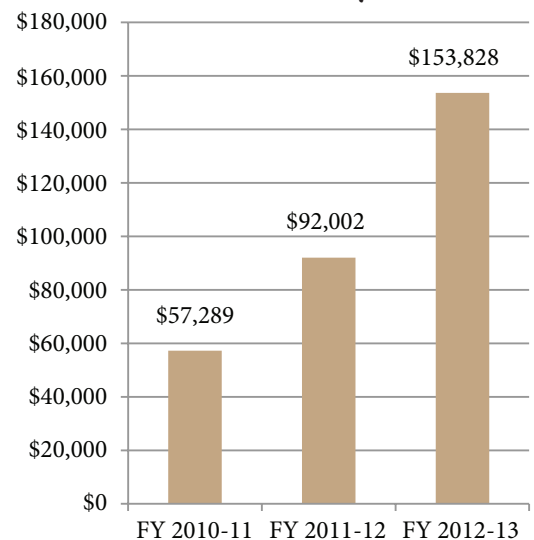


Chart4: Penalties Recovered for the City



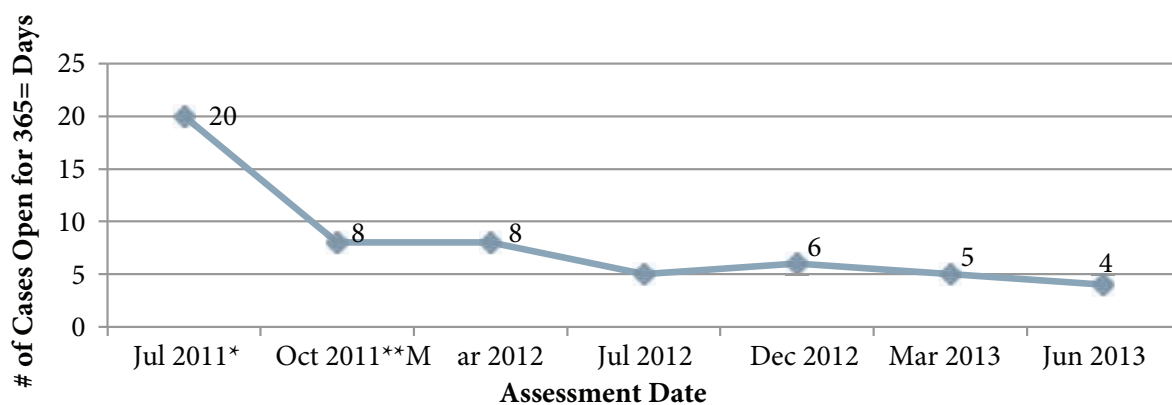
Employees of Great Oriental Restaurant with the checks they obtained for back wages and interest.

The total number of workers repaid increased slightly from the 339 workers paid in FY2012, although the number receiving the first payment from an employer decreased from 263 to 161.

REDUCTION IN CASES LASTING MORE THAN A YEAR

In the last two years, the OLSE has successfully reduced the number of cases open for a year or longer from 20 cases to 4. On September 2011, the Board of Supervisors amended Administrative Code Section 12R.7(a) to state, “The Agency shall make every effort to resolve complaints in a timely manner and shall have a policy that the Agency shall take no more than one year to settle, request an administrative hearing under Section 12R.7(b), or initiate a civil action under Section 12R.7(c).” The OLSE’s Compliance Officers have worked diligently to resolve or bring to hearing all cases within one year, and Chart 5 shows that the number of cases that had been open for 365 days or more at each periodic assessment date declined dramatically.

Chart5: Cases Pending for More than One Year



EFFECTIVE COLLECTION OF UNPAID WAGES

In FY2013, the OLSE was successful at ensuring employees received unpaid wages due. During the year, 67 employers (or 91%) of employers who the owed back wages in MWO cases either paid their employees the full amount of back wages and interest owed or made timely payments according to a payment plan. On the other hand, only 7 employers (9%) failed to make required payments after the OLSE’s finding of a MWO violation. Two of these employers never paid any of the back wages and interest due, and five agreed to a payment plan and made at least one payment, but then failed repay the full amount due.

The success with collections is consistent with the OLSE’s record in prior years. Since the Minimum Wage Ordinance went into effect in 2004, the OLSE has been able to collect back wages owed in 90.5% of cases.

TABLE 1: COLLECTIONS OF BACK WAGES OWED, FEBRUARY 2004-JULY 2013

Cases in which the OLSE found Employer owed back wages	423	Percent of Cases
Employer paid all back wages & interest collected	383	90.5%
Employer currently making payments per payment plans (as of July 2013)	30	7.1%
Employer failed to pay all back wages & interests	10	2.4%

The fact that only ten employers failed to pay back wages and interest owed in the OLSE’s MWO cases is noteworthy because collecting back wages can be extremely challenging. A recent study by the National Employment Law Project (NELP) called attention to what the authors described as the “crisis in collecting unpaid wages for California’s workers,” and documented the major challenges workers face in obtaining back wages owed in state labor law cases. ¹The California Division of Labor Standards Enforcement’s process for adjudicating wage claims is far different than the OLSE’s, and a direct comparison is not applicable. Nonetheless, given that collections is recognized as a major challenge to effective labor law enforcement, the OLSE is pleased to report positive outcomes in this arena.



Case Spotlight: The OLSE investigated Chutney Restaurant (located in the Tenderloin neighborhood) in FY2013 and found significant violations of the Minimum Wage Ordinance. The employer reached a settlement with the OLSE in February 2013 and agreed to repay employees \$189,845 in back wages and interest. This photo was taken during an OLSE site visit.

¹Cho, E.H., Koonse, T., & Mischel, A. (2013) Hollow Victories: The Crisis in Collecting Unpaid Wages for California’s Workers Retrieved June 27, 2013, from National Employment Law Project, p. 15: http://nelp.3cdn.net/f6fc363a30266f0cd3_pzm6id1xa.pdf

CASE OUTCOMES FOR FY2013

As noted, the OSLE received 60 MWO complaints in FY2013. At the end of the year, OLSE had already settled 26 (43%). Twenty of those employers paid the full amount owed, and 6 began paying back wages, interest, and penalties according to a payment plan.

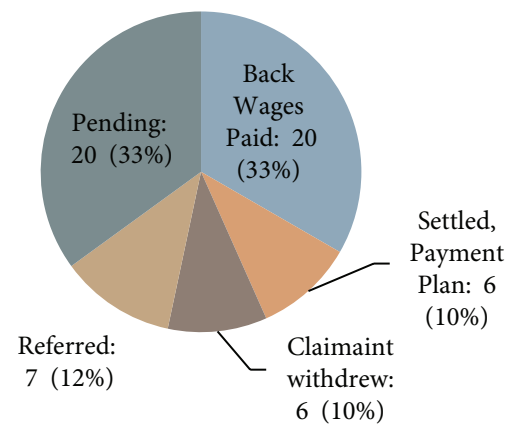
Seven complaints (12%) were referred to more appropriate government agencies – six to the California Division of Labor Standards Enforcement and one to the California Department of Fair Housing and Employment.

The OLSE closed six of the FY2013 complaints (10%) without requiring the employer to pay back wages or penalties. In each of these cases, the claimant withdrew the claim or fell out of touch with the OLSE.

Twenty cases filed between July 1, 2012 and June 30, 2013 (33%) were still pending at the end of the fiscal year, meaning that the OLSE was still investigating the case or negotiating with the employer. Of the twenty one ongoing cases, eleven were filed in the last quarter of the year.

The OLSE has recovered back wages for workers in a majority of MWO complaints filed with the OLSE since 2004.

Chart 6: Status of Complaints Filed in FY 2013 (OF 60 Total)



Innovative Enforcement Partnerships

CITY ATTORNEY'S OFFICE

In FY2013, the OLSE worked closely with the City Attorney's Office to address the most egregious instances of wage theft, particularly those in which the employer refused to cooperate with the OLSE's investigation.

The City Attorney's office used a new tool in FY2013 to recover back wages due – the pre-judgment writ of attachment. In civil litigation, a plaintiff can request a pre-judgment writ of attachment to prevent a defendant from selling or transferring ownership of an asset. ²To obtain the writ, the case plaintiff must demonstrate "meritorious allegations," fraud in the underlying action, and that defendant may attempt to dispose of or hide assets from the court. In the case against Dick Lee Pastry, highlighted above, the couple that owned the restaurant mentioned that they planned to transfer a piece of property into family member's name to avoid paying their debts to employees and the City. In response, City Attorney's Office, working with the OLSE and community-based partners, filed a lawsuit and obtained a pre-judgment writ of attachment. Shortly thereafter, the employer agreed to settle the case, which OLSE staff attribute to the pressure of the writ.

² Ibid, p. 8

In the recent study issued by the National Employment Law Project on collecting unpaid wages, the authors point to pre-judgment attachments as a possible tool for collecting unpaid wages. They note that pre-judgment attachments are only available for “civil cases brought in court,”³ and suggest that filing a civil lawsuit and obtaining the writ is usually too costly for individual claimants. Because the OLSE investigates cases on behalf of many employees at once, a pre-judgment attachment may be a useful tool when an employer: a) has significant assets, b) indicates they may move or hide those assets, c) owes a substantial sum in back wages and penalties, and d) refuses to cooperate with the OLSE investigation.

COMMUNITY-BASED ORGANIZATIONS

In 2006, the Board of Supervisors amended the Minimum Wage Ordinance to add San Francisco Administrative Code Section 12R.25, which states, “The Office of Labor Standards Enforcement shall establish a community-based outreach program to conduct education and outreach to employees.”

Beginning in 2007, the OLSE cocontracted with grassroots workers’ rights organizations to conduct outreach and education in San Francisco’s low wage and immigrant communities. The goal of the contract is to reach workers who might be fearful about approaching a government agency directly and educate them about their legal rights. The prime contractor on this contract, La Raza Centro Legal, subcontracted with the Chinese Progressive Association, the Filipino Community Center. Together, these organizations referred 25 of the OLSE’s 60 MWO complaints and resolved 8 wage theft complaints independently by working directly with employees and their employers in FY2013. As noted earlier in this report, the Chinese Progressive Association identified the potential MWO violation at Dick Lee Pastry, which resulted in a major victory for the employees. The Filipino Community Center also built strong connections with workers in the residential health care industry and referred a series of cases in which the OLSE successfully recovered back wages. Finally, through the partnership, La Raza Centro Legal addressed the needs of workers at their workers’ rights legal clinic.

The Board of Supervisors added \$295,625 to the OLSE’s education and outreach program budget in FY2013, more than doubling the annual funding from \$186,500 to \$482,125. At the end of the previous contract period, the OLSE released a Request for Proposals for an expanded Wage Theft Prevention Education and Outreach program. The OLSE awarded the expanded contract to the Chinese Progressive Association, which has subcontracted with five other grassroots organizations that are well connected in San Francisco’s immigrant and low wage communities.

DEPARTMENT OF PUBLIC HEALTH

The San Francisco Department of Public Health (DPH) sees wage theft as a threat to public health, and the Department has worked with the OLSE to address persistent MWO violations. DPH published a Fact Sheet on the relationship between wage theft and health,⁴ and the Department plans to study the correlation between wage theft and other violations of local law in the coming year.

Perhaps most importantly, DPH has the authority to suspend or revoke health permits based upon findings of noncompliance from decisions made by federal, state, and local labor law regulatory agencies, including the Office of Labor Standards Enforcement. DPH has used its health permitting authority to pressure wage theft violators to repay workers' back wages and penalties owed. The OLSE referred a handful of uncooperative restaurant business owners to DPH prior to FY2013, and DPH initiated hearings to revoke those employers' health permits. The OLSE did not refer any labor violations to DPH health permit hearings in FY2013, but reminding food service businesses that their health permits could be at risk if they do not pay back wages owed continues to be a useful tool for resolving MWO cases.

BUREAU OF FIELD ENFORCEMENT

OLSE Contract Compliance Officers often collaborate with DLSE's Bureau of Field Enforcement (BOFE) on cases that may involve San Francisco MWO violations as well as violations of state labor laws. The joint investigations have allowed both agencies to share resources and implement new strategies to combat wage theft. By combining the resources and staff of both agencies, the OLSE and DLSE have been able to execute a rapid response in extreme cases where workers have not been paid for many months, a business is shutting down, or an employer is deemed a flight risk.

³ Ibid, p. 8

⁴ City and County of San Francisco, Department of Public Health "Wage Theft and Health Fact Sheet" (last accessed October 3, 2013) *available at* <http://www.sfphes.org/component/jdownloads/finish/35-wages-and-health/215-wage-theft-and-health-fact-sheet/0?Itemid=0>

Wage Theft Task Force

Donna Levitt, the OLSE's Manager, served as co-chair of the City's new Wage Theft Task Force throughout the year. The Board of Supervisors established the Task Force in June 2012 to develop recommendations on:

- a) legislation needed to address wage theft,
- b) research needed to understand wage theft,
- c) additional resources needed by City Departments to implement new strategies, or
- d) hearings that the Board should conduct regarding wage theft.⁵

Aside from the OLSE, the Task Force includes representatives from the District Attorney's Office, Police Department, the Department of Public Health, the Office of the Treasurer and Tax Collector, and the Office of Small Business. Four members of the Task Force are representatives of workers' rights non-profit organizations, one is a labor union representative, and three represent the business community. The Task Force group has focused many of its discussions on holding Minimum Wage Ordinance violators accountable, and recently issued a final report.



United Farm Workers co-founder Dolores Huerta spoke at the launch of the Wage Theft Task Force. Stressing of the importance of fighting wage theft locally, she said, "What starts in San Francisco goes through California, then all across the country." ⁷

Conclusion

Nearly a decade after voters first passed the Minimum Wage Ordinance, Mayor Ed Lee affirmed the goals of combating wage theft and protecting workers:

"San Francisco's voter-approved minimum wage law ensures that our workers are able to keep up with inflation and maintain their purchasing power to support our vibrant economy. Our City's proven track record helped lead to an increase in California's minimum wage this year. San Francisco must continue to combat wage theft and help all workers achieve economic self-sufficiency."

The OLSE's successful enforcement makes the MWO meaningful in workers' lives and supports the Mayor's commitment to protecting workers. The OLSE will continue to enhance our enforcement program in the coming year, including further developing our interagency collaborations, deepening community partnerships, and focusing outreach efforts in high-risk industries.

⁵ Chanoff, Yael. "Workers celebrate launch of wage theft task force." San Francisco Bay Guardian. 1 Oct. 2012 *available at* <http://www.sfbg.com/politics/2012/10/01/workers-celebrate-launch-wage-theft-task-force>

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