

Wage Theft in Silicon Valley: **Building Worker Power**

A Report by the Santa Clara County Wage Theft Coalition



Photo Credit: Kirsten Jill Aguilar

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Executive Summary

Wage theft harms workers and their families directly, but also diminishes the collective bargaining power of workers by depressing hourly wages in the impacted industries and occupations. This has a ripple effect on the State's economy, since it forces workers to rely on increasingly strained public assistance programs, which ultimately affects taxpayers.

The theft of workers' earned wages is an epidemic that costs workers billions of dollars across various industries. In Santa Clara County alone, our analysis of federal, state, and local datasets found a total of 25,856 reported wage theft cases across industries. These cases affected 32,826 employees and amounted to \$128,871,256 in total wage theft that is still unpaid—or an average of \$3,926 per employee.

This report demonstrates that wage theft remains rampant in Santa Clara County due to insufficient government enforcement. Despite the progress that the state and local governments have made to combat the problem, workers continue to face wage theft in huge numbers. Even those who successfully file claims against their employers, enduring legal proceedings that can take months or years, largely fail to collect the back wages they are awarded. The crisis of wage theft has only worsened in the age of COVID-19, which has also exacerbated labor trafficking, health and safety violations, job losses, pay decreases, and retaliation against workers.

In this report, the Santa Clara County Wage Theft Coalition recommends state and local policies to (1) protect worker health and safety amid the pandemic, (2) prevent wage theft and strengthen enforcement, and (3) increase worker power and employer accountability.



Photo Credit: Brooke Anderson Photography

Introduction



Photo Credit: Wage Theft Coalition

Wage theft, or employers' theft of workers' earned wages, is an epidemic that costs workers billions of dollars across various industries. Wage theft occurs when a worker is paid less than minimum wage, is not paid overtime, is paid only in tips, is not paid at all, or works off the clock. A study by the Economic Policy Institute found that workers experiencing minimum wage violations are underpaid an average of \$64 per week, nearly one-quarter of their weekly earnings; a total of \$15 billion of wages are stolen each year in the United States [1].

The Santa Clara County Wage Theft Coalition was formed in 2013 to respond to the ongoing crisis of wage theft in the region. The Coalition is composed of 35 community organizations, grassroots groups, and nonprofits that defend workers' rights and ensure enforcement of wage theft judgments through actions such as policy advocacy, community organizing and outreach, direct action, education, leadership development, and resource coordination. The Coalition works directly with workers and their families, particularly low-wage workers who have been victims of wage theft.

This report presents new data demonstrating the enormous scope of unpaid back wages in Santa Clara County and analyzes policy developments related to wage theft in the County. It highlights workers' rights issues that intersect with unresolved wage theft, including retaliation, workplace health and safety violations, and labor trafficking, as well as their adverse impacts on the real earnings of already low-wage workers during the COVID-19 pandemic. In the concluding sections, the Coalition summarizes key advocacy and organizing victories since its last report in 2015, and proposes further policy recommendations to eradicate wage theft and continue building worker power.

To write this report, the authors reviewed academic publications, policy reports, news articles, caselaw, and legislation. We summarized wage theft trends based on data from the U.S. Department of Labor's (DOL) Wage and Hour Division, the California Division of Labor Standards Enforcement (DLSE), and the San Jose Office of Equality Assurance. Finally, we interviewed thirty workers from diverse racial and ethnic backgrounds through the Coalition's Silicon Valley Workers Stories Project. (To view the full transcripts of those interviews, visit workers-stories.org.)

The historical and ongoing struggle for racial and social justice critically informs the findings in this report. Wage theft and other workers' rights violations disproportionately impact people of color, immigrant workers, and women, largely because they are more likely than other workers to have low-wage jobs. Such disparities substantially stem from racial exclusion. COVID-19 exacerbates these inequities [2]. In advocating to build worker power through this report, the Coalition honors and supports the Movement for Black Lives and the cause of racial and social justice.



Photo Credit: Brooke Anderson Photography

Wage Theft

What is Wage Theft?

Wage theft is the “practice of employers failing to pay workers the full wages to which they are legally entitled” [3]. According to the California Department of Industrial Relations, examples of wage theft include:

- Receiving pay less than minimum wage;
- Not receiving agreed upon wages (not getting paid overtime on commissions, piece rate, and regular wages);
- Not accruing or being allowed to take paid sick leave;
- Unauthorized pay deductions;
- Not receiving promised vacations or bonuses;
- Not being paid split-shift premiums;
- Not receiving final wages in a timely manner;
- Not being allowed to take meal breaks, rest breaks, and/or preventative cool-down breaks;
- Tip theft by owners or managers;
- Not being reimbursed for business expenses;
- Bounced paychecks; and
- Not receiving Reporting Time Pay [4]

The Department of Labor Standards Enforcement (DLSE, also known as the Labor Commission), which enforces the California Labor Code and California Wage Orders, is the principal state agency tasked with investigating and adjudicating wage theft claims [5]. The U.S. Department of Labor (DOL) and local governments can also employ various mechanisms to enforce against wage theft.

Wage theft occurs with alarming frequency in California. The DOL reported in 2014 that minimum wage violations in California occur approximately 372,000 times each week. These violations were associated with \$22.5 million in weekly lost income [6].

Furthermore, according to the 2018 Bureau of Field Enforcement (BOFE) Report, 4,166 inspections in a variety of industries found over 3,800 violations that accrued more than \$77,600,000 in penalties, along with over \$78,800,000 in lost wages assessed [7]. And in January 2019 the Labor Commissioner’s Office secured over \$5 million in settlements for wage theft [8]. One Bay Area restaurant chain agreed to pay \$4 million over three payments to 298 workers that were identified during the investigation in 2018, while another Bay Area restaurant chain was issued wages and civil penalty citations totaling more than \$1.8 million by the Labor Commissioner’s Office [9].

Within California, Santa Clara County is known not only as home to the world’s largest high-tech companies but also as the county with the highest number of wage theft claims per capita. The Coalition’s 2015 Report concluded that more workers file claims in Santa Clara County than in the rest of the state, and that more wages on average are stolen from each worker in the County [10]. The San Jose Office of the Labor Commissioner receives an average of 294 claims each month, the highest number of all the sixteen regions [11]. The office awards an average of \$1,000 more per worker than the statewide average.

The 2015 Report provided the impetus for the establishment of the County of Santa Clara’s Office of Labor Standards Enforcement (OLSE) in 2017. The office uses its authority to revoke restaurant health permits from restaurants that do not pay wage theft judgments, and conducts outreach and education through its Fair Workplace Collaborative. According to the OLSE’s analysis of 1,743 judgments filed between January 2015 and September 2019, restaurant owners in the county owe nearly \$5 million in back wages to employees—an average of about \$2,900 per employee [12].

“The care home was only paying me very little — below the minimum wage — \$10.50 per hour. When I was working there, I did not know what is the facility setting or how the workers are being paid here [in this country] because I’m very new. They did not discuss our breaks and everything. Sometimes I don’t take breaks.”

— Mary Ann, an undocumented immigrant from the Philippines who worked as a caregiver

Wage theft harms workers and their families directly, but also diminishes the collective bargaining power of workers by depressing hourly wages in the impacted industries and occupations. This has a ripple effect on the State’s economy, since it forces workers to rely on increasingly strained public assistance programs, which ultimately affects taxpayers.

Collecting Wage Theft Judgments

While workers often win their wage theft claims, collecting is a different story. Employers often avoid paying what they owe. As a result, many workers never get paid the wages they earned, even after engaging in lengthy legal proceedings. For most workers, their wage theft stories are stories of hollow victories.

A landmark study conducted by the National Employment Law Project (NELP) found the following:

- Only 17 percent of California workers who prevailed in their wage claims before the DLSE and received a judgment were able to recover any payment at all between 2008 and 2011.
- Although the DLSE issued awards for unpaid wages of more than \$282 million between 2008 and 2011, workers were able to collect a mere \$42 million—roughly 15 percent—of those awards from their employers.
- Workers who try to enforce DLSE judgments for unpaid wages often find that their employers have disappeared, hidden assets, or shut down operations and reorganized as new entities.
- Employers who failed to pay their workers, refused to settle, were found by DLSE to owe wages, and then became subject to court judgments, were more likely than not to have suspended, forfeited, canceled, or dissolved business status within a year of the wage claim.
- In 60 percent of cases where judgments were issued against business entities by the DLSE, employers who were found to owe their workers for unpaid wages were also found to be “non-active” business entities by the California Franchise Board [13].

Similarly, the DOL and the California Labor Commissioner’s Office have found rampant failure to satisfy wage theft judgments. In the caregiving industry, for example, caregivers have filed 526 wage theft claims with the Labor Commissioner’s Office since 2011. In those cases

that went to hearings, workers were found to be owed \$2.5 million dollars collectively. Approximately 71 percent of the judgment amount due (\$1.8 million) remains unpaid [14].

There are some signs that post-judgment collection has improved slightly in California due to SB 588, a bill passed in 2015 that gives the Labor Commission new powers to collect post-judgment money [15]. Since SB 588, the collection rate has increased somewhat from 17% to 28% [16]. Last year, the Bureau of Field Enforcement recovered nearly \$10.5 million in unpaid wage judgments—more than double the previous year [17]. Under SB 588, a business that contracts with a property service or janitorial company is jointly liable for unpaid wages. The Labor Commission has been more successful in collecting in the property services industry [18], yet still only \$3.7 million has been recovered out of over \$29 million in outstanding judgments [19]. Additionally, the Labor Commission can now mail levies to banks to collect unpaid judgments without relying on local sheriffs and issue stop work orders. Mail levies account for over two-thirds of the money collected, and the stop work order provision has accounted for nearly 26% of outstanding judgments recovered [20].

SB588 notwithstanding, the Judgment Enforcement Unit of the Labor Commission has a very small staff that cannot keep up with the volume of unpaid wage theft judgments.

Thus, there is still a crisis in the collection of unpaid wage theft judgments, and a victory at the Labor Commission remains a hollow victory.

Wage Theft, By County, City & Industry

This report's unprecedented data analysis emphasizes the enormous scope of reported wage theft in Santa Clara County. This analysis is based on the DOL Wage and Hour Division's cases (not all resulting in judgments) since 2000, the DLSE's judgments since 2001, and the City of San Jose's Office of Equality Assurance's cases since 2011 [21].

Since these data exclude instances of wage theft that were not investigated or adjudicated by these agencies, among other data constraints [22], the full extent of wage theft in the County is undoubtedly much greater than even the following samples.

We found a total of 25,856 wage theft cases in Santa Clara County across all industries. These cases affected 32,826 employees and amounted to \$128,871,256 in total wage theft that remains unpaid—or an average of \$3,926 in back wages per employee, plus interest and penalties. Fig. 1 below provides a city-by-city visualization of wage theft in the County. (See Appendix A for data corresponding to this and the following heat maps for select cities.)

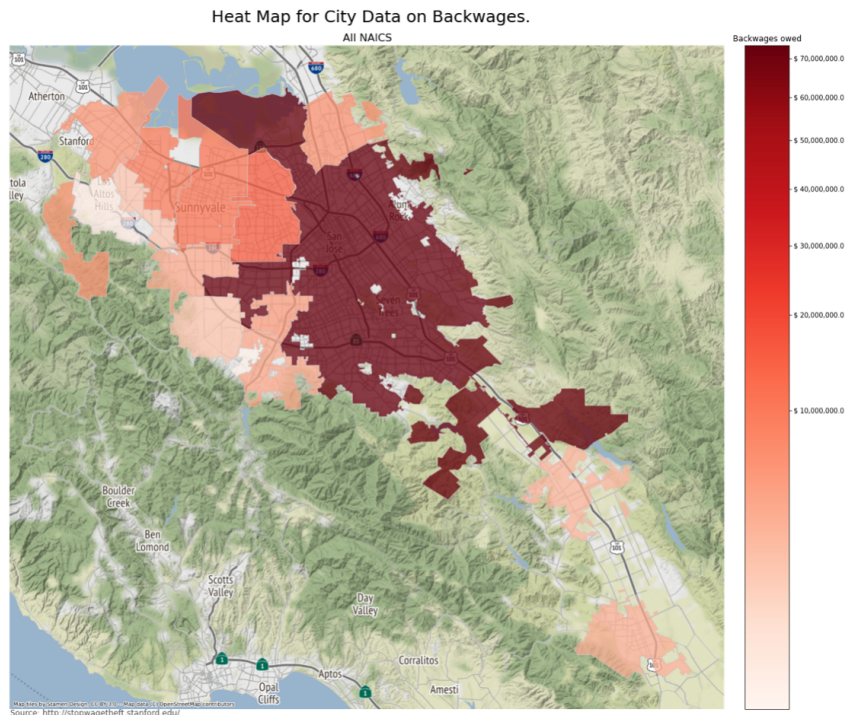


Fig. 1: Heat Map of Back wages Owed in Santa Clara County, by City

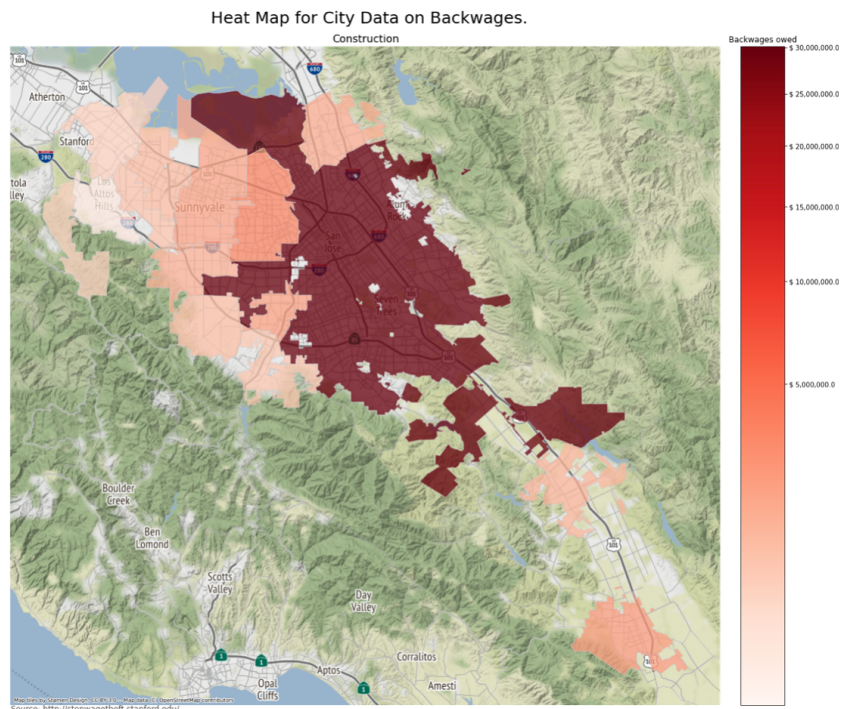


Fig. 2: Heat Map of Back Wages Owed in County's Construction Industry, by City

Further, we reviewed wage theft in six high-risk industries [23]: construction, care homes, fast food, janitorial services, personal care, and gig work:

Construction

We found a total of 8,480 wage theft cases in Santa Clara County's construction industry. These cases affected 12,376 employees and amounted to \$46,609,898 in total unpaid wage theft—or an average of \$3,766 in back wages per employee, plus interest and penalties. Fig. 2 provides a city-by-city visualization of wage theft in the County's construction industry.

Care Homes

We found a total of 1,628 wage theft cases in Santa Clara County's care home and residential care industry. These cases affected 3,474 employees and amounted to \$15,328,942 in total unpaid wage theft—or an average of \$4,412 in back wages per employee, plus interest and penalties. Fig. 3 below provides a city-by-city visualization of wage theft in the County's care home industry.

Fast Food

We found a total of 2,146 wage theft cases in Santa Clara County's fast food industry. These cases affected 2,490 employees and amounted to \$9,141,461 in total unpaid wage theft—or an average of \$3,671 in back wages per employee, plus interest and penalties. Fig. 4 below provides a city-by-city visualization of wage theft in the County's fast food industry.



Photo Credit: Wage Theft Coalition

Heat Map for City Data on Backwages.

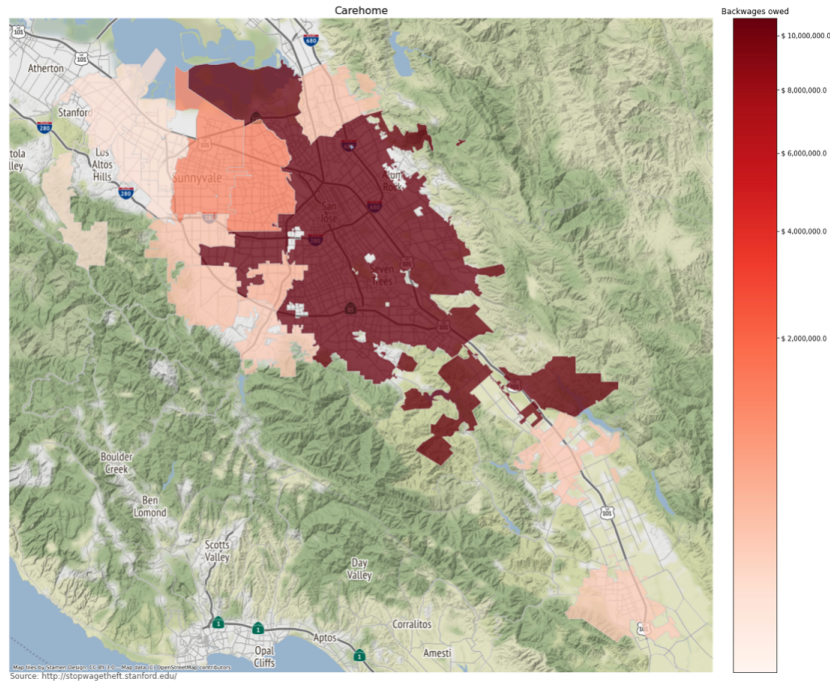


Fig. 3: Heat Map of Back Wages Owed in County's Care Home Industry, by City

Heat Map for City Data on Backwages.

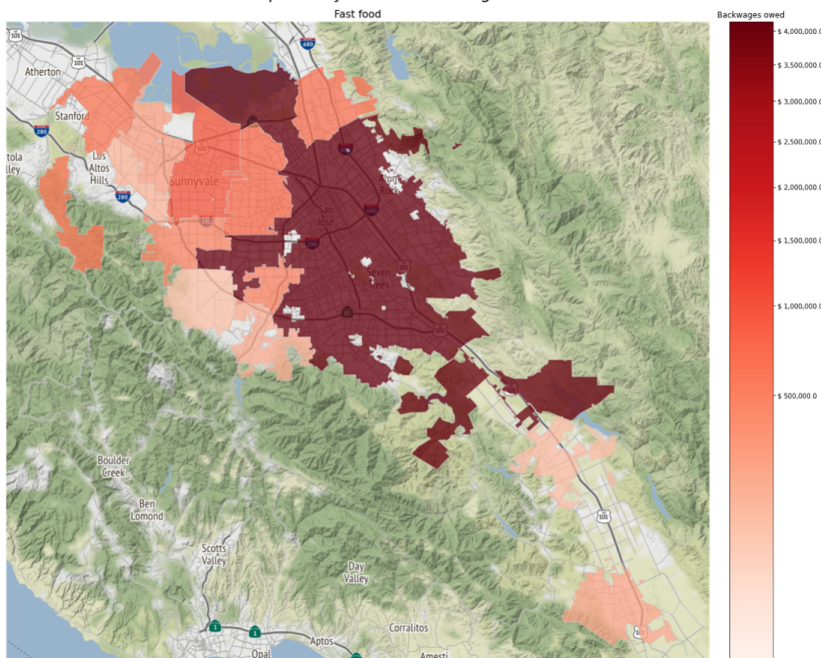


Fig. 4: Heat Map of Back Wages Owed in County's Fast Food Industry, by City

Janitorial Services

We found a total of 1,758 wage theft cases in Santa Clara County’s janitorial industry. These cases affected 2,124 employees and amounted to \$6,798,711 in total unpaid wage theft—or an average of \$3,201 in back wages per employee, plus interest and penalties. Fig. 5 below provides a city-by-city visualization of wage theft in the County’s janitorial industry.

We found a total of 8,480 wage theft cases in Santa Clara County’s construction industry. These cases affected 12,376 employees and amounted to \$46,609,898 in total unpaid wage theft—or an average of \$3,766 in back wages per employee, plus interest and penalties. Fig. 2 above provides a city-by-city visualization of wage theft in the County’s construction industry.

Personal Care

We found a total of 700 wage theft cases in Santa Clara County’s personal care industry. These cases affected 748 employees and amounted to \$3,196,302 in total unpaid wage theft—or an average of \$4,273 in back wages per employee, plus interest and penalties. Fig. 6 below provides a city-by-city visualization of wage theft in the County’s personal care industry.

Gig Work

We found a total of 106 wage theft cases in Santa Clara County’s gig industry. These cases affected 106 employees and amounted to \$986,946 in total unpaid wage theft—or an average of \$9,310 in back wages per employee, plus interest and penalties. Fig. 7 below provides a city-by-city visualization of wage theft in the County’s gig industry.



Photo Credit: Kristen Jill Aguilar

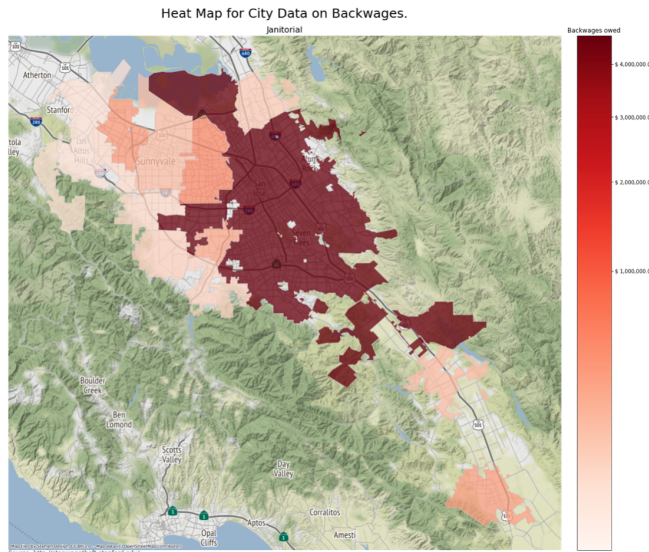


Fig. 5: Heat Map of Back Wages Owed in County's Janitorial Industry, by City

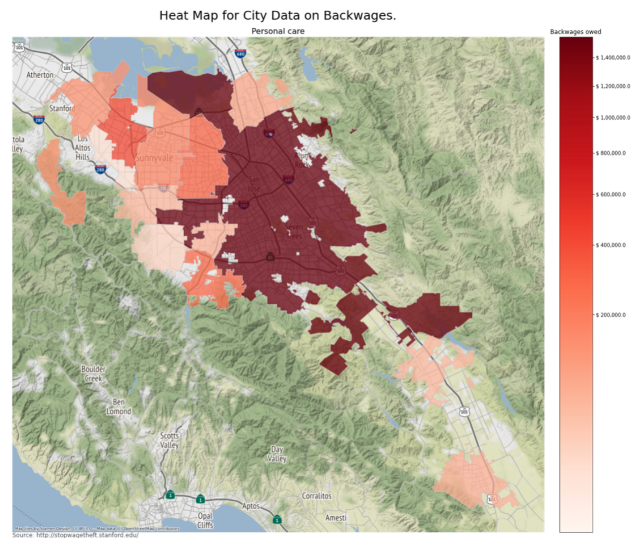


Fig. 6: Heat Map of Back Wages Owed in County's Personal Care Industry, by City

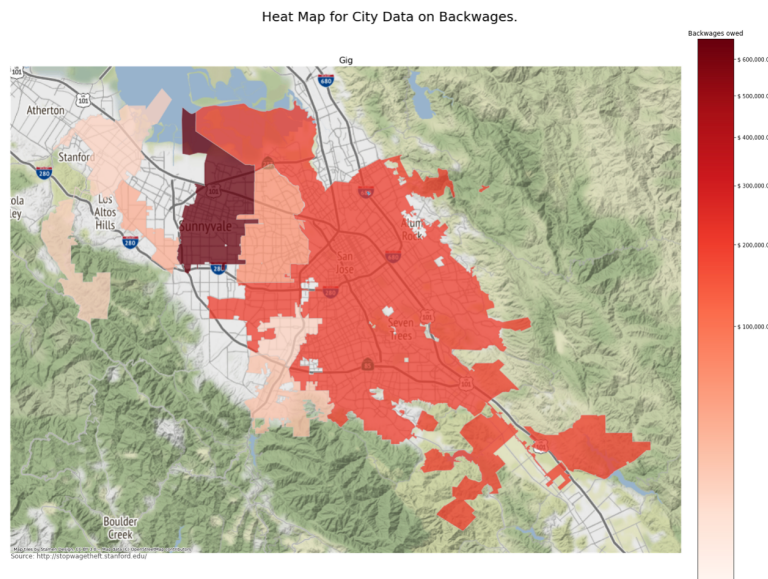


Fig. 7: Heat Map of Back Wages Owed in County's Gig Industry, by City

Wage Theft and Race

Workers' rights issues, including wage theft, are matters of racial justice. The racial wage divide is one of the most persistent features of the United States labor market. The wage gap between white and non-white workers persists across the wage distribution and is larger at the top end of the wage distribution, where Black workers are excluded from high-wage jobs [24].

Similarly, there is a large and long-standing disparity in unemployment between Black and white workers. Black job seekers are about half as likely as white job seekers to secure employment during a consecutive 4-week period. This has been true across multiple periods of economic expansion and recession, and is observed for all age cohorts, at every level of education, and for men and women alike [25].

Further, according to data compiled by the Center for Economic and Policy Research of workers from 2008-2010, women, noncitizens, and Hispanic and Black workers face a higher probability of experiencing minimum wage violations. When the interaction of gender, race, and citizenship are taken into account, the effects of discrimination are compounded [26]. Hispanic women who were not United States citizens, for example, were 2.6 times more likely to experience a minimum wage violation than white female citizens, while noncitizen Black women were 2.4 times more likely [27].



Photo Credit: Brooke Anderson Photography

Katharine & George Alexander Community Law Center Workers' Rights Cases Demographic Breakdown - 2019

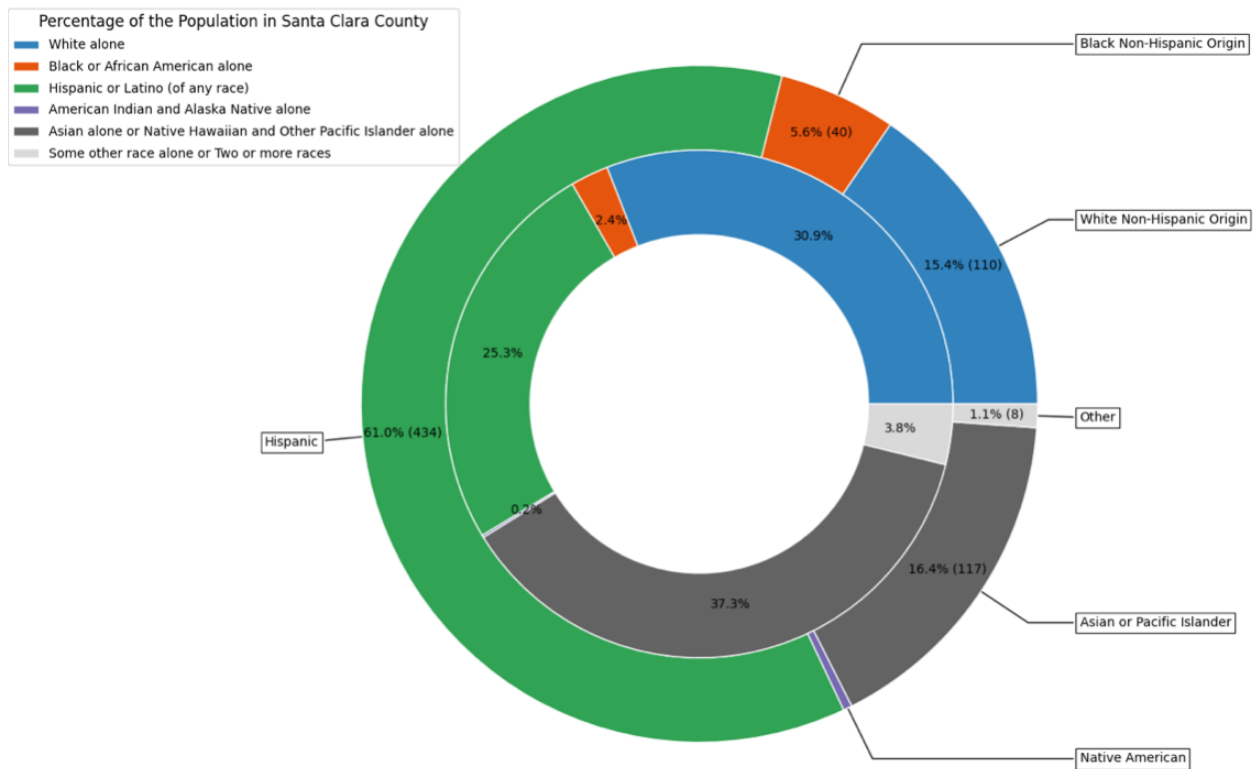


Fig. 8: Katharine & George Alexander Community Law Center Worker Rights Cases Breakdown in Comparison to Santa Clara County Racial Demographics

Similar disparities persist in Santa Clara County. Fig. 8 demonstrates that Black and Latinx workers in Santa Clara County disproportionately sought legal assistance for employment issues from the Workers' Rights Clinic at Santa Clara University School of Law's Katharine & George Alexander Law Center (Workers' Rights Clinic). The inner circle represents the County's racial demographics, while the outer circle represents

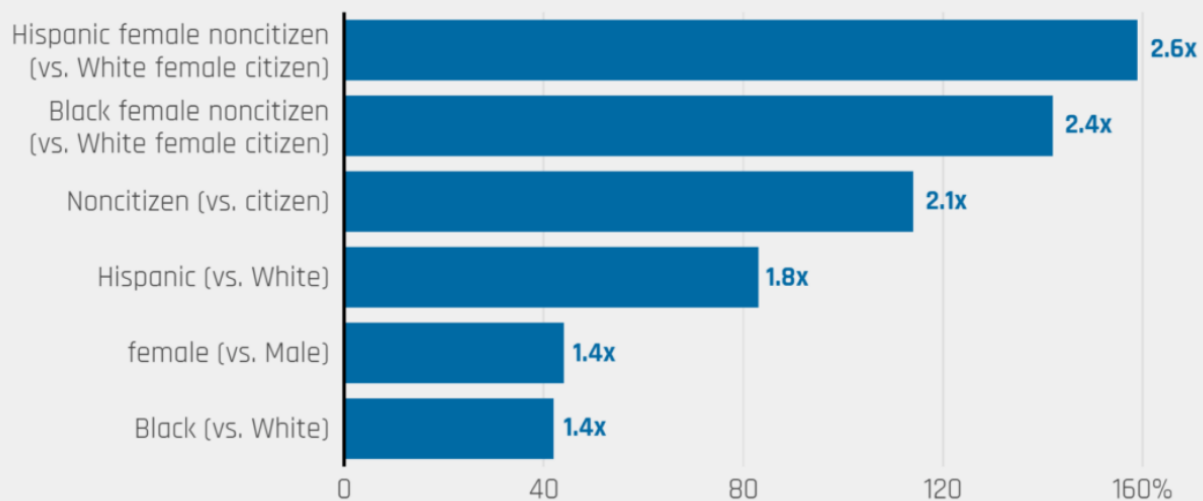
the racial demographics of the Workers' Rights Clinic's clients. The Workers' Rights Clinic served more Black and Latinx clients in comparison to the County's populations: Latinx individuals comprise 61% of the clinic's clients but only 25.3% of the County population, and Black individuals comprise 5.6% of the clinic's clients but only 2.4% of the County population.

The COVID-19 pandemic has only exacerbated these employment disparities. As seen in Figure 9, Latinx workers account for a quarter of Santa Clara County's workforce and are overrepresented in frontline industries such as agriculture, domestic work, and cleaning services. Black workers are disproportionately represented in the trucking industry, as are Asian and Pacific Islander workers in healthcare and manufacturing [29]. COVID-19 disproportionately harms these essential workers, who are more likely to live in or near poverty, pay too much for housing, and lack health insurance [30].

Additionally, a study by the University of California at San Francisco found that Latinx workers had a 36% increase in deaths during the pandemic, and Black workers had a 28% increase, compared to a 6% increase for white workers. Some non-white workers suffered particularly high jumps in deaths during the pandemic. For instance, deaths among Asian health care workers rose 40% during the pandemic, while those among Black retail workers increased by 18% [31].

Immigrants, workers of color, and women are more vulnerable to wage theft

The demographics of workers and the probabilities of minimum wage violations relative to reference group, all U.S. workers, 2008-2010



Source: Minimum wage violation rates calculated using CPS-MORG data compiled by the Center for Economic and Policy Research, "CPS ORG Uniform Extracts, Version 2.3" [2017].

Note: Comparing average marginal effects. See methodological appendix for multivariate models, sensitivity tests, and corrections for measurement error.

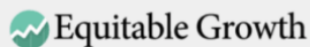


Fig. 9: Minimum Wage Violations By Gender, Race, and Citizenship (Source: Equitable Growth) [28]

Wage Theft: A Key component of Labor Trafficking



Photo Credit: Kristen Jill Aguilar

Wage theft is a key component of labor trafficking, where traffickers force or coerce victims to work against their will for little or no pay. Labor trafficking can occur in any industry, including domestic work, restaurant and food services, hospitality services, care homes, farming and agriculture, manufacturing, and sales [32]. Labor trafficking is rampant in the Bay Area -- for example, in the Rainbow Bright case, traffickers were charged with grand theft of wages totaling \$8.5 million:

In September 2018, the owners of Rainbow Bright, an adult residential care facility with multiple locations in South San Francisco, were charged with labor trafficking and grand theft of wages totaling \$8.5 million. The owners primarily targeted Filipinos who had just arrived in the United States, threatening them with deportation, but the owners also recruited Filipinos in this country. The workers endured abysmal working conditions. They were forced to work up to twenty-four hours per day and to sleep on mattresses on the floor. They lived in fear because the owners had 14 illegal assault weapons and other firearms [33].

Another labor trafficking case involved Mango Gardens; one of the three restaurants owned by the trafficker was in San Jose. In that case, the traffickers stole \$1,006,455 in wages from the workers, who were paid as little as \$2 an hour in cash.

The workers in the Mango Gardens labor trafficking case lived in squalid conditions with 15 people crammed into a two-bedroom apartment and mattresses on the floor [34]. They were required to work 11 to 12 hours per day, six days a per week, without overtime pay or tips [35]. Workers were paid as little as \$2 per hour in cash. Some workers were denied medical treatment [36]. When the owners learned that the workers were preparing to sue them, they closed two of their businesses and reopened them under different ownership in an attempt to avoid the lawsuit [37]. The traffickers were convicted and ordered to pay \$1,006,455 in back wages [38].

Another case involved Tapa Ole, which was a restaurant in Saratoga. There, some workers were paid as little as \$5.00, while other workers were paid nothing at all.

In Saratoga, the owners of Tapa Ole restaurant and Utopik beauty salon recruited workers from an economically depressed part of Spain. The owners housed them in two sheds, as well as a tiny room at the back of their house with cracks in the wall through which cockroaches scurried [39]. Some workers were told they could work off the debt they owed for their plane tickets to the United States [40]. The owners demanded money for rent and docked it from their pay or did not pay them at all [41]. One worked for \$5.00 an hour [42]. The owners were convicted on 44 felony counts.



Photo Credit: Kristen Jill Aguilar

In a Gilroy labor trafficking case, a man was forced to work 15 hour shifts with no pay, according to the Santa Clara County District Attorney's Office.

On November 2020, the owners of a liquor store and a market in Gilroy were arrested on charges of human trafficking, witness intimidation, and wage theft [43]. They allegedly forced a man to work 15 hour shifts seven days a week for no pay, according to the Santa Clara County District Attorney's Office [44]. He slept in a storage room and bathed in a mop sink, according to authorities [45]. The victim had allegedly flown to the United States from India in 2019 expecting to travel. The owners of the Gilroy liquor store and market took the man's passport and put him to work with no pay [46].

The pandemic makes it more difficult to identify labor trafficking victims. In an environment where the priority is limiting the spread of COVID-19, it is easier for traffickers to hide their operations, making victims increasingly invisible. Further, dramatic increases in unemployment and reductions in wages make people more vulnerable to labor trafficking [47].

Employers Who Commit Wage Theft Likely Also Fail to Provide Safe Workplaces

Wage theft violations are correlated with health and safety violations. A study of restaurants in New York found that employers who violate labor laws are more likely to violate health and safety standards, such as the Emergency Temporary Standard recently adopted by the State of California [48].

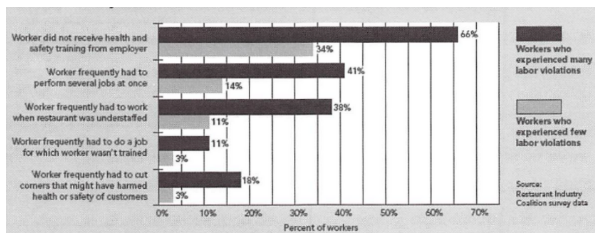


Fig. 10: Five Indicators of Unhealthy Workplace Practices, by Whether or Not Labor Violations Were Common in the Restaurant (Source: San Francisco Department of Public Health) [49]

The COVID-19 pandemic has especially impacted frontline, low-wage workers who must work during the pandemic and are therefore consistently at risk of exposure to the virus. Between August 30, 2020 and October 26, 2021, Santa Clara County received 1,658 complaints alleging businesses violations of its COVID-19 Safety Protocols, which could otherwise help prevent COVID-19 transmission to frontline workers and slow community spread [50].

“When everything started, they gave us something that was a piece of cloth, a piece of fabric that is very cheap ... they gave us two rubber bands and a paper with instructions to make a face mask with that, but [those facemasks] don’t protect us from anything, and we had to make them ourselves... That was the only thing they gave us ... and a hand sanitizer, a little container and that was all...”

Sandra — a janitorial worker.

Health and Safety in the Fast Food Industry

During this ongoing crisis, fast food establishments have failed to provide adequate personal protective equipment (PPE) and enforce health and safety protocols, such as mask-wearing and workplace sanitization. Some have even required workers to come to work after testing positive for COVID-19. In an SEIU union survey from April 2020, more than 90% of respondents said they had trouble getting masks, and 1 in 5 reported working while ill, either because they lacked paid sick leave or were afraid of being penalized for not showing up. There were also strikes over COVID-19 safety led by Fight for \$15 workers that shut down more than 100 McDonald’s outlets in 20 cities [51].

At a McDonald’s on Telegraph Avenue in Oakland, California, the workers were told to wear dog diapers when the store ran out of masks, and 20 workers and their families tested positive for COVID-19 [52]. Soon, COVID-19 had flared at nine other McDonald’s outlets within 15 miles of the Telegraph Avenue store, including three operated by the same owner, with more than 70 workers and their families testing positive or exhibiting symptoms [53]. SEIU filed a complaint in Superior Court on behalf of the workers. The judge ordered the store to upgrade coronavirus safety measures and get approval from the county health department before reopening [54]. When workers continued to test positive, the judge issued an injunction requiring the owner to provide sick pay and ensure that workers with COVID-19 symptoms stayed home [55].

“Before the pandemic I worked 8 hours, I had enough to cover the costs for food and rent. When the pandemic hit they would give us 3 – 3.5 hours. It is a tragedy because I could not cover my costs for the kids and I couldn’t pay rent...It’s worrisome, I had to buy masks. The manager gave us some masks, but when I put on the first mask that the manager brought to us, the first thing that my coworker mentioned was that the masks were diapers...”

Marissa — a pregnant fast food worker and Fight for \$15 member

Fight for \$15 has filed 19 Occupational Safety and Health (OSHA) and/or Public Health complaints with Santa Clara County, as well as 130 complaints in the State of California [56]. The following are three examples of OSHA and/or Public Health complaints with Santa Clara County in the last three months of 2020.

McDonald’s, 1299 E. Santa Clara, San Jose

According to a worker complaint filed June 9, 2020 with the Santa Clara County Public Health Department, this McDonald’s failed to comply with basic COVID-19 safety precautions and/or the Santa Clara County Health Officer’s Health Orders, including by:

- failing to provide employees with adequate personal protective equipment (PPE) such as masks and gloves that do not break easily;
- failing to enforce proper mask-wearing;
- allowing employees to work with visible COVID-19 symptoms;
- unduly delaying informing employees of possible exposure to two co-workers who had tested positive for COVID-19; and

- failing to inform employees of their right to paid sick leave or paid quarantine leave, even after two co-workers tested positive for COVID-19.

McDonald’s, 6990 Automall Parkway, Gilroy

According to complaints filed by four different workers with the Santa Clara Department of Environmental Health and Cal/OSHA between June 13 and August 27, 2020, this McDonald’s has persistently failed to provide a safe and healthy work environment for its employees, and as of August 7, at least four workers at this store had already tested positive for COVID-19. The worker complaints document in detail the store’s failure to comply with basic COVID-19 safety measures and/or the Santa Clara County Health Officer’s Health Orders, which include, among other things:

- failing to provide adequate and sufficient PPE, including masks;
- failing to enforce proper mask-wearing by both employees and customers;
- failing to enforce store hand-washing policies;
- failing to enforce social distancing;
- failing to conduct worker temperature checks at the start of each shift and instead relying on employees to self-report any COVID-19 symptoms;
- failing to regularly and thoroughly clean and sanitize high-touch surfaces, including surfaces that workers regularly touch without gloves, such as the touch screens where workers clock in and out, the point-of-sale touch screens, and headsets that are shared by multiple cashiers each shift;

- failing to notify employees of possible exposure to a co-worker who had tested positive for COVID-19;
- failing to clearly communicate to workers that they should stay home if they experience COVID-19 symptoms, and failing to clearly inform employees of their right to paid sick leave or paid quarantine leave; and
- denying sick and exposed workers paid leave to quarantine or while awaiting COVID-19 test results, even after a positive COVID-19 diagnosis in the workplace.

According to three different workers, after a staff member tested positive for COVID-19, management told only some, but not all, of the workers at the store about their potential exposure. Management did not close the store for a thorough and professional cleaning. Even though all workers at this store work in close quarters and share small spaces for many hours and workers were not provided sufficient PPE, management allowed only a few potentially exposed co-workers to quarantine. Others who requested time off to quarantine out of concern about their potential exposure were told they would not be paid, and potentially exposed workers who got tested for COVID-19 were told they would not be given paid time off while they awaited their test results. When another employee later tested positive for COVID-19 and tried to inform her co-workers of their potential exposure, her manager reportedly told her to stop.

**McDonald’s, 1033 E. Capitol Expressway,
San Jose**

According to a complaint filed on October 30, 2020 by Oralia Almaraz with the Santa Clara County Department of Public Health, the Santa Clara County Office of Labor Standards Enforcement (through the Advice Line), and Cal/OSHA, for about a week leading up to October 4, 2020, four workers at this store, one after another, were forced to work while sick with visible COVID-19 symptoms, such as fever, cough, body aches, and sore throat, until they were too sick to work any longer.

Reportedly, even after the first worker had to stop working because they were too sick, management continued to force the others to continue working while sick. The complaint asserts that each of the sick workers was in close contact with six to eight co-workers during each shift. On October 4, management informed Ms. Almaraz that multiple people at this store had tested positive for COVID-19 and that she needed to quarantine, but provided no further information and did not suggest that she herself get tested.

Ms. Almaraz reports that, when she asked if she would be paid for her quarantine time, her manager told her she would have to check, but never got back to Ms. Almaraz with an answer. Ms. Almaraz and two other co-workers who were also asked to quarantine state that they were ultimately paid only a portion of their regular wages for their quarantine time.



Photo Credit: Brooke Anderson Movement Photography

Due to Fight for \$15 and the Santa Clara County Wage Theft Coalition's advocacy, on January 26, 2020, the Santa Clara County Board of Supervisors unanimously passed a measure to: 1) task community outreach workers with conducting outreach and education to food retail businesses, in consultation with workers and advocates; 2) create a Food Retail Task Force with input from workers and advocates to carry out enhanced enforcement at food retail businesses that have been leading sources of complaints and violations; and 3) suspend and revoke retail food facility permits for businesses where failure to cooperate with authorities poses an imminent threat of harm [57].

Health and Safety Within the Care Home Industry

Care workers include staff at assisted living facilities and residential care facilities for the elderly (RCFEs), personal attendants to people with disabilities and chronic illnesses, and home health aides. Sixty-two percent of homecare workers are people of color, many of whom are Black and immigrant women, with a median income of \$16,200 [58]. For nursing home employees, workers earn low wages and are not always entitled to paid sick leave. Many work at multiple facilities or at other jobs, which increases the risk of contracting the virus [59]. Given their low wages and economic difficulty, hourly care workers may be pressured not to call in sick even when they exhibit symptoms of COVID-19 [60].

In Santa Clara County, RCFEs, assisted living facilities, and nursing homes—with care workers at the frontlines—have experienced widespread outbreaks of COVID-19. On April 27, 2020, a San Jose nursing home became one of the first eldercare facilities to report a major outbreak, reaching over 100 infected cases [61]. One of the largest recent outbreaks occurred at San Tomas Convalescent Hospital in San Jose, where 104 residents and 61 health care workers tested positive for COVID-19, according to state data [62]. State data also indicates that 20 of the San Tomas' Convalescent Hospital residents who had COVID-19 have died [63]. The Atria Willow Glen assisted living facility in San Jose had an outbreak in which 33 residents and employees tested positive for COVID-19 and one resident died [64]. These crises illustrate the critical importance of bolstering protections for vulnerable care workers.

“For private care or one-on-one, we have to provide our own masks and gloves. Some homes provide PPE but limit everyday usage.. I have my own personal supply, but if this lockdown continues any longer I will need to ask help from people who can provide PPE. Because of COVID-19, there are many clients discharged from hospitals in need of caregivers, but it’s high risk work. I told my caregiver friends that there will always be more work but work can wait. We only have one life, so we have to value it and take care of ourselves. We cannot afford to lose our lives if we get infected.”

Lena — a Filipino caregiver who cares for an elderly disabled person in a private home

Meanwhile, domestic workers are excluded altogether from protection under the standards administered by the California Division of Occupational Safety and Health (DOSH), better known as Cal/OSHA [65]. Though Cal/OSHA’s standards require employers to provide health and safety protections to workers, a worker who provides “household domestic service,” or works in a private home caring for a child, an elderly person, or a person with disabilities, is excluded. Thus, 350,000 domestic workers employed by more than 2 million families in the State have no workplace health and safety protections during the pandemic [66]. A study of 700 domestic workers in San Francisco and Los Angeles found that, among those who continued to work during the first 3 months of the pandemic, nearly 1 in 3 reported that they lacked adequate PPE, and only 25% reported that they had been provided safety training by their employer—training required by law in other industries [67]. In 2020 the California Domestic Workers Coalition advocated for SB 1257, the Health and Safety for All Workers Act, which would have removed this exclusion. But given Governor Newsom’s veto, California domestic workers remain unprotected under Cal/OSHA’s standards, including the Emergency Temporary Standards (discussed below).

Grassroots organizations have had to fill gaps in light of employers and governments’ failures to safeguard worker health and safety. For example, many workers have had to rely on grassroots organizations to supply basic life-saving PPE. The Pilipinx Association of Workers and Immigrants (PAWIS)—a grassroots organization advocating for the rights of workers and immigrants in Santa Clara County—distributed masks, face shields, gloves, and other PPE to domestic workers, caregivers, nurses, and staff at residential care home facilities and large assisted living facilities. PAWIS also launched fundraising drives for workers who were most severely impacted by the pandemic.

The PPE drive was a response to workers who informed PAWIS about the lack of PPE in care homes and assisted living facilities. Those workers included the following:

- Lala worked for a health care agency. At the start of the pandemic, her employer gave her and her co-workers only four surgical masks. They were told to spray the masks with disinfectant after use and air-dry them for reuse the next day. She was also issued a limited number of gloves, which she was also told to reuse.
- Hannah worked for a health care agency that assigned her to take care of clients in an assisted living facility. One of her clients who tested positive for COVID-19 during the pandemic was quarantined. The agency did not provide her with PPE. She needed disposable medical gowns, not just surgical masks; PAWIS provided the medical gown.
- Ana was assigned by her joint employer, an agency, to work at a nursing facility with clients who had COVID-19. She unknowingly contracted the virus and went to work without proper PPE because her agency and the facility failed to provide them.
- Two Filipino caregivers working for a skilled nursing facility contracted COVID-19. The facility did not have sufficient PPE at the start of the County's shelter-in-place. PAWIS donated face shields, N95 masks, and surgical masks to the facility.

- Caregivers employed by a health care agency who were misclassified by their employer as independent contractors complained that they were asked to sign a document stating that, because they are independent contractors, they were required to provide their own tools, including PPE.

Moreover, the Day Worker Center of Mountain View's women's collective, COSERA, began making masks during the pandemic. The Day Worker Center of Mountain View and COSERA provided thousands of locally made masks to day laborers, domestic workers, hospital workers, farm workers, and other essential workers. The Day Worker Center has also provided breakfast and lunch to workers who are food insecure.

"Some employers do not provide PPE and don't care about our health and safety. They do not ask if I need a mask and do not offer to give me a mask or other PPE. One of the employers who does not provide PPE is not paying me my wages, and there are safety concerns at the job site."

Enrique — a day laborer



Photo Credit: Kristen Jill Aguilar

C. Cal/OSHA Standards for Aerosol

Transmissible Diseases: Post- COVID-19
Before this pandemic, Cal/OSHA's relevant standard protected only healthcare workers from aerosol transmissible diseases like COVID-19. The standard did not apply to workers in other industries. But as a result of advocacy by WorkSafe, the Southern California Coalition for Occupational Safety and Health, and other organizations, the California Department of Industrial Relations' Occupational Safety and Health Standards Board adopted Emergency Temporary Standards to protect employees in all industries from hazards related to COVID-19 [68]. The new emergency safety orders apply to all employees and places of employment in California except (1) places of employment with one employee who does not have contact with other persons, (2) employees working from home, and (3) health care employees at facilities, services, and operations covered by the previously existing standard on aerosol transmissible diseases.

The new safety orders require employers to establish, implement, and maintain an effective and written COVID-19 Prevention Program. The key points are as follows:

- Without identifying who tested positive, within one business day of learning that someone in the workplace tested positive, an employer must provide notice of the potential exposure to all employees and independent contractors who were either exposed to the person or present at the worksite during the exposure period.
- All employees who were within six feet of someone who tested positive for a cumulative period of 15 minutes or longer within a 24-hour period must be put on paid leave for 14 days from the last known exposure.

- An employer can require the use of sick time, paid time off, Families First Coronavirus Response Act (FFCRA), or other benefit payments from public sources such as State Disability Insurance to maintain employees' pay when they are on leave, but if they have used all those pay benefits, an employer must continue paying the employee.
- An employer must allow employees to return to work after testing positive once the specified time and symptoms have passed (different criteria based on whether the employee is symptomatic or asymptomatic). An employer cannot require a negative test before allowing the employee to return to work.
- In the event of an outbreak (three or more positive cases within 14 days), all employees who were in the workplace during the period of the outbreak must be tested twice: (1) immediately and (2) one week later. Thereafter, all employees who remain at the workplace must continue to be tested at least weekly until there are no more positive cases for a 14-day period.
- In the event of a major outbreak (20 or more positive cases within 30 days), all employees who were in the workplace during the 30-day period must be tested twice per week until there are no more positive cases for a 14-day period [69].

Up until the present, Cal/OSHA's enforcement has not been robust and has thus disappointed workers and advocates. Cal/OSHA must strongly enforce these and other health and safety standards to slow and prevent the spread of COVID-19 in the workplace; it must also increase penalties to help deter violations. Further, these standards should apply to domestic workers. Without proper oversight, employers can deny required health and safety protections to workers with impunity.

Wage Theft Worsens as Unemployment Rate Increases and Workers Lose Pay

According to unemployment data from the Bureau of Labor Statistics and minimum wage data compiled by the Center of Economic and Policy Research, wage theft rises with the state's unemployment rate. The probability that any given low-wage worker would be paid below their applicable minimum wage ranged from about 10 percent to about 22 percent between 2007 and 2013, with each percentage point increase in the state's unemployment rate predicting, on average, almost a full percentage point increase in the probability they would experience a violation [70].

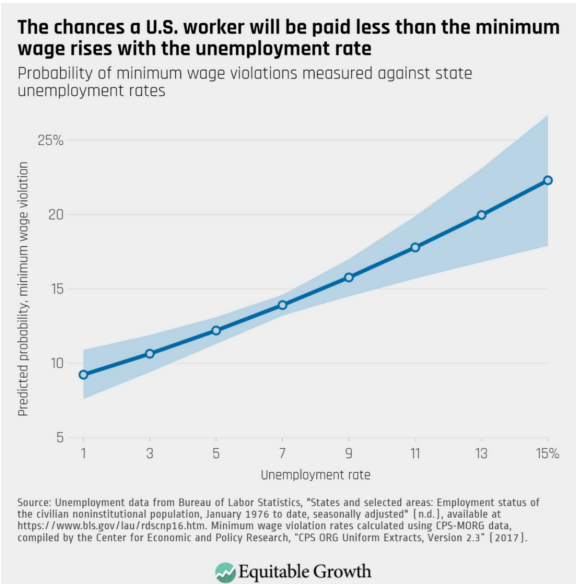


Fig. 11: Correlation Between Minimum Wage Violations and Unemployment Rate Increases (Source: Equitable Growth) [71]

The Pandemic Has Increased Unemployment

By June, 2020, California's unemployment stood at more than 2.8 million people statewide, leaving California's unemployment rate at a record-breaking 14.9% [72]. In Santa Clara County alone, there were 118,000 unemployed workers as of June 2020; the unemployment rate was 10.7%, compared to 4.0% in June 2019 [73].

Certain industries have been disproportionately affected by the wave of layoffs. For example, service sector jobs that depend on face-to-face interactions or involve bringing together large numbers of people were among the hardest hit. This includes industries such as restaurants, fast food, hotels, domestic work, retail trade, and transportation services. Workers in these industries are predominantly immigrants [74]. With the future of the coronavirus still unclear, companies continue to brace for budget cuts, resulting in layoffs, reduced hours, and significantly decreased financial reserves in many vulnerable households.

"Before the pandemic I worked 8 hours, I had enough to cover the costs for food and rent. When the pandemic hit they would give us 3 – 3.5 hours. It is a tragedy because I could not cover my costs for the kids and I couldn't pay rent...It's worrisome."
Sela—a fast food worker and Fight for \$15 member

Workers have faced difficulty in applying for unemployment or have had major delays in receiving their benefits. In a scathing report on January 26, 2021, the California State Auditor's office concluded that EDD's inefficient processes and lack of advanced planning led to significant delays in its payment of unemployment insurance claims [75].

"It's really not enough with all the monthly bills. And my stimulus hasn't come yet, and I have to actually re-apply for unemployment because the first and second time I attempted to apply, I guess I was denied. I'm wondering why and it's so challenging to contact the Department of Unemployment, you will either wait for very long or the music will just keep on until you know, until your battery has exhausted."

Irene — a fast food worker, who was laid off due to the pandemic

Moreover, undocumented workers were ineligible for state unemployment or Pandemic Unemployment Assistance under the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, even though they contribute over \$100.6 million in yearly taxpayer dollars [76].

“Even though we are undocumented, we pay our tax diligently, and this pandemic comes --no support. Not all of us have work now. Many are jobless right now. It’s hard. We cannot go to the governor [and say], “Hey can we get support from you? We are paying taxes.”

Miriam — an immigrant worker

Workers Need Recall and Retention Rights Because of Job Loss Due to Layoffs and Businesses Restructuring

Because of the explosion of COVID-19 cases, businesses have been forced to close for periods of time or lay workers off permanently. Workers are also in danger of losing their jobs when businesses change owners or contractors. Thus, it is critical that workers have recall and retention rights, which require employers to offer laid-off employees their jobs back in order of seniority, and to retain workers when there is a change of ownership or contractor.

“I was happy when I was working, but [COVID-19] happened and, well, they fired us. Yes, this has affected me a lot. I am just at home...hoping that they call me back to work, but they did not call to let me know if they will give me my job back ...nothing.”

Carina — a janitor at Stanford University

AB 3216 would have provided a right to recall and retention to workers in the hospitality industry. It passed through the state legislature, but at the eleventh hour, with immigrant workers fasting and praying on the Capitol’s doorstep, Governor Newsom vetoed the bill.

Nonetheless, cities across the State have passed their own recall and retention laws. For instance, on April 4, 2017, the City of Santa Clara adopted Worker Retention Ordinance - No. 1964, which requires a new contractor in food services or building services to hire existing workers when a City of Santa Clara business changes contractors. On January 12, 2020, the City Council added hotel workers. Due to the advocacy of UNITE HERE! and Silicon Valley Rising, the City Council approved an Emergency Right to Recall Ordinance that will require employers in building services, food services, and hotel services to offer work to workers who are laid off for economic reasons on or after March 17, 2020 once a position becomes available. This Emergency Ordinance expires at the end of the COVID-19 emergency.

Fear of Retaliation: Speaking Up About Wage Theft and Other Workers' Rights Violations

The fear of retaliation deters workers from speaking up about wage theft or filing claims at the Labor Commission or the Department of Labor. Without protection from retaliation, workers will continue to experience wage theft. The fear of retaliation “is particularly debilitating for persons with low institutional power across multiple dimensions. For example, women who are especially isolated and tokens in their jobs, women in nontraditional employment, and women who are especially vulnerable in their jobs are more likely to be silenced by the threat or fear of retaliation. The potential for retaliation increases as the power disparity widens between a low-status target and a higher status perpetrator” [77].

A 2009 seminal study of more than 4,000 workers found that one in five workers “reported that they had made a complaint about wage theft or attempted to form a union in the last year” [78]. Of these, “43 percent experienced one or more forms of illegal retaliation from their employers or supervisors” [79]. Twenty percent of workers surveyed did not make complaints to their employers during that period, even though they had experienced serious problems such as dangerous conditions or pay below the minimum wage, because they feared retaliation” [80]. In a survey of 275 workers in the Chicago metro area, workers who took group action were more likely to experience retaliation than those acting individually [81].

In California, the Labor Commission reported in 2018 that it received 5,633 complaints of retaliation and accepted 2,590 for investigation. The Retaliation Unit ordered payment of \$1,989,104.41 in lost wages, \$446,834.53 in interest on the lost wages, and \$2,082,500 in penalties. The Retaliation Unit was able to reach 997 settlements. The Legal Unit obtained more than \$1,023,000 in settlements, as well as court judgments exceeding \$536,457 [82]. Similarly, in its compliance and enforcement initiative in Bay Area nursing homes and RCFEs, the Department of Labor (DOL) found that employees were threatened or harassed if they questioned their working conditions, some were specifically instructed not to cooperate with the DOL investigation, and some were intimidated and retaliated against for speaking up [83].

The Trump administration fanned the flames of anti-immigrant sentiment and ramped up immigration enforcement, including targeting workers who brought claims against their employers [84]. Complaints over immigration-related retaliation threats surged in this environment. In 2017, the Department of Labor Standards Enforcement received 94 claims [85], compared to 20 complaints in all of 2016 and seven a year earlier [86]. One lawsuit filed by the Labor Commissioner alleges that a boss threatened to report a worker to immigration authorities “several times each year” [87]. Employers have even told the Commissioner’s staff that they would call ICE on their workers [88].



Photo Credit: Wage Theft Coalition

The Division of Labor Standards Enforcement has received even more retaliation complaints during the COVID-19 pandemic. In the six months following Governor Newsom's March 2020 stay-at-home order, the Department of Industrial Relations' Retaliation Complaint Investigation Unit (RCI) received more than 300 claims that mentioned the coronavirus. As of August 2020, at least 95 of those were under investigation for health and safety issues, such as complaints for failure to enforce mask and social distancing mandates [89].

On July 21, 2020, McDonald's fired Maria Ruiz, an employee whistleblower who had reported violations of COVID-19 safety requirements and, in protest, refused to work in unsafe working conditions. Ms. Ruiz and her co-workers reported their concerns to the Santa Clara County Public Health Department, Cal/OSHA, and the Labor Commission, but their manager failed to remedy the problems. According to Ms. Ruiz's lawsuit, instead of addressing their concerns after the second time the workers refused to work in unsafe conditions, McDonald's retaliated against them by reducing their scheduled hours and by firing Ms. Ruiz, the leader of the protests. Ms. Ruiz filed a wrongful termination lawsuit in Santa Clara County Superior Court on October 16, 2020, and the other three workers have filed retaliation complaints with the Labor Commission [90].

The Coalition's Victories

The 2015 Wage Theft Report noted that, due to gaps in enforcing wage theft, local governments increasingly play an important role in protecting workers [91]. The Coalition urged Santa Clara County to implement policies to this end. Many of those recommendations, as well as other measures to protect workers from wage theft and other violations, have been enacted as a result of the Santa Clara County Wage Theft Coalition's advocacy. They are as follows:

Enacted Recommendations

1. Santa Clara County, San Jose, Sunnyvale, Milpitas, and Morgan Hill have enacted legislation that make wage theft violators ineligible for business licenses, permits, and/or Certificates of Occupancy. It is a priority in Mountain View.
2. Santa Clara County, San Jose, Sunnyvale, Milpitas, and Morgan Hill have enacted legislation that prohibits the cities from contracting with businesses that have not paid wage theft judgments. It is a priority in Mountain View.
3. Santa Clara County created an Office of Labor Standards Enforcement (OLSE) to revoke health permits of restaurants that do not pay wage theft judgments.
4. The Office of Labor Standards Enforcement operates a Legal Advice Line with attorneys who speak English, Spanish, Tagalog/Visayan, Mandarin, Vietnamese, and Hindi/Punjabi. The Santa Clara County Wage Theft Coalition Coordinator supervises the Legal Advice Line and answers English calls. An attorney from PAWIS, a member of the Santa Clara County Wage Theft Coalition, staffs the Tagalog/Visayan Legal Advice Line.
5. The Office of Labor Standards Enforcement's Fair Workplace Collaborative coordinates with community organizations in the Santa Clara County Wage Theft Coalition to conduct outreach, education, and awareness. These organizations include PAWIS, the Vietnamese American Roundtable, Working Partnerships USA, and the Day Labor Center of Mt. View. The Fair Workplace Collaborative also works closely with Santa Clara County Wage Theft Coalition member Fight for \$15 and a union.
6. In the Cities of San Jose, Mountain View, and Sunnyvale, the Santa Clara County Wage Theft Coalition; the Mechanical, Electrical, Pipe, and Sprinkler fitter trades (MEPS); and Working Partnerships USA have partnered to advocate for an ordinance requiring employers to disclose unpaid wage theft judgments in order to be granted building permits and Certificates of Occupancy. The City of Milpitas voted to approve such an ordinance on January 5, 2020; the second reading will take place at the next Council meeting.
7. The Santa Clara County Wage Theft Coalition partnered with Fight for \$15 to advocate for a Santa Clara County referral which included 1) investigation of public health violations and retaliation in the fast food industry; 2) the establishment of a task force that includes workers and advocates; 3) outreach and education by the community business engagement team that includes collaboration with workers and advocates; 4) the use of the Department of Environmental Health's power to revoke restaurant health permits if fast food restaurants' lack of cooperation could lead to imminent harm; and 5) authorization of a report on these issues by academic institutions. Board President Cindy Chavez brought the referral to the Board, and it passed unanimously.



Photo Credit: Wage Theft Coalition

At the state level, the Santa Clara County Wage Theft Coalition accomplished the following:

1. The Coalition was the original sponsor of AB 1947 (Kalra) when it was first introduced three years ago. It was signed by the Governor and went into effect on January 1, 2021. It increases the statute of limitations for claims brought to the Labor Commission from six months to one year and allows the court to award attorney's fees for claims brought under the whistleblower statute, Labor Code 1102.5.
2. The Coalition was a co-sponsor of AB 3075. The bill imposes successorship liability on an employer for any wages or penalties owed by its predecessor if it uses (1) substantially the same facilities or substantially the same workforce to offer substantially the same services as the predecessor employer; (2) substantially the same owners or managers that control labor relations; (3) a managing agent that controlled the wages, hours, and working conditions of the predecessor employer; or (4) a family member of a owner, partner, officer, or director of the predecessor employer. The bill was signed by the Governor.

Policy Recommendations



Photo Credit: Wage Theft Coalition

Building upon its policy and organizing victories in recent years, the Coalition recommends the following to better protect workers from exploitation, especially amid the COVID-19 pandemic:

Protecting Worker Health and Safety

- Federal, state, and local governments should provide greater financial assistance and personal protective equipment (PPE) to essential workers.
- The State should make domestic workers eligible for protection under Cal/OSHA's Emergency Temporary Standards.

- The State should require that, at any business where an employer has retaliated against a worker for reporting a violation of a COVID-19 health order, the employer must provide just cause to terminate any worker for a period of at least six months. This would deter employers from retaliating against employees for attempting to ensure their own health and safety, and would encourage workers to make bona fide reports of health violations.
- Cities should require just-cause termination for workers in the fast food industry as a model for just-cause termination and layoff in order of seniority in other industries. In New York, Mayor de Blasio signed two bills on December 17, 2021 (effective July 4, 2021) that will prohibit fast food employers with 30 or more locations from terminating fast food workers or reducing regularly scheduled hours by 15% or more absent "just cause" or bona fide economic concerns, and will require all layoffs to be in order of seniority [92].

- Under a recent ordinance, the County of Santa Clara can designate “any sworn peace officer, County employee, or other individual” to act as enforcement officers, empowered to impose civil penalties to individuals and businesses flouting mandatory COVID-19 health orders [93]. Under this ordinance, the county should designate workers as enforcement officers, since they are often more knowledgeable than third parties about whether their employers are properly implementing health orders that may put their own health at risk.

- Under California state law, COVID-19 Supplemental Paid Sick Leave, which expired on December 31, 2020, up to 80 hours must be provided to all employees who leave their homes or place of residence to perform work [94]. However, workers who can show that they continue to suffer from severe symptoms or that they were reinfected [95] were not provided any additional paid sick leave. The state Supplemental Paid Sick Leave should be reenacted, and workers should be able to access additional hours of paid sick leave if they are exposed again or are reinfected.

- The City of San Jose enacted a COVID-19 Paid Sick Leave Ordinance which requires employers to provide up to 80 hours of paid sick leave. It expired on December 31, 2020, but, on January 5, 2021, the City of San Jose extended it until June 30, 2021 retroactive to January 1, 2021 [96]. Other cities should enact similar ordinances but not limit these ordinances to 80 hours if the worker is exposed or reinfected again.

Wage Theft Prevention and Enforcement

- The State and County should implement systems to flag businesses to which they issue permits or licenses that have been found in violation of state and/or federal labor and employment laws within the last three years. The State and County should publish lists of these wage theft violators on their websites.

- The County and State should enact legislation to authorize all departments that issue permits or licenses to suspend those issued to wage theft violators. The County should expand its Food Permit Enforcement Program to the whole of San Jose [97] and establish a similar revocation program for business licenses it will issue. Further, cities through the County and the State should enact legislation allowing them to suspend or revoke building permits and Certificates of Occupancy for businesses with unpaid wage judgments; one such ordinance passed unanimously on the first reading in Milpitas, and similar ordinances are already priorities in three cities in the County.

- The County should permit workers with unpaid wage theft judgments to record wage liens with the County Recorder similar to the existing Mechanic’s lien. California should similarly provide for wage liens statewide [98].

- The State and County should identify in each department points of contact with workers, especially low-wage workers. They should provide workers information about their employment and other rights.

- The County should convene a working group of County departments that meet quarterly to coordinate efforts to address the problem of wage theft, develop education campaigns, and strategize about how to obtain compliance from the County's violators.

- The County should screen all businesses receiving a County benefit or recognition to ensure that wage theft violators are not eligible.

- The State and County should use opportunities to promote awareness and enhance public recognition of responsible employers.

- The County's Office of Labor Standards Enforcement should establish a data group within its office with demonstrated competency in data analysis to support strategic and effective enforcement of wage theft [99].

Increasing Worker Power and Employer Accountability

- The State and County should provide support for the outreach, education, and assistance that community-based organizations and legal organizations provide to workers who are victims of wage theft or other violations.

- The State should enact legislation providing that retaliation claims filed under California Labor Code Sections 1102.5 and 98.6 trigger increased access and inspection rights. Moreover, upon a prima facie showing of retaliation, an employer should be prohibited from terminating a complainant at will, and should instead be required to provide just cause for 6 months or a year.

- The State should amend Labor Code Section 1102.5 such that the \$10,000 penalty under that section should be paid to the worker, rather than the Labor Commission. Additionally, claims under Section 1102.5 should be available where any business retaliates against a worker for reporting a violation of state or federal law, not only when the business is a corporation or an LLC.

- The State should amend California Labor Code Section 238.4 to require the Departments of Public Health and Social Services to revoke a new license or deny a renewal if a long-term care company has an unsatisfied final judgment. It should further amend the section to require the Labor Commissioner to forward notice of unpaid final judgments to the Departments of Public Health and Social Services if prompted by advocates.

- Cal-OSHA should issue citations with higher penalties for health and safety violations. Currently, Cal-OSHA's penalties are minimal and do not act as a deterrent.

- The State should formally consider establishing a system for wage theft insurance that is funded by employers and guarantees compensation for all wage theft violations (similar in some ways to workers' compensation insurance) [100]. This would facilitate compensation for wage-and-hour violations on a systemic level, rather than through individual adjudications, and may deter wage theft in the longer term. For example, employers could pay regularly into an insurance fund for wage theft violations at amounts calculated based on size and industry; employers with relatively more claims could be required to make larger payments. The State should consult with low-wage workers in studying, designing, and implementing this system, and should ultimately hire these subject-matter experts as claims investigators.

• The County and state should establish industrial labor boards, which could set wages, hours, and working conditions across industries with high rates of wage theft and low rates of unionization. Given the prevalence of wage theft, sexual harassment and assault, health and safety violations, and the identifiability of business locations in the fast food industry, Assemblymember Lorena Gonzalez introduced AB 257, the Fast Food Accountability and Standards (FAST) Recovery Act. This would guarantee fast food workers at large-chain fast-food establishments the ability to shape industry-wide workplace standards and empower workers to hold companies accountable for providing safe working conditions [101]. Such a standards board can serve as a template for other industries.

• In the longer term, American labor law should be reimagined to provide for a system of sectoral bargaining, which would increase collective bargaining coverage. For example, under such a system, when a worker organization has a membership of 5,000 workers in a sector or 10 percent of the workers in a sector, the U.S. Secretary of Labor would—upon request of the worker organization—establish a sectoral bargaining panel for the sector. At the panel, employers would be represented in proportion to their share of the sector. Sectoral bargaining agreements would become binding on all firms and all workers in the sector, subject to review and approval by the Secretary of Labor [102].

Wage Theft Coalition

Santa Clara County

Photo Credit: Wage Theft Coalition

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Appendix A

Wage Theft Data for Select Cities: All Industries

Cities	# of Cases	Backwages Owed	Workers Affected
SAN JOSE	14491	\$ 73,517,896	28511
SANTA CLARA	2331	\$ 15,235,197	2073
SUNNYVALE	1388	\$ 10,976,822	1094
MOUNTAIN VIEW	904	\$ 9,514,851	1075
MILPITAS	1057	\$ 6,166,311	866

Wage Theft Data for Select Cities: Construction, Healthcare, Fast Food, Janitorial, Personal Care, and Gig Industries (Combined)

Cities	# of Cases	Backwages Owed	Workers Affected
SAN JOSE	14491	\$ 73,517,896	28511
SANTA CLARA	2331	\$ 15,235,197	2073
SUNNYVALE	1388	\$ 10,976,822	1094
MOUNTAIN VIEW	904	\$ 9,514,851	1075
MILPITAS	1057	\$ 6,166,311	866

Wage Theft Data for Select Cities: Construction Industry

Cities	# of Cases	Backwages Owed	Workers Affected
SAN JOSE	5446	\$ 30,133,241	4893
SANTA CLARA	686	\$ 3,230,021	586
GILROY	432	\$ 2,024,712	326
CAMPBELL	382	\$ 1,841,476	400
SUNNYVALE	228	\$ 1,611,886	234

Wage Theft Data for Select Cities: Care Home Industry

Cities	# of Cases	Backwages Owed	Workers Affected
SAN JOSE	1112	\$ 10,690,908	1624
SANTA CLARA	86	\$ 1,444,463	119
SUNNYVALE	94	\$ 1,170,656	143
CAMPBELL	42	\$ 437,758	146
MILPITAS	76	\$ 271,202	67

Wage Theft Data for Select Cities: Fast Food Industry

Cities	# of Cases	Backwages Owed	Workers Affected
SAN JOSE	1046	\$ 4,147,154	5912
SUNNYVALE	172	\$ 966,143	129
SANTA CLARA	174	\$ 737,683	781
MILPITAS	184	\$ 639,553	125
PALO ALTO	124	\$ 608,901	87

Wage Theft Data for Select Cities: Janitorial Industry

Cities	# of Cases	Backwages Owed	Workers Affected
SAN JOSE	1276	\$ 4609710	872
SANTA CLARA	94	\$ 468635	77
MOUNTAIN VIEW	76	\$ 329206	81
GILROY	40	\$ 298051	23
CAMPBELL	64	\$ 241372	42

Wage Theft Data for Select Cities: Personal Care Industry

Cities	# of Cases	Backwages Owed	Workers Affected
SAN JOSE	306	\$ 1,556,640	256
MOUNTAIN VIEW	32	\$ 407,683	18
SANTA CLARA	68	\$ 296,947	47
LOS GATOS	98	\$ 274,377	54
SUNNYVALE	52	\$ 169,626	50

Wage Theft Data for Select Cities: Gig Industry

Cities	# of Cases	Backwages Owed	Workers Affected
SUNNYVALE	20	\$ 659,882	10
SAN JOSE	52	\$ 203,737	30
SANTA CLARA	16	\$ 60,160	8
LOS ALTOS	10	\$ 29,360	5
LOS GATOS	4	\$ 16,902	3

Endnotes

1. Cooper, D., & Kroeger, T. (2017, May). Employers steal billions from workers' paychecks each year: Survey data show millions of workers are paid less than the minimum wage, at significant cost to taxpayers and state economies. Economic Policy Institute.
<https://www.epi.org/publication/employers-steal-billions-from-workers-paychecks-each-year/>
2. See, e.g., Gould, E., & Wilson, V. (2020, June). Black workers face two of the most lethal preexisting conditions for coronavirus—racism and economic inequality.
<https://www.epi.org/publication/black-workers-covid/>. Black and Latinx workers face immense job security as compared to white workers, and suffer greater exposure to COVID-19 because they are disproportionately frontline workers.
3. See reference 1.
4. California Department of Industrial Relations. (n.d.). Examples of wage theft.
https://www.dir.ca.gov/dlse/Examples_of_Wage_Theft.html
5. The Labor Commission enforces the California Labor Code. The California Industrial Welfare Commission also provides 17 Wage Orders for different categories or types of industries and jobs. The Labor Code and Wage Orders cover minimum wage, lunch breaks and meal periods, waiting time penalties, and liquidated damages for failure to pay minimum wage. Local jurisdictions or cities may have higher minimum wages than the state minimum wage. For example, in 2021, the cities of San Jose and Sunnyvale have higher minimum wages at \$15.45 and 16.30, respectively, compared to the state's \$13.00 for workplaces with 25 or fewer employees and \$14.00 per hour for workplaces with 26 or more employees.
6. Eastern Research Group, Inc. (2014, December). The social and economic effect of wage theft violations: Estimates for California and New York. U.S. Department of Labor.
<https://www.dol.gov/sites/dolgov/files/OASP/legacy/files/WageViolationsReportDecember2014.pdf>
7. California Labor Commissioner's Office. (2018). 2017-2018 fiscal year report on the effectiveness of the bureau of field enforcement. California Department of Industrial Relations.
https://www.dir.ca.gov/dlse/BOFE_LegReport2018.pdf
8. Culliton, K. (2019, February 7). Wage theft doesn't pay. HRWatchdog.
<https://hrwatchdog.calchamber.com/2019/02/wage-theft-doesnt-pay/>
9. Id.
10. Shannon, G., Silver Taube, R., & Noss, C. (2015). Santa Clara County wage theft report. County of Santa Clara. <https://www.sccgov.org/sites/owp/econ-adv/Documents/wage-theft-report-final-2014.pdf>
11. Id.
12. County of Santa Clara. (2019, September 23). County of Santa Clara new enforcement program to fight for owed wages and food workers' rights: Initiative enables County to suspend food facility permits from businesses with outstanding judgments and protect vulnerable workers from wage theft [Press release]. <https://www.sccgov.org/sites/opa/newsroom/Pages/food-permit-09-23-2019.aspx>

13. Cho E. H., Koonse, T., & Mischel, A. (2013, June). Hollow victories: The crisis in collecting unpaid wages for California's workers. National Employment Law Project. <https://www.nelp.org/wp-content/uploads/2015/03/Hollow-Victories-Unpaid-Wages-Report.pdf>
14. Shah, H. B. (2017). Understaffed and overworked: Poor working conditions and quality of care in residential facilities for the elderly. Publications, 4. <https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1789&context=pubs>
15. Id.
16. Fuentes, R. (2019). Making workers whole: A retrospective analysis of SB588 and enhanced Post-Judgment collection in California. Berkeley Journal of Labor and Employment, 40(2), 401–402. <https://doi.org/10.15779/Z387659G13>
17. Wolfe, E. (2019, October 10). Efforts to claw back stolen wages painfully slow, as California employers who cheat workers often get away with it. FairWarning. <https://www.fairwarning.org/2019/10/clawing-back-stolen-wages/>
18. Id.
19. See reference 15.
20. Id.
21. The DOL provided the WHD data, the DLSE data were obtained through a Public Records Act request (June 2019), and the City provided the SJOE data.
22. These data do not include private lawsuits, stop notices, and complaints to the awarding agency, contractor, employment department, licensing board, or district attorney.
23. Categorizations are based on both documented data and intelligent inferences.
24. See reference 2.
25. Id.
26. Fine, J., Galvin, D., Round, J., & Shepherd, H. (2021, January 14). Strategic enforcement and co-enforcement of U.S. labor standards are needed to protect workers through the coronavirus recession. Equitable Growth. https://equitablegrowth.org/strategic-enforcement-and-co-enforcement-of-u-s-labor-standards-are-needed-to-protect-workers-through-the-coronavirus-recession/?fbclid=IwAR2jagIp6_PQJMdkyVMOs7irJ4M0lWQ0nMDayZbFCEHuHzre42NPYdnXHQA
27. Id.
28. Id. Graphic reproduced with consent of authors.
29. Henderson, J. (2020, May 27). A profile of frontline workers in Santa Clara County. PolicyLink. <https://www.policylink.org/FrontlineWorkerSantaClara>
30. Id.
31. Cabanatuan, M., & Tucker, J. (2021, January 23). New study ranks the riskiest jobs in California during the pandemic. San Francisco Chronicle. <https://www.sfchronicle.com/bayarea/article/California-s-essential-workers-dying-in-greater-15893374.php>
32. Aylstock, Witkin, Kreis & Overholtz, PLLC. (n.d.). Labor trafficking: A booming industry in the United States. <https://www.awkolaw.com/labor-trafficking-a-booming-industry-in-the-united-states/>
33. Green, J. (2020, February 6). Santa Clara County: 17 arrested in human-trafficking crackdown. The Mercury News. <https://www.mercurynews.com/2020/02/06/santa-clara-county-17-arrested-in-human>

34. Id.
35. Id.
36. Id.
37. Id.
38. Geha, J. (2019, January 10). Restaurant owners ordered to pay more than \$1 million in back pay to workers. The Mercury News. <https://www.mercurynews.com/2019/01/10/restaurant-owners-ordered-to-pay-more-than-1-million-in-back-pay-to-workers/>
39. Kaplan, T. (2015, November 20). Plight of Saratoga human trafficking victims revealed. The Mercury News. <https://www.mercurynews.com/2015/11/20/plight-of-saratoga-human-trafficking-victims-revealed/>
40. Id.
41. Id.
42. Green, J. (2019, August 29). Saratoga restaurant owners convicted of labor fraud. The Mercury News. <https://www.mercurynews.com/2019/08/28/saratoga-restaurant-owners-convicted-of-labor-fraud/>
43. NBC Bay Area. (2020, November 10). Gilroy liquor store owners charged with human trafficking: DA. <https://www.nbcbayarea.com/news/local/gilroy-liquor-store-owners-charged-with-human-trafficking-da/2394641/>
44. Id.
45. Id.
46. Id.
47. United Nations Office on Drugs and Crime. (2020). Impact of the COVID-19 pandemic on trafficking in persons: Preliminary findings and messaging based on rapid stocktaking. <https://www.un.org/ruleoflaw/wp-content/uploads/2020/05/Thematic-Brief-on-COVID-19-EN-ver.21.pdf>
48. San Francisco Department of Public Health – Work Environment Program. (2012). Wage Theft and Health Fact Sheet in Ruth Silver Taube’s possession.
49. Id.
50. County of Santa Clara Public Health Department. (2020, November 9). County of Santa Clara officials are calling on the public for strict adherence to safety protocols after seeing sharp uptick in COVID-19 cases [Press release]. <https://www.sccgov.org/sites/covid19/Pages/press-release-11-9-2020-call-for-strict-adherence-safety-protocols-covid19.aspx>
51. Williams, L. (2021, January 15). Not lovin’ it. Reveal News. <https://revealnews.org/article/mcdonalds-workers-across-us-report-covid-19-safety-breakdowns/>
52. Id.
53. Id.
54. Id.
55. Id.
56. Adam Weisberg, SEIU Campaign Director, The Fight for \$15. Information in his possession.
57. Santa Clara County Board of Supervisors’ January 26 meeting, Item 21, Supplemental Report, https://sccgov.iqm2.com/Citizens/Detail_Meeting.aspx?ID=13201
58. Verrett, A. (2020, August 24). Home care workers are now called Essential. But the history of the profession shows that the U.S. has never treated them as such. Time. <https://time.com/5882416/home-care-workers-racism/>

59. Id.
60. Id.
61. Peele, T., & Sciacca, A. (2020, April 27). Coronavirus: San Jose nursing home reaches nearly 100 cases of COVID-19, deaths in elder care facilities represent 40 percent of overall state total. The Mercury News. <https://www.mercurynews.com/2020/04/27/coronavirus-san-jose-nursing-home-reaches-nearly-100-cases-of-covid-19/>
62. Sciacca, A. (2020, November 23). ‘We have no business taking victory laps:’ Just as conditions were improving, second wave of COVID-19 strikes California nursing homes. The Mercury News. <https://www.mercurynews.com/2020/11/21/we-have-no-business-taking-victory-laps-just-as-conditions-were-improving-second-wave-of-covid-19-strikes-nursing-homes/>
63. Id.
64. Id.
65. The California Division of Occupational Safety and Health (DOSH), known as Cal/OSHA, is the main governmental body tasked with protecting and improving the health and safety of workers. It sets and enforces standards; provides education and assistance; and issues permits, licenses, certifications, registrations, and approvals.
66. Shyung, F. (2020, September 21). Domestic workers need laws like SB 1257 for protection. Los Angeles Times. <https://www.latimes.com/california/story/2020-09-21/domestic-workers-protections-california-sb1257>
67. Jabola-Carolus, I. (2020, September). Unprotected on the job: How exclusion from safety and health laws harms California domestic workers. The Graduate Center, City University of New York. https://academicworks.cuny.edu/cgi/viewcontent.cgi?article=1776&context=gc_pubs
68. Standards Presentation to California Occupational Health and Safety Standards Board, <https://www.dir.ca.gov/oshsb/documents/COVID-19-Prevention-Emergency-txtbrdconsider.pdf>
69. Id.
70. See reference 25.
71. Id. Graphic reproduced with consent of authors.
72. U.S. Bureau of Labor Statistics. (n.d.). Unemployment rates for states. <https://www.bls.gov/web/laus/laumstrk.htm>
73. Cuevas, E. (2020, July 17). California, Santa Clara County unemployment rates improve, but uncertainty looms. San José Spotlight. <https://sanjosespotlight.com/california-santa-clara-county-unemployment-rates-improve-but-uncertainty-looms/>
74. County of Santa Clara. (n.d.). The contributions of immigrants in Santa Clara County. <https://www.sccgov.org/sites/oir/Documents/contributions%20BB%20text.pdf>
75. California State Auditor. (2021, January). Employment Development Department: EDD’s poor planning and ineffective management left it unprepared to assist Californians unemployed by COVID-19 shutdowns. <https://www.auditor.ca.gov/pdfs/reports/2020-128and628.1.pdf>
76. Chavarin, J. (2017, April 27). Undocumented immigrants’ tax contributions in California: County-by-County analysis. Institute on Taxation and Economic Policy. <https://itep.org/undocumented-immigrants-tax-contributions-in-california-county-by-county-analysis/>
77. Brake, D. L. (2005). Retaliation. *Minnesota Law Review*, 90, 18. <https://scholarship.law.umn.edu/cgi/viewcontent.cgi?article=1001&context=mlr>

78. Huizar, L. (2019, June). National Employment Law project, exposing wage theft without fear: States must protect workers from retaliation. National Employment Law Project. <https://s27147.pcdn.co/wp-content/uploads/Retal-Report-6-26-19.pdf>
79. Id.
80. Id.
81. Id. at 5.
82. Huber, P. K. (2018). 2018 Retaliation complaint report. California Department of Industrial Relations. <https://dir.ca.gov/dlse/RCILegReport2018.pdf>
83. U.S. Department of Labor. (2015, April 7). U.S. Labor Department Conducts Compliance and Enforcement Initiative in Bay Area Nursing Homes, Residential Care Facilities [Press release]. https://web.archive.org/web/20190921125044/https://www.dol.gov/whd/media/press/whdpressVB3.asp?pressdoc=Western/20150407_1.xml; see reference 13.
84. See, e.g., Khouri, A. (2018, January 2). More workers say their bosses are threatening to have them deported. Los Angeles Times. <https://www.latimes.com/business/la-fi-immigration-retaliation-20180102-story.html>; Kitroeff, N. (2017, August 3). Officials say immigration agents showed up at labor dispute proceedings. California wants them out. Los Angeles Times. <https://www.latimes.com/business/la-fi-ice-california-labor-20170802-story.html> (ICE agents showed up at locations in Van Nuys and Santa Ana looking for workers who had brought claims against their employers); Ford, Z. (2019, August 8). ICE raids followed a massive sexual harassment settlement at Mississippi plants. ThinkProgress. <https://archive.thinkprogress.org/ice-raids-follow-massive-sexual-harassment-settlement-mississippi-plant-koch-foods-d95eb2720f67/>. See also, e.g., ICE targets 7-Eleven stores in Santa Clara as part of nationwide operation. (2018, January 10). The Mercury News. <https://www.mercurynews.com/2018/01/10/ice-targets-7-eleven-stores-in-santa-clara-as-part-of-nationwide-operation/>; Green, J., & Sanchez, T. (2018, February 1). ICE targets 77 Northern California businesses in undocumented worker crackdown. The Mercury News. <https://www.mercurynews.com/2018/02/01/ice-targets-77-northern-california-businesses-in-crackdown-on-illegal-workers/>; Ahearn, T. (2019, January 18). Form I-9 audits and worksite arrests by ICE surged in fiscal year 2018. Employment Screening Resources Check. <https://www.esrcheck.com/wordpress/2019/01/18/form-9-audits-arrests-by-ice/>; Buchanan, B. E. (2019, November 3). ICE is on the warpath against employers with 3,000 I-9 audits in 2 months. HR Professionals Magazine. <https://hrprofessionalsmagazine.com/2019/11/03/ice-is-on-the-warpath-against-employers-with-3000-i-9-audits-in-2-months/>; Buchanan, B. (2018, June 20). ICE's I-9 audits will increase by 400% in fiscal year 2018. Employment Law Handbook. <https://www.employmentlawhandbook.com/legal-work-status/ices-i-9-audits-will-increase-400-fiscal-year-2018/>

85. Su, J. A. (2017). 2017 Retaliation complaint report. California Department of Industrial Relations. In one case cited in the Report, a worker had previously agreed, during a scheduled hearing in the Labor Commissioner's San Diego office, to settle a claim. The worker lived in Mexicali and crossed the border daily for work. In retaliation for pursuing the wage claim, the employer enticed the worker to cross the border from his home on the promise of being paid. When the worker crossed the border, border agents were waiting with paperwork relating to the worker's claim filed with the Labor Commissioner's office. The worker was detained and he was removed from the U.S. The report states that "it appears the employer's primary motivation for requesting the worker cross the border was to enable immigration enforcement to intercept the worker, thus allowing the employer to escape his obligation to pay the worker owed wages and penalties."
86. Khouri, A. (2018, January 2). More workers say their bosses are threatening to have them deported. Los Angeles Times. <https://www.latimes.com/business/la-fi-immigration-retaliation-20180102-story.html>
87. Id.
88. Id.
89. Miller, L. (2020, August 15). COVID-19: Workers face retaliation for demanding safety. Los Angeles Times. <https://www.latimes.com/california/story/2020-08-15/coronavirus-workers-retaliation-claims>
90. Letter by Alynn Umel, Organizing Director, Fight for \$15 and a Union to Santa Clara County Supervisor Cindy Chavez (November 4, 2020) (with author); McDonald's accused of firing worker over strikes for safety gear. (2020, July 22). Bloomberg Law. <https://news.bloomberglaw.com/daily-labor-report/mcdonalds-accused-of-firing-worker-over-strikes-for-safety-gear>; Lee, E. (2020, July 24). SJ McDonald's accused of firing employee over PPE strike. San Jose Inside. <https://www.sanjoseinside.com/news/mcdonalds-accused-of-firing-employee-over-ppe-strike/>
91. Shannon, G., Taube, R. S., & Noss, C. (2015). Santa Clara County wage theft report. County of Santa Clara. <https://www.sccgov.org/sites/owp/econ-adv/Documents/wage-theft-report-final-2014.pdf>
92. Troutman, M. (2021, January 5). NYC fast food workers get "just cause" protections. Patch. <https://patch.com/new-york/new-york-city/nyc-fast-food-workers-get-just-cause-protections>. The first bill is Proposed Int. No. 1415-A, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3860317&GUID=F97F44AA-CCC8-470B-998E-C3C35A5C0717&Options=ID|Text|&Search=1415-A>. The second bill is Proposed Int. No. 1396-A, <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=3860321&GUID=76C5427B-7B33-4E55-AA73-37345B8ABEEF&Options=ID|Text|&Search=1396-A>
93. County of Santa Clara. (n.d.-a). Ordinance No. NS-9.291. <https://www.sccgov.org/sites/covid19/Pages/ordinance-ns-9-291.aspx>; see also Forestieri, K., & Lee, L. (2020, August 12). Santa Clara County imposes fines on public health violators as COVID-19 cases surge: Fees come as state threatens penalties for counties that don't crack down on breaches. Palo Alto Online. <https://www.paloaltoonline.com/news/2020/08/12/santa-clara-county-imposes-fines-on-public-health-violators-as-covid-19-cases-surge>

94. California Labor Code 248, 248.1; California Department of Industrial Relations. (n.d.-b). FAQs on California COVID-19 supplemental paid sick leave. <https://www.dir.ca.gov/dlse/FAQ-for-PSL.html>
95. Centers for Disease Control and Prevention. (n.d.). Symptoms of coronavirus. <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/symptoms.html>; Centers for Disease Control and Prevention. (n.d.-a). Reinfection with COVID-19. <https://www.cdc.gov/coronavirus/2019-ncov/your-health/reinfection.html>
96. City of San Jose. (2021). Urgency COVID-19 paid sick leave ordinance. <https://www.sanjoseca.gov/your-government/departments-offices/public-works/labor-compliance/urgency-covid-19-paid-sick-leave-ordinance>
97. For more information on the program, see County of Santa Clara, Office of Labor Standards Enforcement. (n.d.). Food permit enforcement program - labor standards enforcement - County of Santa Clara. <https://www.sccgov.org/sites/olse/enforcement/Pages/Food-Permit-Enforcement-Program.aspx>. It is currently in Phase I, which is limited to the cities of Sunnyvale, Mountain View, and the 95112 and 95113 Zip Code Areas of San Jose.
98. For more information on wage liens, see pp. 20, 22-23 of reference 10; see also reference 12.
99. Lee, J. J., & Smith, A. (2018). Regulating wage theft. *Washington Law Review*, 94, 50. (“[W]hile . . . data collection and reporting strategies are promising, the successful use of data will largely be dependent on whether the data itself reflects useful and accurate information, and the ability of the public, lawmakers, or agency personnel to make good use of it.”); see also, e.g., Johnson, T., Peterson, F. O., Myers, M., Silver Taube, R., & Fischer, M. A. (2018). Predicting, analyzing, and educating on wage theft with machine learning tools. Center for Integrated Facility Engineering Technical Report #229, Stanford University. https://www.researchgate.net/publication/341735963_Predicting_Analyzing_and_Educating_on_Wage_Theft_with_Machine_Learning_Tools
100. Hallett, N. (2018). The problem of wage theft. *Yale Law & Policy Review*, 93, 401. https://ylpr.yale.edu/sites/default/files/YLPR/2_hallett_final.pdf
101. A.B. 257, 2021 Biennium, 2021 Reg. Ses. (CA 2021). https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB257
102. See pp. 3 of Block, S., & Sachs, B. (2020). Clean slate for worker power: Building a just economy and democracy. *Clean Slate for Worker Power*. https://uploads-ssl.webflow.com/5fa42ded15984eaa002a7ef2/5fa42ded15984eaa6a72a806b_CleanSlate_SinglePages_ForWeb_noemptyspace.pdf