

# ***MAKING RIGHTS REAL***

***HOW THE WHISTLEBLOWER  
ENFORCEMENT MODEL CAN  
ADDRESS THE CRISIS IN  
LABOR RIGHTS ENFORCEMENT***



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IN ACTION**

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# EXECUTIVE SUMMARY

**THE WHISTLEBLOWER ENFORCEMENT (WBE) MODEL** is a common-sense approach to expanding public labor law enforcement, fostering a culture of compliance among employers, and generating significant revenue for state and local enforcement agencies.

This report advocates for the broad implementation of state and local WBE policies in labor law that expand the reach of public enforcement agencies and allow affected workers, whistleblowers, and community-based organizations to take legal action on behalf of the state against employers who violate the law. WBE policies augment the public enforcement of existing workplace standards, holding corporations accountable for labor law infringements and imposing substantial penalties on offenders. **Critically, these penalties deter violations and serve as an untapped revenue source for enhancing the capacity of public sector enforcement agencies, including additional staffing and enforcement resources.**

Workplace rights violations remain rampant and pervasive in the United States, profoundly affecting workers, families, and the economy. Even though legislation exists to prevent and penalize these transgressions—from wage and hour laws to health and safety protections—the **defunding and chronic understaffing of local and state labor law enforcement agencies has caused a devastating enforcement gap, which has led to persistent breaches of workers' existing legal rights**, including wage theft, safety violations, discrimination, and countless other abuses. BIPOC and immigrant workers

(often marginalized by systemic racism and socioeconomic exclusions), low-wage workers, and those who labor under contingent, informal, or gig job arrangements see the brunt of these rights violations. **These workers and the community and labor organizations they comprise are also uniquely situated to help defend and enforce their rights through the WBE model.**

This report highlights the potential revenues that a more robust enforcement of existing labor law could generate and how these revenue streams would create a significant funding mechanism for public enforcement agencies, against a backdrop of extensive labor law enforcement gaps and the critical role of public enforcement in mitigating these violations. This report also provides a comprehensive overview of the potential impact of WBE policies by drawing from various sources, including the long history of the False Claims Acts, labor law-specific state proposals, and existing legislation in California.<sup>1</sup>

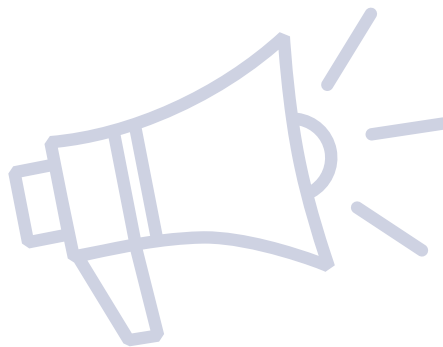
## KEY FINDINGS

### ▶ ▶ ▶ **LABOR LAW ENFORCEMENT AGENCIES NEED MORE RESOURCES AND STAFFING TO ADEQUATELY ADDRESS THE NEEDS OF WORKERS.**

This resource gap is directly proportional to the scale of labor law violations, a widespread problem that affects workers across the country and suggests a vicious cycle between underfunding and non-compliance by employers. This underfunding ties directly to the substandard working conditions, grueling schedules, and relatively low pay often endured by the frontline public servants entrusted with investigating violations and enforcing labor law.

- ▶▶▶ **THE BREADTH OF THIS GAP UNDERSCORES THE SIGNIFICANCE OF POTENTIAL REVENUES CAPTURED THROUGH BETTER ENFORCEMENT.** This report finds that **Whistleblower Enforcement policies could generate hundreds of millions of dollars annually**—funds that should be used to improve conditions for public servants, expand staffing at state agencies tasked with enforcement, and could support the community organizations that aid community and strategic enforcement.
- ▶▶▶ **IMPLEMENTING WBE POLICIES HAS BEEN FOUND TO IMPROVE COMPLIANCE AND PROTECTION FOR WORKERS.** WBE policies **expand the public sector’s reach through grassroots worker involvement and worker initiative** in a system that traditionally relied on complementary public and private enforcement, a regime weakened by underfunding public enforcement agencies and rising barriers to the rights of individual workers to seek justice.

*In summary, adopting whistleblower enforcement policies at the state level represents a significant part of the solution to the labor law enforcement crisis and ongoing defunding of the public sector. These policies can generate substantial revenue, bolster public enforcement agencies, and protect workers’ rights.*



# INTRODUCTION

## A DEEPENING CRISIS IN LABOR LAW ENFORCEMENT

AS REPORTED BY THE CENTER FOR POPULAR DEMOCRACY, the Economic Policy Institute, and the National Employment Law Project in 2019, basic workplace standards and long-standing protections remain at risk of being hollowed out by underenforcement.<sup>2</sup> Since then, this crisis has only deepened: Chronic understaffing and underfunding of public labor law enforcement agencies have resulted in a significant enforcement gap,<sup>3</sup> leading to widespread labor law violations, perhaps most pernicious among them wage theft, which “includes overtime violations, paying below minimum wage, misclassification of employees, and illegal deductions from paychecks [...] Wage theft deeply impacts workers from immigrant and low-income backgrounds. In particular, industries that predominantly hire low-wage or immigrant workers such as construction, restaurants, salons and domestic work are more likely to be affected by wage theft.”<sup>4</sup>

A recent *ProPublica* and *Documented* investigation found that from 2017 to 2021, “more than \$203 million in wages had been stolen from about 127,000 workers” between 13,000 cases of wage theft in the state of New York alone, with the total amount stolen from working people “almost certainly a significant undercount.”<sup>5</sup> The analysis also found that

**\$79 million in back wages owed to victims of wage theft in New York—or 63 percent of stolen wages—had yet to be collected, pointing to chronic understaffing at the NYS Department of Labor** among other causes.<sup>6</sup> In Philadelphia, workers have waited years to receive their back wages despite winning their cases and despite the city’s “powerful wage theft law,” a trend reflected across the country.<sup>7</sup> This lack of enforcement and consequences, according to Jennifer Lee, Director of the Social Justice Lawyering Clinic at Temple University, **“doesn’t send any kind of message to employers that what they’ve done is wrong . . . and it doesn’t stop them from rolling the dice and doing it again in the future.”**<sup>8</sup>

Public state and local investigators, the essential though chronically overburdened pillar of labor law enforcement, are increasingly overwhelmed by the scale of the problem. Testimonies from workers, labor rights organizations, former public servants, and public enforcement agency staff highlight the lack of resources available to investigate complaints, enforce laws, and collect compensation.<sup>9</sup> Lack of resources has meant insufficient staffing and pay to attract and keep talented investigators, leaving investigators with ever-expanding, untenable caseloads. The COVID-19 pandemic exacerbated these

issues, leading to court closures, backlogs at state departments of labor (DOLs) and their equivalents, and delayed cases.<sup>10</sup> At workplaces nationwide, widespread non-compliance with labor laws has resulted in workers losing their hard-earned wages and facing unsafe working conditions.

**As the enforcement crisis deepens and ongoing disinvestment causes the number of enforcement staff to dwindle while more and more people enter the workforce, states including Colorado, Illinois, and New York have introduced whistleblower enforcement bills.<sup>11</sup>**

**“**THE VAST MAJORITY OF WORKERS WHO EXPERIENCE WAGE THEFT do not file claims to recover stolen wages . . . The impact, we all know, goes far beyond the directly-impacted worker and extracts billions of dollars from workers, households, and our state’s economy. Employers who evade enforcement are also emboldened to cheat other workers in the future, fueling pervasive abuse.

The current public enforcement scheme is simply insufficient. The DOL does not have enough resources to promptly investigate the complaints that come into the agency let alone enforce state employment laws in workplaces where workers are too scared to report violations. The pandemic has only also impacted this. Courts closing, DOL backlogs [and] delayed cases by months to years.

In the past several years, New York has taken the lead in worker protections, including [increases] to the minimum wage, paid leave, and protections against gender-based pay discrimination. Constraints on enforcement, however, have blocked many working families from experiencing the real benefits of [these] policies. Through our work, we see that employers bet on the state having inadequate enforcement capacity; they steal wages from their workers and allow toxic workplaces to fester with the expectation that it’s unlikely they will be caught.

**OUR LABOR LAWS ARE RENDERED MEANINGLESS WHEN WORKERS DO NOT HAVE A REASONABLE EXPECTATION THAT EMPLOYERS WHO VIOLATE THE LAW WILL BE HELD ACCOUNTABLE.”**

**–Nathalia Varela**  
*Supervising Attorney for Worker Justice,  
Make the Road New York<sup>12</sup>*



# WORKER RIGHTS & PUBLIC LABOR LAW ENFORCEMENT UNDER ATTACK

A CRISIS IN LABOR LAW ENFORCEMENT plagues the US today, a troubling reality emerging despite established legal frameworks designed to protect workers from exploitation. Its mark is pervasive wage theft (where employers underpay or fail to pay their workers) and other labor law violations. There are two primary reasons: inadequate deterrence against wage theft and insufficient capacity at enforcement agencies, particularly state DOLs and their equivalents.

Wage theft is widespread in the US, affecting millions of workers. According to a 2017 Economic Policy Institute study, “[i]n the 10 most populous states in the country, each year 2.4 million workers covered by state or federal minimum wage laws report being paid less than the applicable minimum wage in their state—approximately 17 percent of the eligible low-wage workforce”—amounting to 2.4 million workers losing \$8 billion annually.<sup>13</sup> On average, this works out to employees in these states being cheated out of \$3,300 per person each year.<sup>14</sup> After extrapolating data from these ten states, the report estimates that **workers throughout the country lose about \$15 billion annually from minimum wage violations alone.**<sup>15</sup>

Existing deterrents, in the form of fines, penalties, and damages, have proven insufficient to curb these exploitative

practices. Part of the problem lies in the modest size of the expected costs compared to the amount of money businesses save by violating labor laws, making it economically rational for some employers to continue their violations even if they’re occasionally caught, fined, and made to pay workers their earned wages.<sup>16</sup> The likelihood of detection and prosecution remains low due to several reasons: the fear of retaliation keeps many workers from submitting complaints or bringing private legal action, other barriers to private litigation (including the expansion of forced arbitration),<sup>17</sup> and critically, the limited resources available for public enforcement in the face of the enormous volume of potential violations. **This situation fails to deter employers who perceive the risk of being held accountable as minimal and breaking the law as a way to maximize profits.<sup>18</sup> Consequently, these inadequate penalties—coupled with the low likelihood of getting caught by public agencies or being held accountable through private litigation—create environments where wage theft and other labor law violations can fester and multiply.**

The enforcement of labor laws primarily falls within the purview of Wage and Hour Divisions (WHDs) housed inside state DOLs and their equivalents. However, a lack of resources severely hinders these entities’

## BEATRIZ TAPIA'S STORY

In October 2020, during the height of the COVID pandemic, Beatriz Tapia worked as an agricultural laborer in Woodburn, Oregon. At the worksite, 4 bathrooms were shared between 20 workers and were typically unsanitary and uncleaned. The workplace lacked water and soap and other basic necessities to prevent the spread of illness. Beatriz took these concerns to the administrator at her job and was fired soon after. Beatriz then submitted a complaint with OSHA who initially investigated the wrong company before proceeding to contact the owner of the company Beatriz had worked for and other employees of the company who all happened to be the owner's family members. No other workers were interviewed. After some time, OSHA informed Beatriz that the case was closed. The employer was not forced to make any changes or improvements responsive to Beatriz's complaint. When given an option to file a complaint with the state's Bureau of Labor and Industries, Beatriz declined to do so, convinced that filing further complaints wouldn't get her the justice she was seeking.

*Beatriz's story speaks to why so many vulnerable workers don't bother to bring formal complaints when wage and hour or safety violations happen, and highlights the importance of the protections against retaliation in whistleblower enforcement policies, such as allowing trusted worker organizations to be named plaintiff. Beatriz emphasizes that organizations like PCUN understand the experiences of workers like her and are ideally situated to fight for their rights.*

Source: PCUN

capacity to perform their duties effectively. **Over the past several decades, the ratio of labor enforcement officers to workers has dramatically declined, with each officer now responsible for an increasingly large number of workers and employers.** Staff levels have suffered as pay for officials stagnates, which has led to high turnover—deeply affecting the capacity to carry out investigations. As outlined in the following table,<sup>19</sup> each state DOL investigator tasked

with enforcing policies against labor violations is responsible for tens to hundreds of thousands of workers—a trend likewise occurring at the federal Department of Labor.<sup>20</sup> With rare exceptions, many states have seen the number of WHD staff decline or stagnate relative to the size of their workforce. For instance, NY saw the workforce-to-investigator ratio increase from 65,237 to 1 in 2018 to 72,884 to 1 in 2023.<sup>21</sup>

# STATE WAGE AND HOUR INVESTIGATORS:

## Number of Workers and Businesses per Investigator\*

STATE	NUMBER OF INVESTIGATORS	NUMBER OF WORKERS IN STATE	NUMBER OF BUSINESSES IN STATE	NUMBER OF WORKERS PER INVESTIGATOR	NUMBER OF BUSINESSES PER INVESTIGATOR
CALIFORNIA	838.9 <sup>22</sup>	17,991,136	1,742,069	21,446	2,077
COLORADO	64.8 <sup>23</sup>	2,839,998	251,383	43,827	3,879
CONNECTICUT	31 <sup>24</sup>	1,657,175	141,916	53,457	4,578
ILLINOIS	20.6 <sup>25</sup>	5,980,455	402,077	290,313	19,518
MAINE	8	631,293	62,846	78,912	7,856
MASSACHUSETTS	27	3,626,315	292,342	134,308	10,827
MICHIGAN	26	4,339,170	301,776	166,891	11,607
MINNESOTA	16	2,873,251	203,202	179,578	12,700
NEVADA	9	1,492,996	105,778	165,888	11,753
NEW JERSEY	63 <sup>26</sup>	4,201,474	319,769	66,690	5,076
NEW YORK	129 <sup>27</sup>	9,402,002	687,794	72,884	5,332
OREGON	20	1,968,890	187,193	98,444	9,360
PENNSYLVANIA	27 <sup>28</sup>	5,917,760	387,046	219,176	14,335
TEXAS	27	13,436,151	812,136	497,635	30,079
VERMONT	2	303,932	30,631	151,966	15,316
WASHINGTON	33	3,547,801	246,225	107,509	7,461

\* State-level investigator data were compiled through a CPD phone survey of state Departments of Labor and their equivalents, conducted in June–July of 2023. Where phone contact could not be made or information not divulged, we used publicly available budget/appropriation documents to ascertain the number of relevant positions for Fiscal Year 2022 or 2023 (whichever was the most recently available from each state)—these sources are included in the endnotes. State-level workforce data are from the Bureau of Labor Statistics, Quarterly Census of Employment and Wages (QCEW), using averages from Q2 of 2022 through Q1 of 2023.<sup>29</sup>

*As the capacity of state DOLs shrinks due to understaffing, insufficient pay, and turnover, so does the number of investigations they can conduct. In addition, the complexity of many labor law cases, which often involve intricate corporate structures and global supply chains, further strains the limited resources of these agencies, reducing their ability to respond to violations effectively and promptly.*

# A TRIED & TRUE SOLUTION: WHISTLEBLOWER ENFORCEMENT

In the face of this systemic crisis in labor law enforcement, several states have sought effective solutions. Perhaps most notable among these, **the Whistleblower Enforcement (WBE) model uses a well-tested method so workers, community and labor organizations, and public agencies can sustainably work together to hold corporate wrongdoers accountable.**<sup>30</sup> The model's core mechanism allows whistleblowers, workers, and labor organizations to act on behalf of the state, initiating legal proceedings against employers who violate labor laws. At the same time, state agencies critically gain greater oversight and can directly intervene in these enforcement actions. Worker-initiated lawsuits could incorporate both individual claims and WBE-based public rights of action.

This approach not only allows workers to recover civil penalties for labor law violations, traditionally a power reserved for the state, but also significantly increases the cost of non-compliance for employers through the establishment of stiff default fines and penalties, thereby offering a more effective deterrent against violations and discouraging dishonest employers. Furthermore, by expanding the number of cases brought to court, WBE policies increase the likelihood of law-breaking employers being caught and held accountable. This increased risk of detection serves as a potent deterrent, as the

heightened probability of legal action and the associated financial penalties increase the expected cost of breaking labor laws, thus creating a powerful incentive for employers to adhere to labor laws. The WBE model gives teeth to existing labor laws by generating additional revenues that states can use to bolster their enforcement capacities. When workers and labor organizations successfully file civil actions for wage theft or other labor law violations, part of the resulting fines and penalties reach affected workers, and a large majority of revenue returns to the state's enforcement agency. **These funds can then bolster staffing through increased pay and higher retention, increase agency capacity to directly investigate and hold law-breaking employers to account, and expand resources available for public enforcement including through strategic collaborations with worker and community-based organizations.** These latter partnerships can serve as a potent tool in extending the reach of state enforcement efforts, as these organizations often serve as a crucial link between enforcement bodies and employees who are most susceptible to exploitation but who, without targeted outreach and assistance, might be the least inclined to lodge formal grievances.<sup>31</sup> In this way, WBE not only increases enforcement capacity by generating revenue for the state but also ensures that

existing labor laws are upheld across various sectors and industries—even those that have historically been difficult to reach and are most vulnerable to employer exploitation. What’s more, **WBE strengthens existing labor law without creating or adding any new regulations or burdens for businesses; these policies help to foster a level playing field where all businesses must meet the same basic standards.**

Finally, WBE addresses the risk of employer retaliation. By offering strong protections for workers who seek to assert their rights, **such policies foster a safer environment for**

**employees to report abuses.** For instance, by allowing trusted community and labor organizations the ability to bring cases, whistleblowers and other vulnerable populations fearing retaliation can authorize a collective agent to bring these complaints. This principle, in addition to protecting vulnerable workers, further bolsters public enforcement capacity. By enabling workers and their attorneys to aid enforcement, WBE policies leverage private resources to directly resource and grow the efforts of underfunded public agencies.

## **SINUE ALEJANDRO IBARRA’S STORY**

In May 2023, Sinue Alejandro Ibarra Meza experienced wage theft over the course of two months while working as a painter in Minneapolis. Sinue confronted his employer demanding that he pay him what was owed but the employer failed to do so, instead responding with threats.

During this time, Sinue’s daughter—who suffers from epilepsy—was hospitalized, and due to not being paid, Sinue lacked even the funds to pay for a taxi to transport his daughter back home. Sinue was then issued an eviction notice for failure to pay rent on time. As the sole breadwinner for his family and with finances stretched beyond the breaking point, Sinue filed a report with the Minnesota Department of Labor.

Not only was there a delay of over a month to investigate Sinue’s case, but the agency was ultimately unable to recover Sinue’s wages. Sinue reports that he is not the only one whose wages were stolen by this employer, which makes this case a perfect example of the urgent need for qui tam enforcement actions. Sinue’s story illustrates why state agencies need sufficient staffing to resolve investigations quickly.

***For low-wage workers living paycheck-to-paycheck, even a couple weeks of missed wages can be disastrous. To this day, Sinue has not been paid and is still seeking justice for workers and accountability for employers who continue to get away with wage theft.***

Source: COPAL MN

# WHISTLEBLOWER ENFORCEMENT PROCESS: HOW IT WORKS

These tenets underpinning WBE—expanding the reach of public sector enforcement, the deterrence of future violations through civil penalties, and the provision of remedies for injured workers and revenues for the state—would work as follows:

1. First, a worker files a complaint with the state enforcement agency. The agency can investigate the claims before a suit is filed in court and can decide to resolve the claim through administrative mechanisms.
2. If the agency opts out of resolving the claim or does not respond to the complaint, the whistleblower may bring a lawsuit to collect penalties on behalf of the state and all affected workers. Whistleblowers who fear retaliation can authorize a union or nonprofit organization to represent them.
3. If a judge finds that the company broke the law and imposes a penalty, most of the penalty revenues generated go to the agency, with a portion going to the whistleblower and the other workers injured by the violation(s).

Throughout these steps, public agencies maintain oversight over the litigation process and retain the ability to intervene in and take over a given case.

## WHISTLEBLOWER ENFORCEMENT PROCESS

### HOW IT WORKS





While the step outlined in the final bullet point above is essentially uniform across actually-existing WBE policy (proposed and passed), in some versions, a portion of the penalty may also be earmarked for community outreach and education grants, otherwise known as co-enforcement grant funding. In practice, these funds take the form of a community outreach or labor education account, which can then be drawn from by worker or community-based organizations to support workers in enforcing

their employment rights, including outreach, community-based education events, training materials, technical assistance, counseling, and research and referral activities.<sup>33</sup> In some states, such as Connecticut, the proposed bill prioritizes funding for projects that service especially vulnerable workers—including low-wage, immigrant, refugee, and contingent workers; women, lesbian, gay, bisexual, or transgender workers; workers with disabilities and injured workers.<sup>34</sup>

*New York Communities for Change and the EmPIRE Coalition rallies in Albany, New York for the EmPIRE Worker Protection Act*



# WHISTLEBLOWER ENFORCEMENT: 160 YEARS IN U.S. LAW

THE WBE'S APPLICATION IN STATE LABOR LAW TRACES ITS ROOTS TO THE FALSE CLAIMS ACT (FCA), legislation with a long history of bipartisan support. Enacted during the Civil War in 1863, the FCA was designed to combat fraud by suppliers to the Union Army.<sup>35</sup> It introduced the concept of "qui tam" actions in US law, meaning that private citizens may sue on behalf of the government and share in the recovery of funds.<sup>36</sup> This approach has been highly effective in recovering billions of dollars in fraudulent claims against the government. In 2017, the US Department of Justice collected \$3.7 billion in FCA cases from perpetrators of fraud, of which 92 percent came from cases brought by *qui tam*; in 2022, \$2.2 billion was collected under the FCA, of which the vast majority—over \$1.9 billion—arose from *qui tam*.<sup>37</sup>

WBE policies described here adopt this *qui tam* approach to labor law, **empowering directly-impacted workers and their organizations to act on behalf of the state** and initiate legal proceedings against employers who violate labor laws. Employing the *qui tam* approach has also significantly increased the cost of non-compliance for employers through the use of fines and penalties (which are inflation-adjusted on the federal level), deterring violations.

The FCA has enjoyed success over the course of its 160-year lifespan in large part because of the law's bipartisan appeal. Amended in 1986 by Republican Senator Chuck Grassley to expand whistleblowers' role in the law's enforcement (an amendment that would be signed into law by then-President Ronald Reagan),<sup>38</sup> the FCA has been recognized as an effective tool in combating fraud and recovering funds for the government regardless of political affiliation. Some 32 states, Washington, D.C., and several municipalities have adopted their own versions of the FCA covering different types of fraud.<sup>39</sup>

*Such bipartisan support suggests that there could be a strong foundation for the adoption of WBE policies in labor law.*





# WHISTLEBLOWER ENFORCEMENT POLICIES EFFECTIVELY GENERATE A CULTURE OF COMPLIANCE FOR LABOR LAW & GROW THE PUBLIC SECTOR

*Inspired by the False Claims Acts' track records in expanding public civil enforcement, WBE policies have proven to be effective tools in mitigating labor law violations.*

The Private Attorneys General Act (PAGA) of California, enacted in 2004, created a mechanism similar to qui tam in California labor law, testing and comprehensively proving some of the impacts of WBE.<sup>40</sup> Since its inception, PAGA has facilitated the recovery of hundreds of millions of dollars from corporations violating labor laws, reduced the prevalence of wage theft, and increased state enforcement capacity, all while fostering job growth higher than the national average.<sup>41</sup>

Other states have also recognized the value of such policies and have taken steps to implement them at least as enforcement mechanisms to new substantive labor rights:

►► **COLORADO:** The state has introduced a whistleblower's right of action related to workplace safety violations during public health emergencies. This law allows whistleblowers to claim attorneys' fees and 25% of the recovery.<sup>42</sup>

►► **ILLINOIS:** A recent law applicable to temporary work agencies in Illinois includes a whistleblower provision. This provision allows interested parties, including organizations monitoring compliance with public safety and wage requirements, to bring actions for civil penalties.<sup>43</sup>

THE EFFECTIVENESS OF LAWS LIKE THOSE PASSED IN CALIFORNIA, COLORADO, AND ILLINOIS IS EVIDENT IN SEVERAL WAYS.

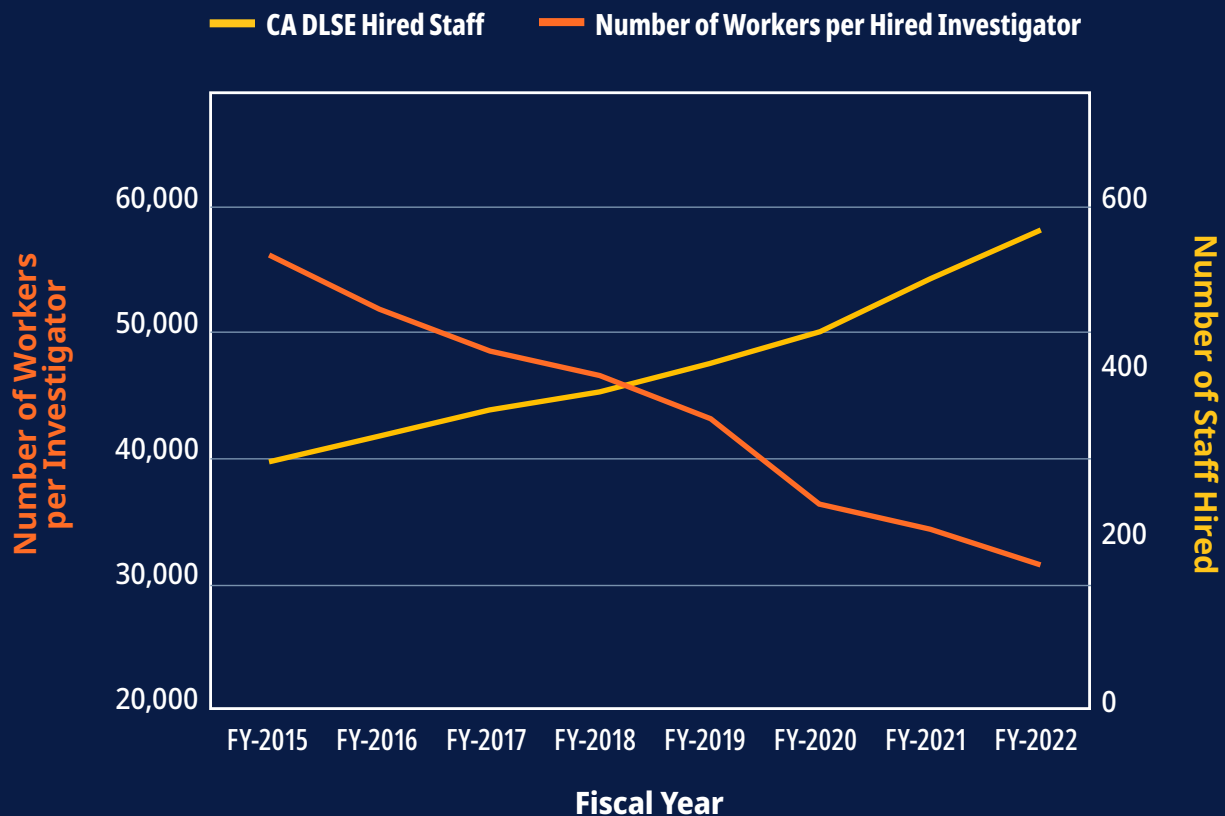
First, WBE allows affected workers to bring cases against their employers, thereby increasing the cost of non-compliance and serving as a deterrent against violations. This provision has drastically altered the enforcement landscape in California by significantly increasing the likelihood that an employer faces serious consequences for exploiting its workforce.<sup>44</sup> Indeed, the most significant PAGA judgments and settlements have been those addressing systemic violations by large, low-wage employers, including Bank of America and Walmart — setting an example throughout various industries that the state will not tolerate labor law infractions and that violations could prove costly.<sup>45</sup> According to attorneys in this field,

the mere threat of a PAGA lawsuit has had a dramatic impact on prompting employers to address labor law violations proactively.<sup>46</sup>

Second, **the revenue generated through PAGA has bolstered California's labor agency and enforcement efforts.** Between Fiscal Years 2016 and 2023, the California DOL's Division of Labor Standards Enforcement (DLSE) experienced a remarkable staffing budget increase that more than kept up with the growth in the workforce, with the number

of DLSE positions *nearly doubling* from 435.5 positions to 838.9.<sup>47</sup> These staffing improvements stem from several sources. For a majority of funds, dedicated assessments of Worker's Compensation premiums ensure a dedicated and increasing revenue stream to the DLSE and other divisions under the state's labor agency, the Labor and Workforce Development Agency (LWDA).<sup>48</sup> At the same time, PAGA-generated revenues provided funds for staffing to be further supplemented.

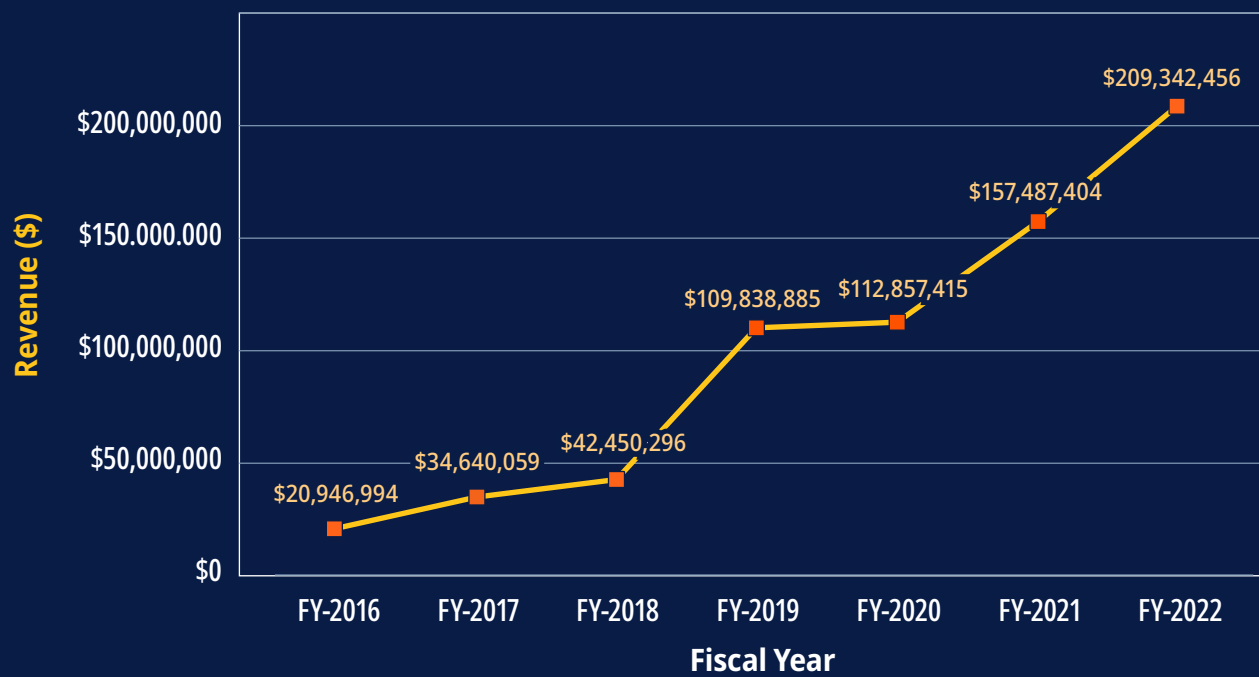
## *Decreasing Ratios of Workers per Investigator are Driven by Staffing Increases*



In addition to putting money back into the hands of the state’s most vulnerable workers, California’s PAGA has resulted in more than \$98 million in average annual revenue flowing to the state between FY 2016 and 2022.<sup>49</sup> As evidenced in multiple Budget Change Proposals,<sup>50</sup> the fund established through PAGA penalty revenues enabled multiple increases in DLSE staffing as new policies took effect.<sup>51</sup> **As illustrated in the graph, all these increases in staffing have decreased the number of workers per enforcement agency staff over time.**<sup>52</sup> PAGA revenues, primarily derived from civil penalties and administrative fees similar to those proposed WBE bills in other states, have been allocated to various initiatives aimed at enhancing labor

law compliance and worker protection. For instance, these revenues have been used to conduct independent investigations, launch public education campaigns encouraging workers to report Labor Code violations, and develop a program that disqualifies employers violating state wage laws from bidding on public contracts.<sup>53</sup> Such programs include the *California Workplace Outreach Project* (expanded in the 2023 budget) and the *Domestic Worker and Employer Education & Outreach Project*. Despite a deficit in the state budget, these programs remain in place—or were even expanded—precisely due to PAGA revenue earmarked into a fund dedicated to informing workers and employers about their rights and obligations.

## ***California Annual Revenues from PAGA Penalties***



The additional staffing facilitated by PAGA revenues has also enabled strategic enforcement cases against large employers. For example, the first “suitable seating”<sup>54</sup> case against Bank of America resulted in a settlement that generated \$10 million for the state’s LWDA—a substantial sum used to hire nine additional personnel, increasing the state’s enforcement capacity.<sup>55</sup> Dedicated funding sources and PAGA revenues have enabled California’s steady expansion of public sector enforcement staff. Similar reforms in which WBE generated revenues supplement existing funding could help expand staffing and improve pay for enforcement agency officials. WBE policies like PAGA have proven effective in deterring violations of labor law, expanding enforcement capacity, and leveling the playing

field between employers and workers. They discourage unscrupulous employers from violating the law and generate additional revenues that can be used to bolster staffing and enforcement efforts. Worker-initiated, grassroots enforcement of existing labor law has the potential to transform the lives of workers, especially those from historically marginalized communities, low-wage workers, and those in the informal economy. As such, WBE policies hold immense potential for broader implementation and impact, and policymakers should welcome conversations about how the *qui tam* model might apply in other contexts.

**Already, at least ten states have enacted or introduced for consideration whistleblower enforcement legislation (as of July 2023):**

STATE	LATEST LAW/BILL	BILL NUMBER	YEAR
California	<a href="#">Private Attorneys General Act</a>	Cal. Lab. Code § 2698 et seq.	2004 (Passed & Enacted)
Colorado	<a href="#">An Act Concerning the Expansion of Protections for Workers who Raise Workplace Health &amp; Safety Concerns</a>	Colorado General Assembly Senate Bill 22-097	2022 (Passed & Enacted)
Connecticut	<a href="#">An Act Concerning Forced Arbitration Agreements</a>	sHB-5245	2022 (Proposed)
Illinois	<a href="#">A Bill Concerning Regulation</a>	IL House Bill 2862	2023 (Passed & Enacted)
Maine	<a href="#">Whistleblower Enforcement Act</a>	LD 1711 SP 525	2021 (Governor veto)
Massachusetts	<a href="#">Wage Theft Act</a>	S.1158 H.1868	2023 (Proposed)
New York	<a href="#">EmPIRE Worker Protection Act</a>	A1893a S541a	2023 (Proposed)
Oregon	<a href="#">Just Enforcement Act</a>	House Bill 2205	2021 (Proposed)
Vermont	<a href="#">Vermont Private Attorneys General Act</a>	VT H0483	2020 (Proposed)
Washington	<a href="#">Worker Protection Act</a>	House Bill 1076	2021/2022 (Proposed)

# PROJECTING THE IMPACT OF THE MODEL: REVENUE-GENERATING POWER OF WHISTLEBLOWER ENFORCEMENT POLICIES

As discussed, the **WBE model** represents a **comprehensive mechanism for strengthening labor law enforcement in large part through its potential to fully fund public agency budgets to ensure staffing and pay levels are sufficient to sustain, retain, and attract public servants.** Given the success California has enjoyed, adopting a whistleblower enforcement model in other states has the potential to result in significant revenue generation for public labor law enforcement across the country. As in California, should similar laws gain passage, those revenues could be used to bolster public enforcement staffing, expand capacity, and advance worker protections—creating a positive feedback loop in which the mere act of enforcing existing labor further reinforces the state’s ability to hold corporate wrongdoers accountable.

**Note that while each of these proposed laws takes inspiration from PAGA by allowing workers to initiate public enforcement actions on behalf of the state, they also include meaningful differences, including provisions that have the potential to increase revenues vastly, such as:**

- ▶ **IMPROVEMENTS IN PROCEDURE**, such as safeguards that allow for ongoing control and involvement from government enforcement agencies that protect against potential misuse. The Just Enforcement Act (JEA) introduced in Oregon, for example,

allows the responsible state official to move to dismiss public enforcement actions, intervene in these proceedings, and request copies of all pleadings. These protective measures facilitate the government agency’s continuous oversight, active participation in, and ultimate control of the process.<sup>56</sup>

- ▶ **EXPANDING THE REACH OF THE PUBLIC SECTOR by allowing a larger set of whistleblowers—such as unions and community-based organizations with a vested interest in employees’ claims—to bring cases on behalf of workers as well.** Such inclusion is incredibly important since it is precisely these types of organizations—worker centers, unions, and organizations rooted in vulnerable communities – that can **engage low-wage workers, those working in the informal or fissured or gig economy, and workers confronted with the legacy of systemic racism because they are the best positioned to do so.**<sup>57</sup> Furthermore, organizations connected to immigrant communities are more likely to have linguistic competency, understand cultural barriers that impede workers from contacting enforcement agencies, and can address fears that discourage undocumented workers from reporting violations.<sup>58</sup> For instance, these organizations can protect vulnerable workers’ identities by being the named plaintiff. States can choose whether those organizations deserve further support by establishing special co-enforcement grant funding.

# PROPOSED WBE POLICIES & ESTIMATED ANNUAL REVENUES

ANNUAL EXPECTED REVENUES  
WHEN POLICY IS FULLY  
OPERATIONAL FOR 7 YEARS<sup>59</sup>

STATE	LATEST LAW/BILL	YEAR	ANNUAL EXPECTED REVENUES WHEN POLICY IS FULLY OPERATIONAL FOR 7 YEARS <sup>59</sup>
Massachusetts	<a href="#">Wage Theft Act</a>	2023 (Introduced)	\$46,345,263
New York	<a href="#">EmPIRE Worker Protection Act</a>	2023 (Introduced)	\$103,613,840
Connecticut	<a href="#">An Act Concerning Forced Arbitration Agreements</a>	2022 (Introduced)	\$23,147,334
Washington	<a href="#">Worker Protection Act</a>	2021/2022 (Introduced)	\$40,192,588
Maine	<a href="#">Whistleblower Enforcement Act</a>	2021 (Governor veto)	\$4,329,877
Oregon	<a href="#">Just Enforcement Act</a>	2021 (Introduced)	\$12,905,638
Vermont	<a href="#">Vermont Private Attorneys General Act</a>	2020 (Introduced)	\$1,402,960
Colorado	No General Law Introduced as of August 2023	N/A	\$34,948,100
Illinois	No General Law Introduced as of August 2023	N/A	\$74,227,207
Minnesota	No Law Introduced as of August 2023	N/A	\$35,166,890
Michigan	No Law Introduced as of August 2023	N/A	\$55,407,250
Nevada	No Law Introduced as of August 2023	N/A	\$16,956,421
New Jersey	No Law Introduced as of August 2023	N/A	\$52,657,138
Pennsylvania	No Law Introduced as of August 2023	N/A	\$73,898,903
Texas	No Law Introduced as of August 2023	N/A	\$160,241,600

*The chart represents a breakdown of estimated revenue on a state-by-state basis—revenues accruing to local DOLs and their equivalents by virtue of the fines and penalties imposed on corporate lawbreakers—with states chosen on the basis of existing or proposed WBE legislation and/or where CPD network affiliates that have raised issues of labor law violations and are currently organizing around workplace justice issues. For more, see Appendix: Methodology.*



# CONCLUSION

**IN A TIME OF RAMPANT WORKPLACE RIGHTS VIOLATIONS, the Whistleblower Enforcement model has emerged as a promising approach to addressing the crisis.** When put into practice, WBE policies allow workers and labor organizations to initiate legal proceedings against employers who violate labor laws and extend the reach of the state. This approach has not only increased the cost of non-compliance for employers but has also generated significant revenue for the state, creating a virtuous cycle in which those funds can then be used to increase enforcement capacity and further strengthen labor law enforcement more generally. These policies are not only beneficial for workers but also for the state, safeguarding the rule of law and fostering economic growth. If these benefits are to be fully realized, however, more focus will be needed from governors, policymakers, and community-based stakeholders in states across the country fighting for their passage and prioritizing their implementation as a key component of their work.



# POLICY RECOMMENDATIONS

In light of the findings and discussions presented in this report, we propose the following policy recommendations to strengthen labor law enforcement:

▶▶▶ **APPROPRIATE MORE FUNDS FROM ANNUAL BUDGET PROCESSES TO FURTHER BOLSTER ENFORCEMENT CAPACITY:**

Recognizing public servants as the lynchpin of labor law enforcement, states should appropriate more funds from annual budget processes to expand staffing, increase pay, improve retention, and extend overall capacity for those doing the work. This funding should be independent of the revenues generated through WBE policies, ensuring a comprehensive approach to strengthening labor law enforcement. By investing in those on the front lines of enforcing labor laws, states can create a more robust and effective system that protects workers' rights and holds employers accountable.

▶▶▶ **ADOPT ROBUST STATE WHISTLEBLOWER ENFORCEMENT POLICIES:**

States should consider adopting WBE policies that allow workers, whistleblowers, and labor organizations to initiate legal proceedings on behalf of the state for all workers at a given workplace in which violations have occurred. These include the EmPIRE Worker Protection Act in New York, the Wage Theft Act in Massachusetts, as well as labor bills that institute new rights and include WBE mechanisms like the Predictable Scheduling Act in Connecticut.

▶▶▶ **INSTITUTE STRICT PENALTIES FOR LABOR LAW VIOLATIONS:**

To deter potential violators, states should institute strict penalties for labor law violations. These penalties should adjust for inflation to account for business costs and maintain their deterrent effect over time.

▶▶▶ **ALLOCATE WHISTLEBLOWER ENFORCEMENT REVENUES TO ENFORCEMENT AGENCIES:**

A significant portion of the revenues generated through penalties for labor law violations should be allocated to special funds to resource enforcement agencies, such as state DOLs or their equivalents. Such revenue would provide these agencies with the resources to improve pay and working conditions, expand staffing, and thus effectively enforce labor laws.



- ▶▶▶ **DEVELOP ACCESSIBLE REPORTING PROCESSES:** States should develop accessible and straightforward processes for employees to report labor law violations. This action would encourage more workers to come forward with evidence of violations.
- ▶▶▶ **PROMOTE PUBLIC AWARENESS OF LABOR RIGHTS:** States should launch public education campaigns to raise awareness about labor rights and the avenues available for workers to report violations.
- ▶▶▶ **ENCOURAGE INTER-STATE COLLABORATION:** States should collaborate and exchange knowledge about whistleblower enforcement policies. This cooperation would allow states to learn from each other's experiences and adopt best practices.

*Adopting and implementing these policy recommendations would go a long way in strengthening labor law enforcement, creating a culture of compliance, and protecting the rights of the nation's most vulnerable workers. By harnessing the resilience of workers advocating for transformation and the guidance of their elected officials, WBE policies provide a meaningful opportunity to expand public labor law enforcement, empower workers to hold employers accountable for their transgressions, and ensure that established workplace standards have a tangible impact on households nationwide.*



# APPENDIX

## METHODOLOGY

The projected revenues provided in this report are based on the revenues generated in California by PAGA from 2016 to 2022, information provided by California's Labor and Workforce Development Agency through a Public Records Act request in July of 2023. Each state's projected average revenue amount is an estimate that incorporates different factors, such as the size of a state's total workforce, the default civil penalty provided by the policy, and the percentage of revenue going to the state. While state-level workforce data was pulled from the U.S. Bureau of Labor Statistics State and County Quarterly Census of Employment and Wages,<sup>60</sup> the default civil penalty and remittance percentage allotted to the state were drawn from each state's policy text. (For states without proposed policies, we assume 65% of penalties go to the state and a default penalty of \$500 per violation per worker per pay period.) While many of these figures are easily accessible, others, like the total rate of employer violations of state labor law, were less so.

As with all models, we employ a set of assumptions concerning these figures as described below. Generally, these assumptions are meant to provide a conservative estimate.

**Default Penalties and Total Revenues.** The model assumes total revenues are proportional to the default civil penalty amount. Similarly, because a significant portion of revenue under PAGA policies comes from legal settlements, we assume (for the purposes of simplicity) that these settlement awards, along with court-mandated total penalties, are directly proportional to each state's default civil penalty amount. Some violations of labor law incur a variety of penalties, but many do not. For the estimate, we assume that all litigation using PAGA and hypothetical WBE laws is based on the civil penalties that exist due to those policies. California's default civil penalty amount varies based on whether the violation in question is a first-time or repeated infraction (with penalties of \$100 per worker per violation per pay period for first-time infractions and \$200 for repeat offenses). As such, we assume the average default penalty amount in California to be \$166.67 or that two-thirds of the violators are repeat violators. It should be noted that this assumption likely results in a comparatively conservative estimate, as many employers facing litigation often secure a settlement, potentially preventing them from potentially being identified as repeat violators. Furthermore, data from California has shown that most settlements are made in response to systemic violations by large, low-wage employers.<sup>61</sup>

**Violation Rates.** Given the lack of data on the employer labor violation rates in states without WBE policies, we assume that the rate of violations in states with pending legislation is consistent with that of California and is directly proportional to the amount of revenue. This assumption is also likely to have a downplaying effect on the revenue estimates made for each state since, following the enactment of PAGA in 2004, the expansion of enforcement staffing, the high ratio of enforcement staff per worker, and the increased compliance observed in that state on behalf of employers, it is reasonable to assume that infraction rates in California are lower than that of the national average.

**Inclusion of New Types of Relators.** As previously stated, it is assumed for the purposes of simplicity that violation rates in states with pending WBE legislation are consistent with that of California. However, it should be noted that even with this already conservative assumption in place, proposed legislation in states since the passage of PAGA further expand the reach of public sector enforcement by including whistleblowers, unions, and/or community-based organizations as relators (i.e., plaintiffs litigating on behalf of the state). Our model does not adjust for changes in the rate of enforcement with the addition of these new types of relators, which we believe would allow for the litigation of new cases that would not have otherwise occurred.

**Implementation of Policy.** We only apply estimates to WBE policies that cover significant portions of the labor law. We do not apply them to individual policies that include WBE mechanisms. We assume that the revenues generated from 2016 to 2022 in CA are the equivalent of the eventual full implementation of the laws. We assume that the institutional learning curve would be much shorter for newer laws that would be passed, given the fact that many experienced litigators in qui tam and WBE-related mechanisms would facilitate the rapid adoption of such policies around the country.

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