

# The Impact of Wage Theft on Rural New Mexico

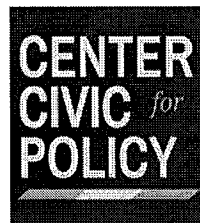


Presented to the NM Economic and Rural Development Committee  
October 31, 2018

# The NM Worker Organizing Collaborative

The New Mexico Worker Organizing Collaborative is comprised of six organizations, working together to improve the economic security of working families in New Mexico.

We do this through civic engagement, community organizing, strategic communications, law reform, and impact litigation, to create lasting change for New Mexico low-wage and immigrant workers.



# What Is Wage Theft?

New Mexicans experience wage theft in many ways:

- Failure to pay the minimum wage
- Non-payment of overtime
- Off-the-clock work
- Employers altering time cards
- Tip misappropriation
- Repeated late wage payments or partial wage payments
- Failure to issue a final paycheck
- Failure to pay at all

# Wage Theft Impacts Rural New Mexicans

- Difficulty paying for family's food, clothes, healthcare, transportation, and other basic necessities
- Sub-standard living conditions or homelessness
- Increased spending on assistance programs
- Millions of dollars in lost payroll and income tax revenues to the state, local, and federal governments

# NM's Statutory Enforcement Scheme

---

State statutes create a **mandatory duty** for the Director of DWS' Labor Relations Division to:

- Investigate unpaid wage claims and
- Take legal action to enforce and remedy violations.
- Legal action = file case in court or refer to DA

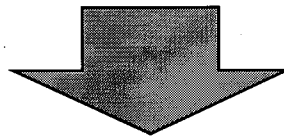
NMSA 1978 §§ 50-1-3, 50-4-8, 50-4-12, 50-4-26



# Lack of Enforcement

---

- Failure to accept wage claims at all offices.
- Denying wage claims that went back more a year, even though employers who have committed wage theft are liable going back at least three years.
- Not seeking statutory damages that the New Mexico legislature approved in 2009.
- Only accepting wage claims in English.
- Illegally terminating claims for procedural reasons, *even where employers admitted the violation.*
- Refusal to accept claims of \$10,000 or more in unpaid wages.



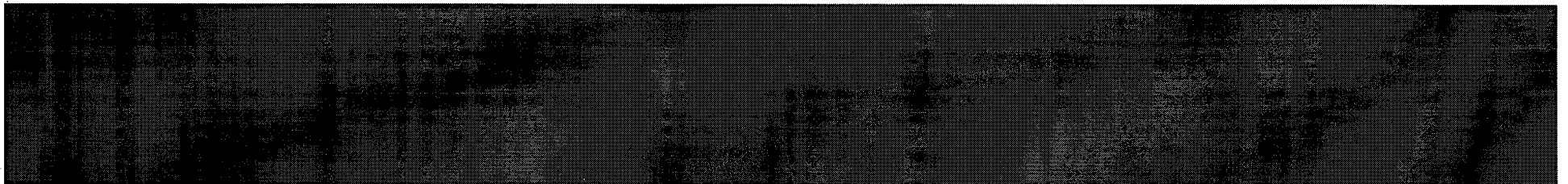
## STATEMENT OF WAGE CLAIM

### INSTRUCTIONS:

1. Please print clearly in black ink and in English.
2. Please notify us immediately if you change your address or phone number.
3. **Do not fill out this form if you have worked as an independent contractor**
4. **This office will not accept Statement of Wage Claims over \$10,000.00, and no less than \$25.00**

# Advocacy to Improve Enforcement

- Workers and workers' rights organizations have advocated for improvements to wage law enforcement and documented enforcement problems
- Letters to & meetings with LRD leadership
- USDOL Civil Rights Complaint



# NM Workers Sued DWS

- In January of 2017, the New Mexico District Court ***ordered DWS to start accepting and investigating all wage claims.***
- In March of 2018, the court approved a full settlement of the lawsuit, requiring DWS to comply with state law.





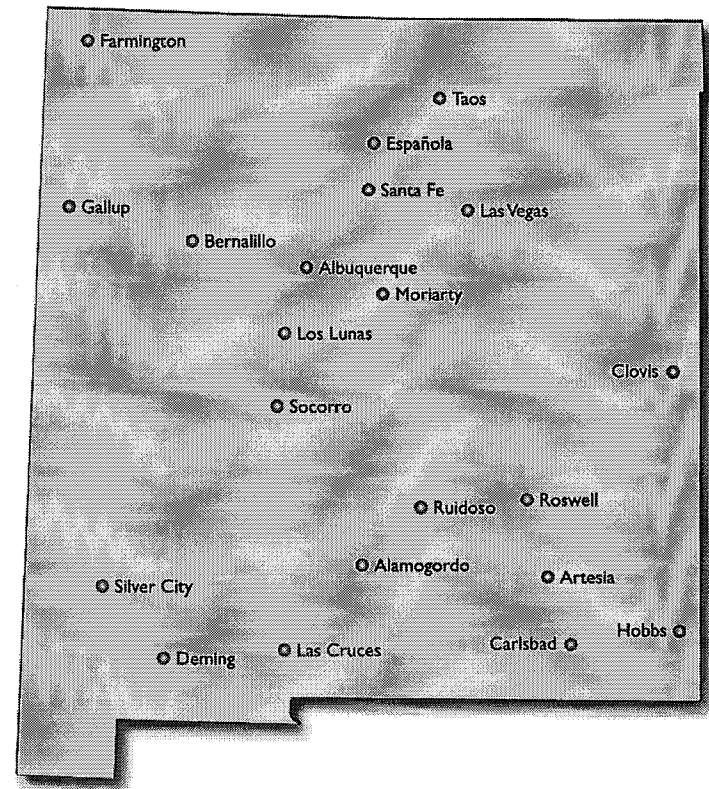
# Order for DWS to Comply with the Law

- Allow any worker to file a wage claim
- Issue regulations that comply with state law
- Investigate all claims
- Reopen and investigate improperly closed claims
- Develop a manual for LRD staff
- Train staff
- Lawsuit can be reopened if LRD doesn't comply

# Improved Access to LRD

- Allow workers to access the wage claim process through all Workforce Connection centers, not just at LRD's offices in Albuquerque, Las Cruces, and Santa Fe
- Workers can make wage claims, use telephones and fax machines, and attend meetings and hearings at WCCs
- Provide language assistance to workers with limited-English proficiency

Workforce Connection Centers



# Dramatic Increase in Wage Claims & Backlog

*The court approved the settlement in the Fourth Quarter of FY 18.*

	FY 2017	FY 2018	FY 2019
Wage claims	773	1,121	398 (Just the 1st quarter)
FTEs	35.3	31.4	32

*New Mexican workers currently have to wait months for their claim to be investigated and even longer for a case to be filed in court.*

# DWS Needs a Budget Increase of at Least \$500,000 For Adequate Enforcement

- LRD should increase the number of wage claim investigators by adding five new investigator positions.
- LRD should add at least one attorney to its wage and hour division to assist in court enforcement and to litigate the most egregious violations of the state minimum wage act. Currently, there is almost no court enforcement of wage claims over \$10,000.

# The ERDC Can Help Working New Mexicans

- Support a budget increase of at least \$500,000 for DWS' LRD in HB 2 to pay for travel and language assistance and increase the number of investigators.
- Get data on wage theft in rural areas from DWS.
- Support a minimum wage increase.

# Questions?

**Marcela Diaz**

**Somos un Pueblo Unido**

**[marcela@somosunpueblounido.org](mailto:marcela@somosunpueblounido.org)**

**Stephanie Welch**

**New Mexico Center on Law and Poverty**

**(505) 255-2840**

**[stephanie@nmpovertylaw.org](mailto:stephanie@nmpovertylaw.org)**

