

TWO GROUPS, ONE COMMUNITY:

***THE IMPACT OF WAGE THEFT AND OTHER
EMPLOYMENT VIOLATIONS ON NATIVE
AMERICAN AND LATINO IMMIGRANT
WORKERS IN GALLUP***

**CONDUCTED BY
THE MCKINLEY WORKER
JUSTICE COALITION**

Somos Gallup (an affiliate of Somos Un Pueblo Unido)

McKinley Collaborative for Health Equity

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APRIL 2017

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This Health Impact Assessment is supported by a grant from the New Mexico Health Equity Partnership, Santa Fe Community Foundation and the W.K. Kellogg Foundation.

The opinions expressed are those of the authors and do not necessarily reflect the views of the New Mexico Health Equity Partnership, Santa Fe Community Foundation or the W.K. Kellogg Foundation.

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I. Executive Summary

This report was compiled by the McKinley Worker Justice Coalition to explore how wage theft and other employment violations impact the economic security and health of workers and families in Gallup, New Mexico.

Dozens of community members shared their experiences with wage theft, health and safety violations, and discrimination in the workplace. Using a Health Impact Assessment (HIA) framework as a tool to develop the report, the Coalition's main objective was to elevate these stories and inform decision-makers, business leaders, and the general public about the extent of these workplace problems, as well as to propose community-based solutions. The report can also help workers organize for stronger workplace protections and more effective enforcement mechanisms, which could lead to improved economic security, reduced stress, and other basic of quality of life improvements such as spending more time with their families.

Background

Several studies show that wage theft, discrimination, and health and safety violations in the workplace adversely affect the economic security and consequently, the health of workers and their families. Economic security requires families to have a stable income to support their standard of living and a predictable cash flow. Low wages, stagnant wages, or unforeseen decreases in income can lead to deterioration in living conditions, food insecurity, insufficient access to medical care, increased stress and limited ability to invest in educational resources for improved job opportunities in the future.

Wage Theft

While many studies have documented the impact of discrimination and health and safety related injuries on working families, few have been conducted on wage theft. The issue, however, is attracting more attention from local policy-makers and worker advocates for a number of reasons. On a national level, there is a higher concentration of low-wage sector jobs where wage and hour violations are more prevalent. Union membership and influence have declined, leaving most workers unprotected. And anemic administrative enforcement budgets at the local level have allowed employers who steal wages to go unchecked. In response, a proliferation of worker centers that provide services to low-wage non-unionized workers has emerged across the country, and many have started to organize around wage enforcement issues.

Wage theft occurs when workers are not paid time and a half for overtime hours, are misclassified as exempt employees or independent contractors, are paid less than the mandated minimum wage, are required to work off the clock, or are denied their last paycheck. Low-wage workers who encounter wage theft rarely

report it or attempt to recuperate their stolen wages. Not only does this adversely affect workers, often exacerbating or propelling their families into poverty, but it also has an economic impact on the community.

Discrimination

Discrimination in the workplace occurs when an employer treats a worker differently because of the worker's race, color, religion, national origin, sex, pregnancy, gender identity, sexual orientation, age, or disability or medical condition, or ancestry.¹ Being treated differently can mean that an employee is harassed, not promoted, or paid less than other workers based on these factors.

Health and Safety

Employers must comply with all applicable standards set by the Occupational Safety and Health Administration (OSHA). The law's mission is to guarantee safe and healthy workplaces by setting and enforcing standards and by providing training, outreach, education and assistance. OSHA also ensures workers the right to health and safety trainings in a language they understand.

Background on McKinley County

McKinley County is located in northwestern New Mexico and has a population of 74,426 with the largest percentages being American Indian (74%) and Latino (13.4%).² The City of Gallup is the largest municipality and considered a border town to the Navajo Nation and the Pueblo of Zuni. Gallup has a population of 23,240 with the primary percentage being American Indian (43.8%) and Latino (31.7%). Foreign-born residents make up 2.3% of the population in the county and 5.2% in Gallup.³

McKinley is the poorest county in the state. According to the U.S. Census 2015 American Community Survey, 37.5% of the population lives below the poverty level, compared to the overall rate of 20.7% in the state (below \$23, 834 annual income for family of four). The average unemployment rate in the county for 2016 was 8.8%, while in New Mexico it was lower at 6.5%.⁴

Summary of Key Findings from Survey

- Wage theft in McKinley County is pervasive among Latino immigrant and Native American workers.

¹ United States Equal Employment Opportunity Commission. *Title VII of the Civil Rights Act of 1964*. Retrieved on January 14, 2017 from <https://www.eeoc.gov/laws/statutes/titlevii.cfm>

²New Mexico Alliance of Health Councils. Retrieved October 4, 2016 from http://www.nmhealthcouncils.org/Resources/Pictures/McKinleyProfile_060714.pdf

³United States Census Bureau. Retrieved on October 7, 2016 from <https://www.census.gov/quickfacts/table/PST045215/3528460/embed/accessible>

⁴ New Mexico Department of Workforce Solutions. Retrieved on October 4, 2016 from

- Latino immigrant workers experienced wage theft at a slightly higher rate than Native American workers.
- Nearly half of workers reported feeling discrimination in the workplace, with Native Americans reporting discrimination at a greater rate than Latino immigrants.
- One out of four workers had been injured on the job, and nearly half said their work is dangerous.
- Most victims did not report wage and hour violations nor did they try to recuperate their stolen wages for fear of retaliation.
- One out of three workers who complained about employment violations experienced retaliation.
- Wage theft impacts the health and ability of workers to pay for basic needs and keep up with their bills. Two out of five wage theft victims reported that the violation affected their health.

Conclusion and Recommendations

According to several studies, workplace abuses tend to cluster. Employers who violate one labor law are often willing to violate others. Moreover, wage theft, discrimination, and health and safety violations are frequently linked to low-wage industries where people of color and immigrants primarily work. These violations habitually go unchecked in communities like McKinley County that are economically poor, unstable, and where there is a scarcity of jobs.

These abuses adversely impact economic security for working families already struggling to make ends meet and consequently affect important health indicators for these communities.

These violations are for the most part illegal, and protections and remedies do exist for workers. Unfortunately, there are several barriers to reporting wage theft, discrimination and health and safety violations and accessing those remedies. Lack of language appropriate and culturally competent know-your-rights education, fear of retaliation, scarcity of available jobs, inadequate enforcement mechanisms or resources—these all contribute to not being able to file complaints and access remedies.

It is incumbent on local leaders, governments, and community groups to do more to fill in the gaps. The McKinley Worker Justice Coalition has identified several policy recommendations for city and county officials:

1. City and county governments are urged to provide more extensive community education for workers and employers regarding workplace protections and remedies.
2. Given the distance between rural communities and administrative enforcement agencies, decision makers should garner support for more mobile or permanent investigators to assist people with filing wage theft

and other workplace complaints.

3. Local community leaders and governments should establish ongoing working relationships with state and federal enforcement agencies such as the New Mexico Human Rights Bureau, the U.S. Department of Labor, the Occupational, Health and Safety Administration (OSHA), as well as the Navajo Nation Human Rights Commission and local organizations, to maximize enforcement resources in rural communities and to increase worker's rights awareness.
4. Local governments are encouraged to secure additional funding to improve access to worker's rights enforcement in rural communities, such as establishing a local office in the county to inform workers regarding protections, enforcement and remedies under state and federal laws.
5. City and county governments should explore local ordinances and policies requiring business owners who are renewing or obtaining new licenses to self-certify that they are following employment laws with penalties if they are not in compliance.

II. Introduction

The McKinley Worker Justice Coalition was formed in 2015 to bring organizations and community members together to strengthen worker's rights and improve workplace conditions. In 2016, the Coalition decided to use the Health Impact Assessment (HIA) framework as a tool to explore how wage theft and other employment violations impact the economic security and health of workers and families in Gallup, New Mexico.

While the primary focus of this report concerns the impact of wage theft, dozens of Native American and immigrant community members also shared their experiences with discrimination and health and safety violations in the workplace and how these experiences impacted their lives. The main objective of this HIA is to elevate these stories and inform decision-makers, business leaders and the general public about these problems, as well as to propose community-based solutions. It can also serve to help workers organize for stronger workplace protections and more effective enforcement mechanisms. Gains made in these areas could significantly improve economic security, reduce stress and ameliorate health inequities for low-wage workers in McKinley County.

Several studies have documented the economic and health impacts of discrimination and health and safety related injuries on working families, but few have been conducted on wage theft in the U.S. This issue, however, is attracting more attention from policy-makers and worker advocates for a number of reasons. On a national level, there is a higher concentration of low-wage sector jobs where wage and hour violations are more prevalent. Union membership and influence have declined, leaving more and more workers unprotected. And anemic administrative enforcement budgets at the local level have allowed most employers who steal wages to go unchecked. In response, a proliferation of worker centers that service non-union, low-wage workers has emerged around the country, and many have started to organize around wage enforcement issues.

What is wage theft?

Wage theft occurs in many ways. Examples include when workers are not paid time and a half for overtime hours, are misclassified as exempt employees or independent contractors, are paid less than the mandated minimum wage, are required to work off the clock or are denied their last paycheck. Low-wage workers who encounter wage theft rarely report it or attempt to recuperate their stolen wages. Not only does this adversely affect the worker, often exacerbating or propelling their family into poverty, but it also has an economic impact on the community at large. It drives down wages and workplace standards, undercuts businesses that are following the rules, and robs local jurisdictions of state income, social security and unemployment insurance taxes.⁵

⁵ Kim Bobo (2011), *Wage Theft in America: Why millions of Americans are not getting paid - And what we can do about it*. New York: The New Press, 21.

In 2009, a first-of-its-kind study *Broken Laws; Unprotected Workers* was conducted in three major U.S. cities. It found that 68% of workers experienced some form of pay related violation in the week prior to the study.⁶ In Los Angeles County, Human Impact Partners also conducted a health impact assessment regarding wage theft, which found that 655,000 low-wage workers suffered at least one wage and hour violation per week—collectively losing 26.2 million dollars.⁷ In another 2012 New Mexico study, Dr. Andrew Schrank and graduate student Jessica Garrick from the University of New Mexico Sociology Department found that 27% of Mexican immigrant workers had experienced wage theft in the state.⁸

Until now, no countywide study has been conducted in New Mexico, and none has centered its research on Latino immigrants and Native American workers. This report will help fill that gap and provide a more comprehensive picture of the impact of wage theft and other employment violations in the region.

Background of McKinley County

McKinley County is located in northwestern New Mexico and is considered a rural county. It has a population of 74,426 with the largest percentages being American Indian (74%) and Latino (13.4%).⁹ The City of Gallup is the largest municipality and considered a border town to the Navajo Nation and the Pueblo of Zuni. Gallup has a population of 23,240 with the primary percentage being American Indian (43.8%) and Latino (31.7%)m. Foreign-born people make up 2.3% of the population in the county and 5.2% in Gallup.¹⁰

Gallup serves as one of the primary areas where businesses, services and other necessities are accessible to the population living throughout the county. The main job sectors include but are not limited to retail trade, accommodation and food services, health care, social services, and agriculture.¹¹ The per capita income in the county was \$24,383 in 2013, which ranked the county one of the lowest per capita income in the state.¹² As of October 2016, McKinley County had an unemployment rate of 8.8%.¹³ The county also had 24.1% of its people living in poverty.¹⁴ Elected

⁶ Bernhardt, Annete et al., *Broken Laws; Unprotected Workers*, 2009

⁷ Human Impact Partners and the Los Angeles Wage Theft Coalition, *Wage Theft Health Impact Assessment of the Proposed Los Angeles Wage Theft Ordinance*, 2014

⁸ Schrank, Andrew and Jessica Garrack. 2013. *Mexican Immigrants and Wage Theft in New Mexico*.

⁹New Mexico Alliance of Health Councils. Retrieved October 4, 2016 from http://www.nmhealthcouncils.org/Resources/Pictures/McKinleyProfile_060714.pdf

¹⁰ United States Census Bureau. Retrieve on October 7, 2016 from <https://www.census.gov/quickfacts/table/PST045215/3528460/embed/accessible>

¹¹ The Office of Policy Analysis at Arrowhead Center, New Mexico State University. *The Economic Base of McKinley County* (July 2016). Retrieved on October 9, 2016 from <http://arrowheadcenter.nmsu.edu/university-center/wp-content/uploads/sites/19/2016/08/McKinley-County-2016.pdf>

¹² Ibid., page 3

¹³ New Mexico Department of Workforce Solutions. Retrieved on October 4, 2016 from <https://www.dws.state.nm.us/Portals/0/DM/LMI/TA2016.pdf>

officials on all levels recognize the need to create and diversify job opportunities in the area.

McKinley Worker Justice Coalition Partners

The McKinley Worker Justice Coalition is made up of Somos Gallup, McKinley Collaborative for Health Equity, and the McKinley Community Health Alliance.

- Somos Gallup, an affiliate of *Somos Un Pueblo Unido (Somos)*, is a group of families that live, work and organize in McKinley County. *Somos* is a statewide immigrant-based organization that works to advance racial and worker justice. In addition to its local and statewide campaigns to secure rights for immigrant families, *Somos* led campaigns to pass two anti-wage theft laws at the legislature. In 2009, one law greatly improved protections and remedies for workers whose wages are stolen, and in 2013 another required courts to fast track wage and hour cases. Currently, *Somos* teams are working to improve wage enforcement in rural and semi-urban communities and at the state Department of Workforce Solutions. They also have launched a campaign to improve conditions in the dairy industry in eastern New Mexico.
- McKinley Collaborative for Health Equity (formerly known as McKinley Community PLACE MATTERS) works with the vision that all people in the northwest region of New Mexico should live in a safe, healthy, and prosperous environment that honors health-in-all-policies and leaves a legacy of responsible leadership grounded in equity. Using a health equity lens, the team seeks to change systems that perpetuate environmental health disparities related to the impacts of institutional racism and multi-generational trauma, by building the capacity and empowering participating communities within the county to impact equitable policy changes.
- The McKinley Community Health Alliance is made up of approximately 150 organizations and individuals working to affect and facilitate change in systems that perpetuate health, education, economic, and environmental inequities by engaging individuals and agencies to understand and address the underlying “root” causes of poverty/income inequality, institutional, and structural racism and multi-generational trauma. The alliance convenes groups monthly to learn about different programs, share best practices, and support mutual initiatives or legislative efforts.
- Several local unaffiliated community members also participate in the Coalition.

¹⁴ United States Census Bureau. Retrieved on October 7, 2016 from <http://www.census.gov/quickfacts/table/PST045215/3528460>

Purpose of a Health Impact Assessment (HIA)

Coalition partners were interested in assessing the pervasiveness of wage theft, discrimination, and health and safety problems, as well as the impact of these violations on the economic wellbeing and health of Native American and Latino immigrant workers.

According to Human Impact Partners:

“A HIA draws upon diverse sources of knowledge including lay and professional expertise and experience. HIA also offers recommendations to decision-makers for alternatives or improvements that enhance the positive health impacts and eliminate, reduce, or mitigate the potential negative impacts of a proposed policy, project or plan.”¹⁵

The steps in conducting an HIA include:

- **Screening** helps determine the feasibility in providing substance to decision makers,
- **Scoping** develops a timeline and plan, which entails priorities, research questions and methods,
- **Assessment** is creating an existing conditions profile and evaluating potential health impacts,
- **Recommendations** are developed to improve projects, plans or policies and reduce negative health impacts,
- **Reporting** involves creating a written and/or visual report and sharing the results, and
- **Monitoring** tracks the HIA on the decision making process.¹⁶

The HIA addresses health broadly rather than limiting its scope to only physical illness or disease related concerns. In addition to reporting the results of a survey on wage theft and other employment violations among low-wage workers and lifting up their stories, this report references the current local and state policies in regard to how wage theft, discrimination, and health and safety violations impact the economic security and health of these families.

This HIA brought together a diverse group of stakeholders who will aid decision-makers, business leaders and the general public in evaluating future workplace protections and enforcement mechanisms within McKinley County.

Methodology

¹⁵ Human Impact Partners. Retrieved on December 10, 2016 from http://www.humanimpact.org/wp-content/uploads/A-HIA-Toolkit_February-2011_Rev.pdf

¹⁶ Human Impact Partners. Retrieved on December 10, 2106 from http://www.humanimpact.org/wp-content/uploads/A-HIA-Toolkit_February-2011_Rev.pdf

In order to develop a snapshot of workers' experiences with employment violations, the McKinley Worker Justice Coalition set out to survey 50 individuals—25 in Spanish and 25 in English. The group ended up surveying 53 workers (25 Native Americans, 25 Latino immigrants, two U.S. born Latinos and one U.S. born white worker). Surveys were conducted at the public library, flea market, Presbyterian Medical Services health clinic, the Mexican mobile consulate, churches and family gatherings.

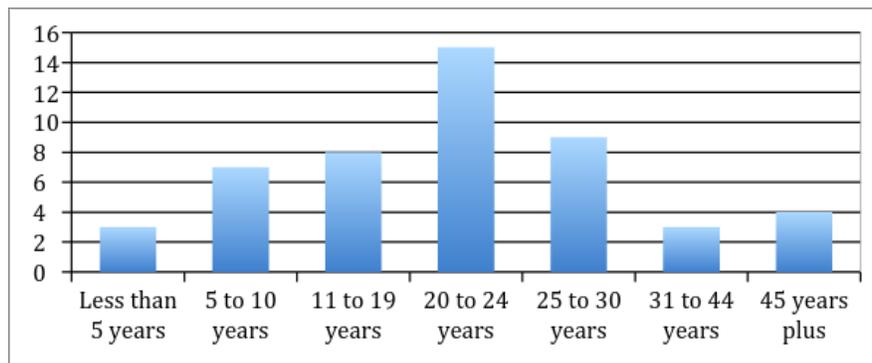
The Coalition also held one focus group with participants who had completed the survey. The focus group was a space for participants to elaborate on their wage theft, discrimination and workplace health and safety experiences. It was conducted in English and Spanish with professional interpretation. 14 people of color participated from a range of ages. All participants were selected because they indicated in the surveys that they had experienced wage theft.

The key findings section of this report only reflects and compares the experiences of the 50 Latino immigrant and Native American workers who participated in the survey. The Coalition recognized the significance of bringing these communities together to document the impact of workplace conditions on their quality of life and as a way to build a shared capacity to effect equitable policy changes.

Survey and Focus Group Demographics

The majority of survey participants live in the City of Gallup or surrounding areas. Most jobs are in the City of Gallup, and there is extremely limited public transportation in the county. Transportation to and from work can be a challenge for some workers. From the survey data collected, the majority of participants have lived in the area for more than 20 years with only three workers living in the area less than five years.

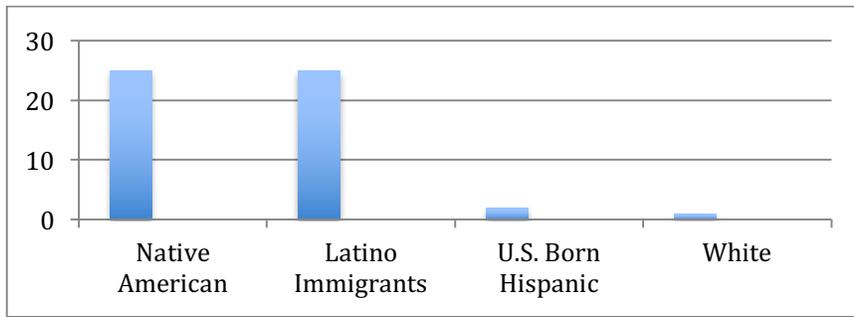
Length of residency in McKinley County:



* The graphs document 53 survey participants

* All charts in the report are in numbers of participants and not percentages.

Participants' racial and ethnic demographics:

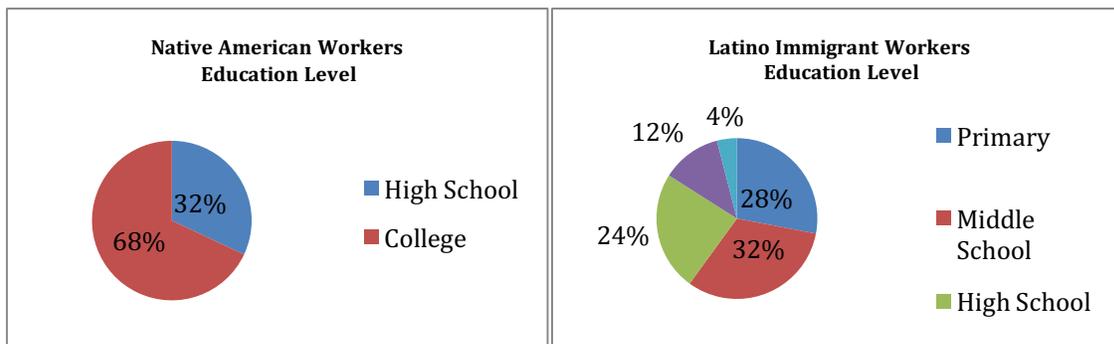


* 25 Native American, 25 Latino Immigrants, 2 U.S Born Latinos, and 1 white participant.

The survey participants were between the ages of 24 and 54. The survey did not request gender information, so data results cannot suggest conclusions about the relationship between gender and prevalence of workplace violations.

From the survey results, 23 people pursued college courses or a higher education degree in some capacity. The most recent New Mexico Department of Health's county profile indicates 11.4% of people have obtained a college degree in McKinley.¹⁷ Survey responses show that participants are still experiencing wage theft regardless of their college experience.

Participants' education level:



Because the HIA focuses on the health impacts of employment violations, participants were asked whether or not they had health insurance. Native Americans access Indian Health Services (IHS), which is funded by the federal government. HIS, however, is severely underfunded, which can have an impact on community members' decisions to access these services. Moreover, undocumented immigrants do not have access to subsidized health care coverage under the federal Affordable Care Act (ACA). From the survey, 21 participants stated they had

¹⁷ New Mexico Department of Health. *McKinley County Health Profile*. Retrieved on October 16, 2016 from <http://www.nmhealth.org>

insurance while 32 stated they did not. This report does not expand on the component of access to health insurance, yet it could impact people's wellness.

III. Background on Wage Theft

Wage theft is the non-payment or underpayment of wages. It affects a wide range of workers, but often results in dire economic consequences for low-wage workers and their families.

Wage theft comes in many forms. It includes, but is not limited to the underpayment of overtime hours, misclassification of employee status, an hourly wage less than the mandated minimum wage, nonpayment of wages for every hour worked, or unlawful deductions from paychecks.

Payroll fraud is one way employers steal from workers. It is most prevalent in the construction, restaurant, janitorial and trucking industries. Kim Bobo, in *Wage Theft in America*, writes, "Payroll fraud is one of the most common forms of wage theft. Payroll fraud occurs when an employer intentionally lies to public agencies about how many employees it has and denies workers the wages, contributions to taxes, and insurances and protections due to employees."¹⁸

Required payroll administration entails workers receiving a pay stub noting proper tax and benefit deductions. Some workers, however, are paid in cash or with prepaid visa cards. This form of payment is one way employers avoid paying their fair share of federal and state required taxes and benefits to workers.

Whom Does It Affect?

Wage theft can affect anyone, but according to the few studies that exist in the U.S., workers experience it to different degrees depending on various factors. Workers in low-wage industries, women, people of color and foreign-born people are especially vulnerable and report violations at different rates.¹⁹

Accurately documenting the number of people and ways in which wage theft is taking place in McKinley County is difficult if workers do not file administrative complaints or do not pursue their claims in court.

Immigrants may encounter slightly different challenges than workers born in the United States. Bobo writes, "Because our nation has no rational immigration system

¹⁸ Kim Bobo (2011), *Wage Theft in America: Why millions of Americans are not getting paid - And what we can do about it*. New York: The New Press, 40.

¹⁹ Fabiola Santiago MPH. *Health Impact Assessment of the Proposed Los Angeles wage theft ordinance*. 2014. Retrieved on December 15th, 2016 from <http://www.humanimpact.org/news/just-released-la-wage-theft-hia/>

providing a path to citizenship and no strong worker protections for immigrants, many immigrants find themselves in vulnerable situations.”²⁰ Not only are immigrants facing challenges with federal and state bureaucratic systems, like federal immigration enforcement agencies or state motor vehicle and tax departments, they are simultaneously navigating the dynamics of exploitative employers and substandard work conditions while struggling to provide for their families. Some of the worst wage theft takes place when immigrant workers do not get paid the minimum wage or are not paid at all.

Still, a significant portion of wage theft victims are U.S. born workers who are not paid overtime or are misclassified as exempt, temporary or contract workers.²¹

Wage theft cuts across all educational levels. This report’s findings showed that workers with some level of college education experienced wage theft at similar rates as workers with no college education. Of the 35 wage theft victims in the survey, 12 had not completed high school, nine had completed high school, and 14 had some level of college, including a four-year degree. Wage theft also cuts across all employment sectors, and many workers are unaware that they are victims.

Bobo writes, “Most of us spend more time in the workplace than we do sleeping, caring for our families, or anything else we do. The laws regulating how most of us are treated and paid are terribly important to our quality of life, and yet most of us have very little understanding of workplace laws.”²²

What is the process to file an administrative wage claim?

The Wage and Hour Bureau at the New Mexico Department of Workforce Solutions (DWS) enforces the state minimum wage, currently \$7.50 per hour, as well as overtime provisions under the state Minimum Wage Act. The bureau also enforces the payment of scale wages to laborers and mechanics under the Public Works Minimum Wage Act. The bureau is authorized to investigate claims for unpaid wages from employees and ex-employees under both acts (see Appendix D and E). DWS also provides seminars and materials to employers and employer groups on the compliance requirements of state labor laws.²³

Workers in McKinley County must travel more than 140 miles to DWS’s Albuquerque Wage and Hour Bureau to receive in-person assistance and information about filing a wage claim from a state employee. In Gallup, they can also go to the local Department of Workforce Connections office to obtain a wage claim form, but then they must mail it or fax it to the DWS office in Albuquerque.

²⁰ Bobo (2011) *Wage Theft in America*, 59.

²¹ Bobo (2011) *Wage Theft in America*, 7.

²² Bobo (2011) *Wage Theft in America*, 70.

²³ New Mexico Department of Workforce Solutions. Retrieved on October 14th, 2016 from <https://www.dws.state.nm.us/Labor-Relations/Labor-Information/Wage-and-Hour>

Workers then have to follow up via telephone with DWS employees on the progress of their complaint.

The U.S. Department of Labor (USDOL) administers the Fair Labor Standards Act (FLSA), which enforces the federal minimum wage of \$7.25 per hour and overtime protections. It's a little more confusing to file a wage complaint with USDOL because there are no claim forms available to workers. To file a claim, workers must relay information about the wage theft to federal agents via email, fax or voicemail, and then wait for a USDOL employee to contact them over the phone for an initial intake interview.

Wage theft victims can also file a lawsuit for unpaid wages in magistrate, district or federal court with the help of an employment attorney. They can also file *pro se* in some courts, but that is generally not considered an acceptable or viable option for workers.

Keeping track of the different workplace protections and administrative complaint procedures in federal and state jurisdictions is further complicated by the fact that some local municipalities and counties have established their own minimum wages, known as "living wage" laws. Protections and remedies within these laws vary widely. For example, statutes of limitation, exemptions and amount of damages allowed to workers are different in city, state and federal minimum wage statutes. Even within the same jurisdiction, minimum wages can be different. The New Mexico Minimum Wage Act, for instance, requires employers to pay at least \$7.50 per hour, but if their employees make over \$30.00 a month in tips they only have to pay a tipped wage of \$2.13 per hour.

In 2009, *Somos Un Pueblo Unido* spearheaded a campaign to pass a state law strengthening protections for workers who are victims of wage theft in New Mexico. This law protects workers against retaliation, stiffens penalties by allowing victims to seek treble damages, extends the statute of limitation to initiate wage claims to three years with continuing course protections, and allows judges to require employers to post a workplace notice describing wage violations (See Appendices A). In 2013, *Somos* also passed a law to fast track wage theft lawsuits in court.

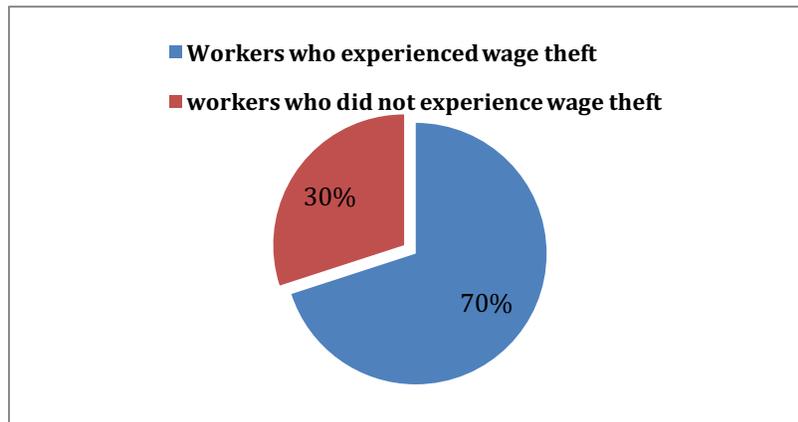
In addition to providing for civil administrative remedies, the state Minimum Wage Act also makes non-payment or underpayment of wages a misdemeanor violation, a crime rarely, if ever, investigated or pursued by local law enforcement agencies or district attorneys.

IV. Key Findings from Community Surveys

1. Wage theft in McKinley County is pervasive amongst Latino immigrant and Native American workers.

70% of the workers who participated in this study (35 out of 50) reported experiencing some form of wage theft. Either they did not receive the minimum wage or last pay check, they were required to work off the clock, or they were not paid time and a half for overtime hours.

- 16% of respondents experienced two or more forms of wage theft (8).
- 48% of respondents said they were not paid overtime (24).
- 16% of respondents said they were paid less than the minimum wage (8).
- 22% reported that they were required to work off the clock (11).
- 14% reported that they were denied a last paycheck (7).
- 36% of Latino immigrant workers (9) reported being paid in cash, while 8% of Native American workers (2) said they were paid in cash (workers paid in cash are shortchanged when it comes to key employer-provided benefits like social security and Medicare tax contributions).



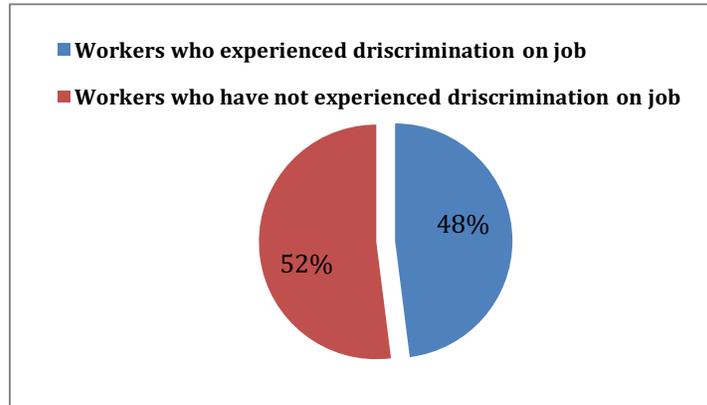
2. Latino immigrant workers experienced wage theft at a slightly higher rate than Native American workers.

72% of Latino immigrant respondents (18 out of 25) reported a violation, while 68% of Native American respondents (17 out of 25) experienced at least one form of wage theft in their employment history.²⁴

3. Nearly half of workers report experiencing discrimination in the workplace, Native Americans at a greater rate than Latino immigrants.

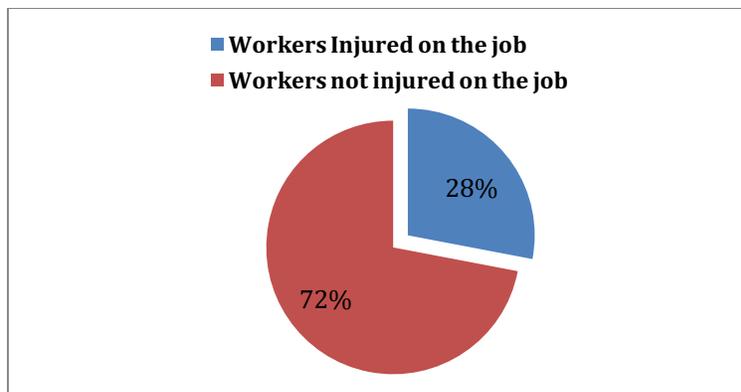
²⁴ As mentioned, the data is only looking at 50 people who participated in the survey.

48% of respondents (25 out of 50) reported having experienced discrimination or harassment on the job. 56% of Native American workers (14 of 25) said they felt discriminated against, while 40% of Latino immigrant workers (10 of 25) reported experiencing this violation.



4. One out of four workers has been injured on the job, and nearly half say their work is dangerous.

- 40% (23 of 50) reported not having received any kind of health and safety training on the job.
- 44% (22 of 50) said they considered their job dangerous. Of the 22 workers who considered their job dangerous, only 13 received health and safety training.
- 32% of Native American respondents (8) said they have been hurt on the job, while 24% of Latino immigrant workers (6) said they had been hurt.
- Latino immigrant workers reported receiving health and safety training at a much lower rate than Native Americans - 28% of Latino immigrant workers (7 of 25) versus 52% of Native Americans (13 of 25).



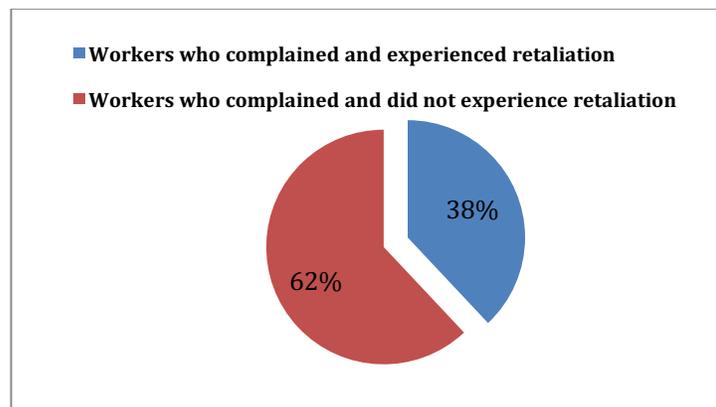
5. Most victims do not report wage and hour violations nor do they try to recuperate their stolen wages for fear of retaliation.

Of the 35 workers who said they experienced wage theft, only 23% (8) tried to report the violation or recuperate their stolen wages.

- 50% of victims said they did not report the violation (56% of Native Americans, 44% of Latino immigrant workers).
- 20% of victims said they did not report it because they didn't know how to file a complaint.
- 31% of victims said they did not report it because they were afraid of retaliation - losing hours, getting fired, etc.

6. One out of three workers who complain experience retaliation.

38% of workers (15 of 40) who said they were victims of wage theft and/or discrimination tried to report the violations and experienced retaliation as a result. Retaliation came in the form of losing hours, being subjected to a hostile work environment, or getting fired.



7. Wage theft impacts the health and ability of workers to pay for basic needs and keep up with bills.

- 40% of wage theft victims (14 of 35) reported that the violation affected their health.
- 40% (14 of 35) said they had to obtain a loan to make ends meet after not being paid what they were owed by employers.
- 11% (4 of 35) said they couldn't pay for educational programs.
- 14% (5 of 35) said they couldn't pay for home repairs.
- 20% (7 of 35) said they couldn't keep up with loan payments.

V. Impact of Employment Violations on Economic Security and Health

Background on Economic Security and Health

This section articulates the impact of wage theft, discrimination, and health and safety problems in the workplace on the economic security and health of workers and their families.

Economic security for individuals and families means they have a stable income to support their standard of living and a predictable future cash flow. Economic instability can greatly affect the physical and emotional health of families. Low wages, stagnant wages or unforeseen decreases in income can lead to deterioration in living conditions, food insecurity, insufficient access to medical care, increased stress and a limited ability to invest in educational resources for improved job opportunities in the future.²⁵

In *Raising the Minimum Wage Could Improve Public Health*, J. Paul Leigh connects low wages to poor health outcomes. He cites as an example a Panel Study of Income Dynamics (PSID) that documents how low wages increase the likelihood of workers to struggle with obesity. In another study, mental health was shown to be improved by higher wages, especially individuals' anxiety and depression levels.²⁶ Leigh writes, "Scores of studies in economics and epidemiology link low incomes to health problems, including diabetes, heart disease, arthritis, and premature mortality."²⁷ These studies provide a framework for examining how the growing phenomenon of wage theft, discrimination and workplace injuries could also lead to poor health outcomes.

Economic Security in McKinley County

McKinley County is the poorest county in New Mexico. According to the 2015 U.S. American Community Survey, 37.5% of the population lives below the poverty level, compared to the overall rate of 20.7% in the state (below \$23,834 annual income for family of four is considered poverty). The average unemployment rate in the county for 2016 was 8.8%, while in New Mexico it was 6.5%.²⁸ The majority of jobs in the county are in health care and social services, retail, accommodation and food services. These industries mostly offer low-wage positions.

²⁵ Human Impact Partners and the Los Angeles Coalition Against Wage Theft, *Health Impact Assessment of the Proposed Los Angeles Wage Theft Ordinance*, 2014

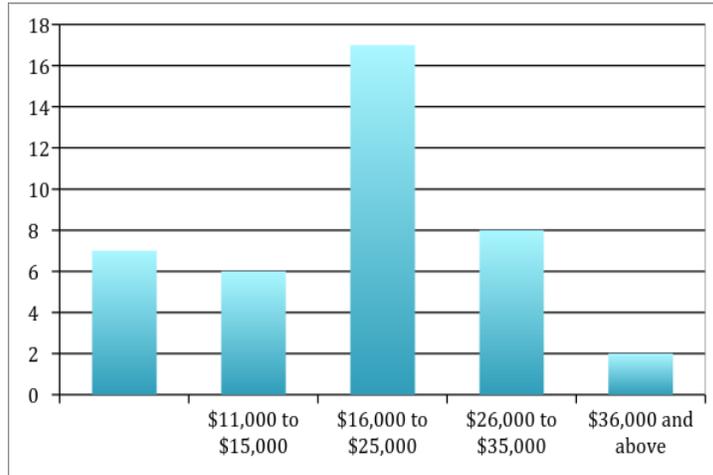
²⁶ J. Paul Leigh. *Raising the minimum wage could improve public health*. Retrieved on October 7, 2016 from <http://www.epi.org/blog/raising-the-minimum-wage-could-improve-public-health>, 1.

²⁷ Leigh, *Raising the minimum wage could improve public health*, 2.

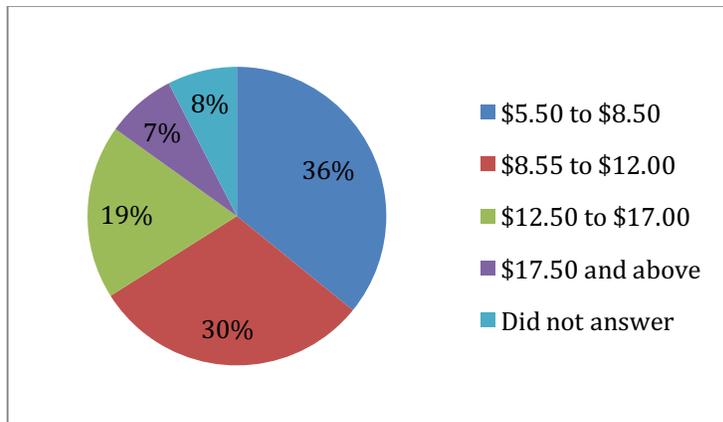
²⁸ United States Census Bureau. Retrieved on October 14th, 2016 from

Much like what census data shows for the overall population of McKinley County, survey respondents indicated they are making an income ranging from \$16,000 to \$24,000 a year. 21% percent of respondents earn less than \$10,000 per household and 14.8% earn wages that range from \$15,000 to \$24,999 per year.

Survey participants' level of income:



Participants' hourly wage:



36% of survey participants (19 workers) stated they are making \$8.50 per hour or less and 66% (35 workers) are making less than \$12.00 per hour. Even though people have an income above the minimum wage, the number of household members dependent on this income is critical to consider. There is often more than one person in the household dependent on this income. The HIA survey showed that as many as four people depend on each worker's income indicating that workers are supporting loved ones' basic needs on very limited funds.

Survey participants shared a wide range of the type of jobs worked such as restaurants, construction, education and many other forms of employments. Only three survey participants reported working more than one job, not because they did not want a second job, but because they could not find one.

30 people worked four or more years in their positions. Only ten participants had worked less than two years in their jobs. Because of the limited job opportunities in the county, workers indicated feeling obligated to stay in a position to support their families and livelihoods despite employment violations.

I stuck it out and I think they do that because they know you need the job. I feel that I could find another [job], but why would I want to put myself through all that. That is how I look at it because then you have to start all over from the bottom. [It] took a good four years to get to where I am right now.—Focus group participant

Workers also experience economic insecurity when employers inform them that they are not covered for certain worker protections or when they misclassify them as ‘exempt’ so they do not have to pay overtime.²⁹

Bobo writes, “When employers know that there aren’t very many good jobs out there, few are inclined to raise wages and benefits if they don’t have to do so. Again, this establishes a context for wage theft.”³⁰

Because people do not have financial security, this impacts a person’s access to healthcare coverage and general services. The American Community Survey has documented that 44.3% of people in the county have public health insurance coverage. However, this is not differentiated between the types of coverage such as private or public insurance. Native American community members have access to Indian Health Services, although the impacts of these services are not addressed in this report. The federal survey also demonstrates that 34.7% of the people in the county do not have health insurance coverage.³¹

Impact of Wage Theft on Economic Security and Health

Wage theft depresses the already insufficient earnings of low-wage workers. When workers who live paycheck to paycheck do not receive what they are expecting, it often leads to drastic changes in weekly family budgets. It can mean the difference in being able to pay utilities, a car payment, insurance, rent, a mortgage payment, medical bills, food and other staples.

²⁹ Bobo, *Wage Theft in America*, 27.

³⁰ Bobo, *Wage Theft in America*, 59.

³¹ American FactFinder (2010-2014) American Community Survey 5-year estimates. Retrieved on October 15, 2016 from https://factfinder.census.gov/faces/nav/jsf/pages/community_facts.xhtml

Persistent wage theft--requiring employees to consistently work off the clock, not getting paid time and a half for overtime hours, being paid a rate less than the minimum wage--can lead to long-term economic insecurity. Workers may not have extra funds available when unexpected circumstances arise such as vehicle repairs, unforeseen health incidences, funds for school events for their children, or any extracurricular activities with the family.³² In fact, unanticipated medical expenses are the number one reason for declaring bankruptcy in the U.S.

When people lack economic security, they experience additional stress in providing for their family's basic needs. This sense of economic insecurity can lead to functional limitations such as depression and decrease in work productivity. Studies have shown that individuals experience premature deaths because of financial struggles and lack of income gains.³³ Native Americans lifespan is six years less than white people who live in McKinley County.³⁴

One of the participants shared how economic insecurity forced them to pursue personal loans as a way to provide for their family:

When I found out things were going to end with our company. That is what I did. I pulled three or four loans because I knew money wasn't going to be coming in pretty soon, so that is what I used to help relieve whatever stress we had coming in from bills. I pulled a lot of them. –Focus group participant

Predatory lending has an impact on people's livelihood and financial stability over an extended period of time. This report does not delve into the health impacts of predatory lending, however, it is important to consider how it adds an additional layer of financial struggle. McKinley County has a high number of predatory lenders for the population, which are primarily located in Gallup. Readers are encouraged to look more closely at the impacts of predatory lending in relation to economic security and health.

Fourteen participants in the survey reported the need to obtain a loan to make ends meet after not being paid. Other workers documented that they could not pay for educational programs, home repairs, and could not keep up with loan payments.

One participant talked about the impact of not getting paid:

³² Kathleen Lalley and Kelly Griffith, Building Financial Strength in Rural Communities, Southwest Center for Economic Integrity, Sept. 2011.

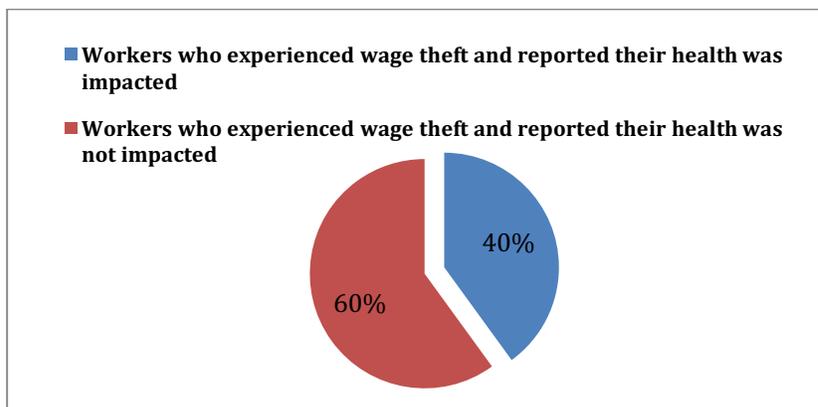
³³ Health Impact Partners, *Health Impacts of Raising California's Minimum Wage, 2014*.

³⁴ New Mexico Department of Health. Retrieved on October 20, 2016 from <https://ibis.health.state.nm.us/community/highlight/Selection.html>

In my case, my husband and I were really affected. When we moved from here to Farmington for that job they offered us, we left our home. We had to pay rent in Farmington. We were working 120 hours a week and we had our son who was 12 years old. Our son was working in the restaurant, washing dishes to help us. Our dream was to be able to get that job and have some money to buy a food truck. So the time that we were there working and we never received any wages, we used all our savings. We came back without any money, without any payment. We had to come back and start from the bottom. So that really affected our family.

—Focus group participant

In the survey, 14 out of 36 participants reported that the wage violations had affected their health.



Some elaborated on health impacts in the focus group:

Not getting paid hurt my family financially and the whole experience was so stressful that my wife's health deteriorated. She was diagnosed with high blood pressure and for the first time she had to start taking medication.

--Focus group participant

Impact of Workplace Discrimination on Economic Security and Health

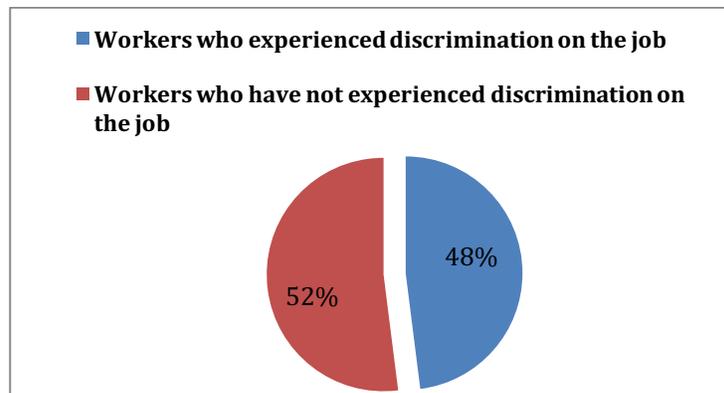
This section describes the impact of workplace discrimination and how it affects people's health and wellbeing. Discrimination in the workplace is when an employer treats a worker differently because of the worker's race, color, religion, national origin, sex, pregnancy, gender identity, sexual orientation, age or disability

or medical condition, or ancestry.³⁵ Being treated differently can mean that an employee is harassed, not promoted, or paid less than other workers because of the aforementioned factors.

Workers who experience discrimination can file a complaint with the federal Equal Employment Opportunity Commission (EEOC)³⁶ or New Mexico's Human Rights Bureau in the Department of Workforce Solutions.³⁷ Both agencies investigate discrimination claims. Additionally, workers can sue their employers in court. The Navajo Nation Human Rights Commission has also gathered testimonies and can intervene in cases of discrimination against Native American workers in towns that border Navajo Nation tribal lands.

Despite legal protections, discrimination is still pervasive in workplaces for a number of reasons. First, proving discrimination may be challenging. And even if workers have proof, they may be hesitant to raise the issue for fear of losing their jobs.³⁸ Navigating the federal or state discrimination complaint process, or initiating a lawsuit, can be hard without the help of an attorney.

48% of workers in the survey said they experienced discrimination at work.



Many workers surveyed spoke of being discriminated against based on their perceived immigration status. One focus group participant explained that he and

³⁵ United States Equal Employment Opportunity Commission. *Title VII of the Civil Rights Act of 1964*. Retrieved on January 14, 2017 from <https://www.eeoc.gov/laws/statutes/titlevii.cfm>

³⁶ The EEOC is the federal agency charged with enforcing federal law that prohibits discrimination in the workplace.

³⁷ The New Mexico Workforce Solutions' Human Rights Bureau is the state agency created to enforce the New Mexico Human Rights Act, which makes it unlawful for an employer to refuse to hire, to discharge, to promote or demote or to discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or serious medical condition. 28-1-7. Unlawful discriminatory practice

³⁸ Bobo, *Wage Theft in America*, 59.

several co-workers noticed they were paid less for doing the same work as other employees. When they confronted the manager, he replied that the pay difference was because they “did not have certain kind of documents to work in the country.”³⁹

This type of discrimination is common across the country. A report by the Institute for Research on Labor and Employment found that undocumented immigrants earn \$2 less per hour on average than workers with legal status.⁴⁰ Andrew Schrank and Jessica Garrick, in *Mexican Immigrants and Wage Theft in New Mexico*, write, “Documentation status matters. Undocumented immigrants were more than twice as likely (21.6%) to have been victims of workplace abuse as documented immigrants (9.2%).”⁴¹

Even with discrimination being illegal, this report found that many workers fear reporting the violation. Community members said they typically do not complain because they need their job. Workers in the county are forced to endure a hostile and discriminatory work environment because other job opportunities are limited. A focus group participant shared her experience working at a Gallup hotel:

They would pay Mexican workers less per room. If you complained, they would just tell us to leave. I worked there for three years until I was able to get another job.

—Focus group participant

Other participants reported gender discrimination. A female worker explained that she was getting paid less than a male worker doing the same job. She complained to her supervisor, but when her contract was up for renewal, her employer chose not to renew it.

Additionally, workers in McKinley County discussed having trouble reporting discrimination to the proper agencies. In the focus group, participants described a lack of attorneys in rural areas that provide free or low-cost legal assistance. Many participants described having to travel to Albuquerque to find an attorney or make a complaint with a government agency. This is an additional barrier for low-wage workers in rural communities trying to advocate for protections and equal opportunities.

Existing Data on Discrimination in the Workplace

One way to potentially measure disparate treatment in the workplace is to look at the concentration of minority workers in low wage jobs and wage disparity. The National Women's Law Center reports that women make up two thirds of the total

³⁹ Focus Group Transcript

⁴⁰ Ruth Milkman, Ana Luz González and Victor Narro. 2010. Wage Theft and Workplace Violations in Los Angeles. Retrieved on October 12th, 2016 from <http://www.irle.ucla.edu/publications/documents/LAwagetheft.pdf>

⁴¹ Andrew Schrank and Jessica Garrick. 2012. *Mexican Immigrants and Wage Theft in New Mexico*

low wage worker population, women of color being particularly over represented, making up 33% of the fastest growing low wage industries.⁴²

In 2015 the EEOC reported 976 discrimination complaints that resulted in formal charges in New Mexico. Of the protected classes that were listed, sex, disability, national origin and race were the most prevalent. This report also says there were 427 charges of retaliation⁴³

A Princeton University study found that minority workers tend to experience lower levels of stability and authority and fewer opportunities for advancement.⁴⁴ Native Americans are one of the most economically disadvantaged populations in the country with one in four living in poverty versus only one in ten non-Hispanic whites.⁴⁵

In addition to wage disparities that can lead to economic insecurity and consequent health disparities, discrimination in the workplace can also cause stress and illness for workers and their families. In a 2016 report, the American Psychological Association showed that experiencing discrimination in various settings, including in the workplace, is associated with higher reported stress and poorer health. The report surveys adults who year after year say that money and work are great contributors to significant stress. The study also indicates that people of color are more likely to rate job stability as a significant source of stress compared to white populations.⁴⁶

From the results of the survey, half of the participants reported feeling discriminated against in the workplace, Native Americans at a greater rate. 56% of Native Americans (14 of 25) said they felt discriminated against and 40% of Latino immigrant workers (10 of 25) reported experiencing a violation. 38% percent of workers (15 of 40) who said they were victims of wage theft and/or discrimination tried to report the violations and experienced retaliation. Retaliation came in the

⁴² Katherine Gallaguer and Robbins and Julie Vogtman. 2016. Low Wage Jobs Held Primarily by Women will Grow the Most in the Next Decade. Retrieved on September 10th, 2016 from <https://nwlc.org/wp-content/uploads/2016/04/Low-Wage-Jobs-Held-Primarily-by-Women-Will-Grow-the-Most-Over-the-Next-Decade.pdf>.

⁴³ Equal Employment Opportunity Commission. Retrieved on October 12th, 2016 from https://www1.eeoc.gov/eeoc/statistics/enforcement/charges_by_state.cfm#centercol.

⁴⁴ Devah Pager and Hana Shepard. 2008. *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*. Retrieved on September 14th, 2016 from http://scholar.harvard.edu/files/pager/files/annualreview_discrimination.pdf

⁴⁵ Algernon Austin. 2013. Native Americans and Jobs, the Challenge and the Promise. Retrieved on September 10th, 2016 from <http://www.epi.org/publication/bp370-native-americans-jobs/>

⁴⁶ Norman B. Anderson PhD. 2016. Stress in America: The impact of Discrimination. Retrieved on December 15th 2016 from <http://www.apa.org/news/press/releases/stress/2015/impact-of-discrimination.pdf>

form of losing hours, being subjected to a hostile work environment or getting fired.

Since discrimination is difficult to document and measure statistically because workers are fearful to report it, one way to look at how people are treated in the workplace is by examining inequalities in the environment. For instance, managers may favor certain individuals over others in ways that can impact their income.

“We all have the same problems when we are working and relatives are in the workplace. They always are treated differently. It happens many times. That is why we are here and trying to work with a group so we can do something about wage theft, the hours and the checks, and the discrimination.” –Focus group participant

“In my job, they discriminate a lot against me because of my language and because I don’t speak a lot of English. They are bothered by you. They tell you to go back to your country. They are always joking about the fact that you don’t speak English, and they make fun of you.”—Focus group participant

Another participant in the focus group shared the stress of being discriminated against and reprimanded in a humiliating way:

“That is like harassment what I went through. They put me before a panel. All the supervisors were in there and they ganged up on me. I had nobody to look at. I blew up. I was like: you think you are upset? I am upset with all of you. I don’t know what the hell you want from me. I know you are not supposed to scream and yell at your supervisors. There is a lot of discrimination.”—Focus group participant

Impact of Health and Safety Violations on Economic Security and Health

Many workers in McKinley County are in work environments related to the service and hospitality industry. In this section on workplace health and safety, we document information from the federal Occupational Safety and Health Administration (OSHA), the significance of workplace safety and how it impacts individuals’ health and wellbeing.

Under federal law, all workers are entitled to a safe workplace. The federal law also ensures that workers can obtain training in a language they understand. The law’s mission is to assure safe and healthy workplaces by setting and enforcing standards, and by providing training, outreach, education and assistance.

Employers must comply with all applicable OSHA standards. Employers must also comply with the General Duty Clause of the OSHA Act, which requires employers to keep their workplace free of serious recognized hazards.

Personal protective equipment, often referred to as “PPE”, is equipment worn to minimize exposure to serious workplace injuries and illnesses that may result from exposure to chemicals, physical, electrical and mechanical workplace hazards. Workers have the right to be provided with required safety gear such as gloves, be protected from toxic chemicals, be able to report an injury or illness and obtain copies of their medical records.

If workers have any concerns about their work environment, they have the right to speak up about them without fear of retaliation. It is illegal for an employer to fire, demote, or otherwise retaliate against a worker for exerting their rights under the law. Workers also have the right to raise a safety or health concern with their employer, receive information and training on job hazards, and file a complaint with OSHA within 30 days (by phone, mail, or online) if they experienced retaliation.

Despite these protections afforded by federal and state laws, millions of workers are seriously injured on the job every year and thousands are killed.

Existing Data on Workplace Health and Safety

Low-wage workers are more susceptible to workplace injuries and this impacts low-income families more severely than higher wage earners.⁴⁷ When injuries occur, families often have to carry the biggest financial load when it comes to subsequent medical expenses, lost income as a result of time off, reduced hours or a change in work duties. Like wage theft, an injury on the job can quickly propel a family into poverty and cause long-term effects on economic security.

Employers can often get around OSHA requirements to provide a safe workplace because the law does not cover self-employed workers. When they misclassify workers, employers can avoid paying for worker’s compensation insurance or providing adequate health and safety training. Misclassification of employees as independent contractors (a form of wage theft) and the use of temporary workers often result in injured workers not having adequate worker’s compensation coverage.

The Bureau of Labor statistics records approximately 3 million workplace injuries per year. About half of these injuries require at least one missed day of work or a work restriction.⁴⁸

⁴⁷ Occupational Safety and Health Administration. 2015. Adding Inequality to Injury: The Costs of Failing to protect Workers on the Job. Retrieved December 12th, 2016 from <https://www.dol.gov/osha/report/20150304-inequality.pdf>

⁴⁸ Occupational Safety and Health Administration. Adding Inequality to Injury, 3

These are conservative estimates. The statistics rely on employer reported information, and it is difficult to gauge the degree to which workplace environments are dangerous for workers. If workers fear retaliation, they are unlikely to report unsafe work conditions, which make capturing public data challenging.

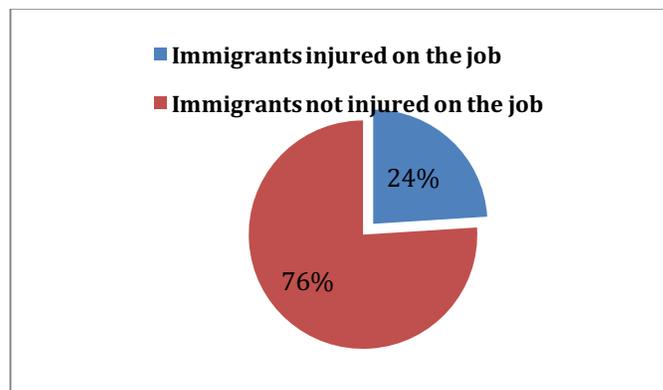
In addition to the immediate loss of income related to workplace injuries for workers and their families, research indicates that long-term wage loss as a result of the injuries is also substantial. A study in New Mexico, for instance, showed that workplace injuries resulted in a loss of an average of 15% of the earnings for that worker over 10 years after the injury took place.⁴⁹

Workplace injuries can lead to chronic health problems that remain unaddressed by workers, as well as indirect problems for family caregivers, who often have to reduce their own work hours to provide aid to an injured family. These disruptions can lead to increased stress, which in turn leads to health deterioration.⁵⁰

Immigrant workers suffer higher rates of workplace fatalities and injuries. A Centers for Disease Control and Prevention (CDC) study that surveyed Latino and immigrant workers from various communities including New Mexico showed that immigrant workers frequently report receiving poor safety training or no safety training at all. Language barriers, cultural differences, and policies leading to structural discrimination in the workplace need to be more effectively addressed in order to implement adequate health and safety training and other prevention measures according to recommendations made in the CDC report.⁵¹

McKinley County Data

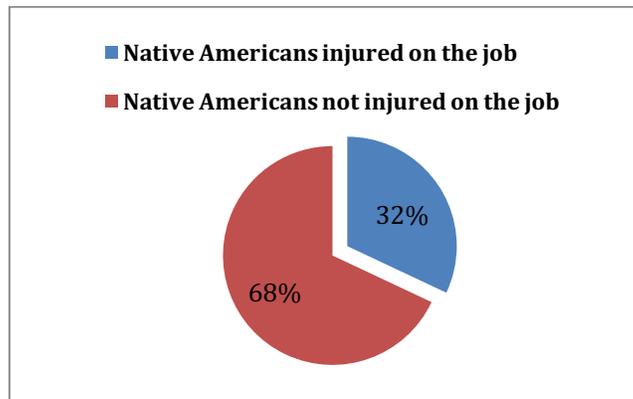
32% of Native American workers surveyed in this HIA indicated being hurt on a job, while 24% of Latino immigrant workers said they had been hurt.



⁴⁹ Occupational Safety and Health Administration. Adding Inequality to Injury. 4

⁵⁰ Occupational Safety and Health Administration. Adding Inequality to Injury.4,5

⁵¹ Michael Flynn. December 4th, 2014. Safety and Health for Immigrant Workers. Retrieved on December 15th, 2016 from <https://blogs.cdc.gov/niosh-science-blog/2014/12/04/immigrant-osh/>



40% of workers (20 of 50) reported not having received any kind of health and safety training on the job. 44% said they considered their job dangerous, and of these workers, only 13 people received health and safety training. Latino immigrant workers (28%) reported receiving a health and safety training at a much lower rate than Native Americans (52%).

Focus group participants expanded on the health impacts regarding workplace health and safety. One individual shared the following statement about feeling like their job was dangerous:

In the hotels, there is a lot of danger for housekeepers. When we do our cleaning, you find needles in the sheets, blood, and they don't give you gloves to protect you from all the chemicals that you have to use to clean. They give you 15 minutes to finish a room. When you have to pull off the covers quickly and remove everything, workers have found needles that stick them. And they don't have medical insurance.—Focus group participant

Another participant in the focus group shared their experience of working in a restaurant and the lack of training or procedures in place to protect workers from injury.

When I was working in a restaurant several years ago, I started washing dishes. When they picked up the table, waiters would throw all the knives and forks and everything. It was dangerous because you would have to move very quickly. You would have to put your hands in the water to separate everything, and it was very dangerous because you could cut yourself. In that job, they would not give us any gloves and the waiters would throw the glasses and plates in there. Sometimes they were broken, so it was very dangerous to put your hands in the water.—Focus group participant

VI. Barriers for Reporting Violations and Accessing Remedies

Based on the surveys and anecdotal information in this HIA, we identified several barriers to workers being able to report wage theft, health and safety violations and discrimination in the workplace and access proper remedies.

Focus group participants indicated that employment laws, remedies and complaint procedures are complicated and confusing. Furthermore, when workers have limited resources, it is challenging to self-advocate for rights and protections especially in rural areas like McKinley County where state and federal enforcement agencies have minimal presence. For instance, workers must travel to Albuquerque's Wage and Hours Bureau to initiate a wage theft investigation in person. They often cannot take time off work or do not have transportation or gas money to travel to an urban center to file a complaint. Depending on the enforcement agency, claimants can download complaint forms send them via fax, email or the U.S. postal service. Many low-wage workers, however, in poor and rural communities have limited or no access to a computer, email, fax, internet service, or they simply lack basic computer literacy skills. Also, cell phone service is limited and unreliable in the Navajo Nation, making follow up calls with agencies difficult.

In the focus group, workers cited the long-distance virtual claims process as intimidating, preferring in-person intake and follow-up with bilingual staff. Wage theft victims can try to recuperate their stolen wages or access remedies for other employment violations in court, but there are few attorneys and low-cost legal assistance providers in rural communities like McKinley County. New Mexico Legal Aid has an office in Gallup to aid workers with some of these legal problems, but the agency only serves documented immigrants and U.S. Citizens.

Even when workers overcome all these barriers and successfully file a claim with administrative agencies like the New Mexico Department of Workforce Solutions (DWS), it does not mean they will be able to successfully recoup their stolen wages. Several wage theft claimants in New Mexico, for example, along with *Somos Un Pueblo Unido* and other worker advocacy organizations, filed a lawsuit in 2017 against the Department of Workforce Solutions' Wage and Hour Bureau for refusing to implement key aspects of the state Minimum Wage Act and for not providing language appropriate services.

VII. Conclusion & Recommendations

According to Dr. Schrank's New Mexico study on wage theft, workplace violations tend to cluster.⁵² Employers who violate one labor law are often willing to violate others. All three types of workplace violations highlighted in this HIA--wage theft, discrimination, and health and safety--are strongly linked to low-wage industries where people of color and immigrants primarily work. These violations tend to go unchecked in communities that are poor and economically unstable like McKinley County and where jobs are scarce.

Workplace abuses adversely impact economic security for working families already struggling to make ends meet and consequently, important health indicators for these communities also deteriorate.

When already vulnerable workers are short changed, injured on the job, or denied promotions and pay increases as result of discrimination, their short-term and long-term economic security is at risk. These circumstances often lead to stress and illness, and low-wage earners are less able than their higher wage counterparts to adequately address the health problems that arise. Moreover, chronic stress and illness can result directly from singular and repeated incidences of wage theft, discrimination, and injuries related to health and safety issues in the workplace.

Although these violations are for the most part illegal and protections and remedies exist for workers, this report identified several barriers to workers being able to report the violations. Lack of language appropriate and culturally competent know-your-rights education, fear of retaliation, scarcity of available jobs, limited enforcement resources in rural communities—these all contribute to not being able to access those remedies. And even when worker overcome these barriers, it does not mean they will be able to successfully recoup stolen or lost wages. If local jurisdictions lack the political will to properly enforce workplace protections, the community-wide problems associated with these violations will persist. It is incumbent on local leaders, governments, and community groups to do more to fill in the gaps.

More community education about workplace protections, as well as stronger enforcement mechanisms to hold employers accountable and afford workers practical access to remedies, would greatly benefit McKinley's low-wage working families in immediate and long-term ways. They could lead to reduced stress, more promotional opportunities and skills building in the workplace, additional resources for short and long-term financial needs, fewer injuries on the job, more time spent with family members, and improved mental and physical health. To that end, the McKinley Worker Justice Coalition identified the following recommendations for city and county officials:

⁵² Shrank and Garrick. *Mexican Immigrants and Wage Theft in New Mexico*

1. City and county governments should explore local resolutions or ordinances to provide workers and business owners community education regarding state and federal wage and hour laws, discrimination protections and health and safety requirements, as well as potential remedies.
2. County commissioners and city councilors need to examine the distance people have to travel to file wage theft complaints at the New Mexico Department of Workforce Solutions and the U.S. Department of Labor. Given the distance, decision makers could bring to McKinley County a mobile or a permanent investigator to assist people with filing wage theft complaints.
3. Local community leaders and governments should establish a working relationship with state and federal enforcement agencies such as the New Mexico Human Rights Bureau, the U.S. Department of Labor, the Occupational, Health and Safety Administration (OSHA), as well as the Navajo Nation Human Rights Commission and local community groups to maximize enforcement resources in rural communities and to increase worker's rights awareness.
4. Local community leaders and governments should lobby for additional funding to improve access to worker's rights enforcement in rural communities, such as establishing a local office in the county to inform workers on protections, enforcement and remedies under state and federal laws.
5. City and County governments should explore passing local laws and policies to require business owners renewing or obtaining new licenses to self-certify that they are following wage and hour laws with penalties if they are not in compliance.

Appendix A
New Mexico Bill – 2009 – House Bill 489

AN ACT
RELATING TO PAYMENT OF WAGES; PROVIDING EMPLOYEES PROTECTION
FROM RETALIATION; EXTENDING THE STATUTE OF LIMITATIONS PERIOD;
PROVIDING FOR INJUNCTIVE RELIEF; INCREASING LIABILITY FOR
FAILURE TO PAY WAGES; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 37-1-5 NMSA 1978 (being Laws 1947, Chapter 44, Section 1) is amended to read:

"37-1-5. ACTIONS FOR WAGE AND HOUR VIOLATIONS.--A civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 shall be commenced within three years after a violation last occurs. The three-year period shall be tolled during a labor relations division of the workforce solutions department investigation of an employer, but such an investigation shall not be deemed a prerequisite to a person bringing a civil action, nor shall it operate to bar a civil action brought pursuant to Chapter 50, Article 4 NMSA 1978."

Section 2. A new section of Chapter 50, Article 4 NMSA 1978 is enacted to read:
"CONTINUING COURSE OF CONDUCT.--A civil action to enforce any provision of Chapter 50, Article 4 NMSA 1978 may encompass all violations that occurred as part of a continuing course of conduct regardless of the date on which they occurred."

Section 3. A new section of the Minimum Wage Act is enacted to read:

"RETALIATION PROHIBITED.--It is a violation of the Minimum Wage Act for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing another person about employment rights or other rights provided by law."

Section 4. Section 50-4-26 NMSA 1978 (being Laws 1955, Chapter 200, Section 5, as amended) is amended to read:

"50-4-26. ENFORCEMENT--PENALTIES--EMPLOYEES' REMEDIES.--

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. The director of the labor relations division of the workforce solutions department shall enforce and prosecute violations of the Minimum Wage Act. The director may institute in the name of the state an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein any violation hereof occurs shall aid and assist the director in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

E. The court in any action brought under Subsection D of this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

A. In addition to any remedy or punishment provided pursuant to the Minimum Wage Act, a court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer."

Appendix B Survey Questionnaire

McKinley Workers Justice Coalition Health Impact Assessment on Wage Theft Questionnaire

This survey is project of a local pro worker coalition. All information is strictly confidential and will **only** be used to learn more about barriers or issues workers have and to collectively identify solutions to better our lives.

Demographics:

What city or town do you live in? _____

How long have you lived in this community? _____

What is your race/ethnicity? _____

Where were you born? _____

What is your age?

- a) 15 to 24 b) 25 to 34 c) 35 to 44 d) 44 to 54 e) 55 to 64
f) 64 and over

What is your highest level of education?

- a) Primary school b) Middle school c) High school d) College
e) Other _____

Do you have health insurance? Yes No

Are you currently employed? Yes No

What city do you work in? _____

What is your income level?

- a) \$5,000 to \$10,000 b) \$11,000 to \$15,000
c) \$16,000 to \$25,000 d) \$26,000 to \$35,000 e) \$36,000 and above

How many people in your household depend on your income? _____

Have you ever accessed income assistance programs? (like cash assistance, food stamps, housing subsidies, etc.) Yes No

Do you have more than one job? Yes (How many?) _____ No

What types of jobs do you work?

- a) Restaurant b) Construction c) Hotel d) Administrative e) Other

How long have you been in your job or jobs? _____

How many hours do you work per week? _____

How much do you get paid per hour? _____

Economic security and Work Place Discrimination

Do you feel your gender, race/ethnicity or national origin have anything to do with your working experiences?

Have you ever gotten paid less than minimum wage an hour (\$7.50)? Yes No

Have you ever not received your last paycheck? Yes No

Have you ever been asked to work off the clock? Yes No

Have you ever been asked to work more than 40 hours a week and not gotten paid over time (time and a half)? Yes No

Do you get paid cash or do you get a check and a pay stub? Paid Cash or Receive Pay Stub

Are you considered (pick one) a) An employee b) A Contractor

Do you set your own schedule? Y N

Do you use your own tools or vehicle? Y N

Workplace Health and Safety

Have you ever been hurt or injured while working? Yes No

Were you covered by worker’s compensation? Yes No

Do you receive health and safety training in your position? Yes No

Do you consider you job dangerous? Yes No

Have you ever experienced discrimination or harassment in the work place? Yes No

If you have complained about not getting paid, discrimination or harassment, has your boss retaliated against you by:

a) Firing you b) Cutting your hours c) Creating a hostile work environment

d) Other_____ e) None

If you have not been paid for hours you worked, overtime, minimum wage, received your last pay check, etc. did you try to recuperate your money?

a) Yes, I filed a formal complaint with the NM Department of Labor

b) Yes, I filed a formal complaint with the Federal Department of Labor

c) Yes, I went to court

d) No, I did not know I had the right to recuperate my money

e) No, I was afraid to do anything for fear of retaliation (losing my job, losing my hours, etc.)

When you have not been paid hours worked, overtime, minimum wage, or received your last pay check, has this impacted your ability to:

a) Pay for basic needs b) Pay for educational programs for self/children

c) Pay for medical bills/health insurance d) Pay for home repairs/improvements

e) Pay loans/debt f) Other_____

Has not getting paid for all your hours, overtime, minimum wage, or received your last pay check affected your health? Yes No

When you have not gotten paid for all your hours, overtime, minimum wage, or received your last pay check, have you had to obtain a loan to make ends meet? Yes No

Additional comments:

Name _____
Phone Number _____
E-mail _____

Coalición de Justicia para los Trabajadores de McKinley
Evaluación de Salud cuando existe el Robo de Salario
Cuestionario

Esta encuesta es parte de un proyecto de una coalición de organizaciones locales en pro de los derechos de los trabajadores. Toda la información que proporcione es estrictamente confidencial y solo se usará para aprender más sobre los retos que tenemos los trabajadores e identificar soluciones para mejorar nuestras vidas.

Estadísticas Demográficas:

¿En qué ciudad vive? _____

¿Cuánto tiempo ha vivido en esa comunidad? _____

¿Cuál es su raza/etnia? _____

¿Dónde nació? _____

¿Qué edad tiene?

a) 15 a 24 b) 25 a 34 c) 35 a 44 d) 44 a 54 e) 55 a 64 f) 64 o más

¿Cuál es su nivel de educación?

a) Escuela primaria b) Secundaria c) Preparatoria d) Universidad
e) Otro _____

¿Tiene seguro médico? Si No

¿Trabaja en este momento? Si No

¿En qué ciudad trabaja? _____

¿Cuáles son sus ingresos?

a) \$5,000 a \$10,000 b) \$11,000 a \$15,000 c) \$16,000 a \$25,000
d) \$26,000 a \$35,000 e) \$36,000 o más

¿Cuánta gente en su hogar depende de sus ingresos? _____

¿Alguna vez ha solicitado ayuda de algunos programas gubernamentales? (Como ayuda financiera, estampillas de comida, subsidio para la vivienda pública, etc.) Si No

¿Tiene más de un trabajo? Si (¿Cuántos?) _____ No

¿Qué tipo de trabajo hace?

a) Restaurante b) Construcción c) Hotel d) Administrativo e) Otro _____

¿Cuánto tiempo ha estado en su trabajo o trabajos? _____

¿Cuántas horas trabaja por semana? _____

¿Cuanto le pagan por hora? _____

Seguridad Económica y discriminación en su Lugar de trabajo

¿Siente Ud. que su género, raza/etnia u origen nacional tienen algo que ver con su experiencia laboral? _____

¿Alguna vez le han pagado menos del sueldo mínimo por hora (\$7.50)? Si No

¿Alguna vez no le han pagado su último cheque? Si No

¿Le han pedido que trabaje sin ponchar (fuera del reloj)? Si No

¿Le han pedido que trabaje más de 40 horas y no le han pagado tiempo y medio (overtime)?
Si No

¿Le pagan en efectivo o le dan un cheque con talón? Efectivo Cheque oficial
Es considerado un: a) empleado b) Trabajador independiente

¿Determina su propio horario? Si No

¿Usa sus propias herramientas o vehículo? Si No

Seguridad y Salud en el Trabajo

¿Se ha lastimado alguna vez mientras trabaja? Si No

¿Estaba cubierto por seguro en caso de accidentes en el trabajo (worker's compensation)?
Si No

¿Recibe capacitación de Salud y Seguridad ocupacional en su trabajo? Si No

¿Siente que su trabajo es peligroso? Si No

¿Ha sufrido alguna vez de discriminación o acoso en su lugar de trabajo? Si No

¿Si se ha tratado de quejar por que no le pagan, por discriminación o acoso, su patrón ha tomado represalia contra usted como:

a) Lo despidieron b) Le disminuyeron las horas
c) Crearon un ambiente hostil de trabajo d) Otro _____ e) Ninguno

¿Si no le han pagado sus horas trabajadas, tiempo y medio (overtime), sueldo mínimo, último cheque, etc. ¿trató de recuperar su dinero?

Si, hice una queja formal con el Departamento de Trabajo Estatal

Si, hice una queja formal con el Departamento de Trabajo Federal

Si, fui a la corte

No, no sabía que tenía el derecho a recuperar mi dinero

No, tuve miedo a que mi patrón tomara represalia contra mí (me quitara horas, me despidiera, etc.)

¿Cuándo no le han pagado sus horas trabajadas, tiempo y medio (overtime), sueldo mínimo, último cheque, ha impactado la manera en que puede: (circule las respuestas que apliquen)

Pagar por sus necesidades básicas (renta, utilidades, comida, etc.)

Pagar por programas educativos extras para usted o sus hijos

Pagar por gastos médicos

Pagar por reparaciones o mejoras en el hogar

Pagar préstamos u otras deudas

Otro _____

¿Cuándo no le han pagado sus horas trabajadas, tiempo y medio (overtime), sueldo mínimo, último cheque le ha afectado a su salud? Si No

¿Cuándo no le han pagado sus horas trabajadas, tiempo y medio (overtime), sueldo mínimo, último cheque, ha tenido que pedir préstamos para completar sus gastos? Si
No

Comentarios/notas

Nombre

Teléfono

Correo electrónico

Appendix C

Focus Group Questions

Introductions/Presentaciones

- Name/Nombre
- ¿Where do you live?/¿Dónde vives?
- Where do you work and what do you do?/ ¿Dónde trabajas y que haces en tu trabajo?
- How long ago did you experience wage theft? ¿Cuánto tiempo hace que experimentaste robo de salario?

What is Wage Theft? ¿Qué es el robo de Salario?

- Non payment of overtime(worked more than 40 hrs **weekly** and not get paid time and a half)
- Que no te paguen tiempo y medio cuando trabajas más de 40 hrs por semana
- To get paid less than minimum wage
- Te pagan menos del salario mínimo
- To work off the clock/trabajar fuera del reloj
- When you are misclassified as a contractor
- Cuando te clasifican como trabajador independiente
- Non payment of training/ Cuando no te pagan el periodo de de prueba

Did you try to recuperate your money? ¿Trató de recuperar su dinero?

How did wage theft impact your family's budget or finances? ¿De qué manera HA impactado el robo de salario a el presupuesto y finanzas de sus familia?

How has wage theft impact your health and wellbeing of your family?¿Cómo HA impactado el robo de salario su salud y bienestar y el de su familia?

If you are having money problems, how does this impact your family relationships? ¿Si está sufriendo de escasez de dinero? ¿Cómo afecta esto a su relación familiar?

Have you experienced discrimination or harassment in the workplace? In what ways? ¿Ha sufrido de discriminación o acoso en su lugar de trabajo?¿De Qué manera?

Have you ever complained about not getting paid, discriminated against or harassed?¿Te has quejado por que no te han pagado, por discriminación o acoso?

Do you feel your gender, race/ethnicity or national origin have anything to do with your work experiences? ¿Siente UD. que su género, raza/etnia u origen nacional tienen algo que ver con su experiencia laboral?

Do you consider your job dangerous? ¿Considera que su trabajo es peligroso?

If you were mayor for a day, what long lasting change will you make to improve working conditions for you and your children? ¿Si fueras alcalde por un día, ¿Qué cambios harías para mejorar tus condiciones laborales y las de tus hijos?

Join other workers to create the change we want to see! Únete a otros trabajadores para hacer el cambio!

Appendix D

NEW MEXICO MINIMUM WAGE ACT

50-4-21. Definitions. As used in the Minimum Wage Act [50-4-20 NMSA 1978]:

A. "employ" includes suffer or permit to work;

B. "employer" includes any individual, partnership, association, corporation, business trust, legal representative or any organized group of persons employing one or more employees at any one time, acting directly or indirectly in the interest of an employer in relation to an employee, but shall not include the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 50-4-22 NMSA 1978, "employer" includes the state or any political subdivision of the state; and

C. "employee" includes an individual employed by an employer, but shall not include:

- (1) an individual employed in domestic service in or about a private home;
- (2) an individual employed in a bona fide executive, administrative or professional capacity and forepersons, superintendents and supervisors;
- (3) an individual employed by the United States, the state or any political subdivision of the state; provided, however, that for the purposes of Subsection A of Section 50-4-22 NMSA 1978, "employee" includes an individual employed by the state or any political subdivision of the state;
- (4) an individual engaged in the activities of an educational, charitable, religious or nonprofit organization where the employer-employee relationship does not, in fact, exist or where the services rendered to such organizations are on a voluntary basis. The employer-employee relationship shall not be deemed to exist with respect to an individual being served for purposes of rehabilitation by a charitable or nonprofit organization, notwithstanding the payment to the individual of a stipend based upon the value of the work performed by the individual;
- (5) salespersons or employees compensated upon piecework, flat rate schedules or commission basis;
- (6) students regularly enrolled in primary or secondary schools working after school hours or on vacation;
- (7) registered apprentices and learners otherwise provided by law;
- (8) persons eighteen years of age or under who are not students in a primary, secondary, vocational or training school;
- (9) persons eighteen years of age or under who are not graduates of a secondary school;
- (10) G.I. bill trainees while under training;

- (11) seasonal employees of an employer obtaining and holding a valid certificate issued annually by the director of the labor relations division

of the workforce solutions department. The certificate shall state the job designations and total number of employees to be exempted. In approving or disapproving an application for a certificate of exemption, the director shall consider the following: retreat;

- (a) whether such employment shall be at an educational, charitable or religious youth camp or
- (b) that such employment will be of a temporary nature;
- (c) that the individual will be furnished room and board in connection with such employment, or if the camp or retreat is a day camp or retreat, the individual will be furnished board in connection with such employment;
- (d) the purposes for which the camp or retreat is operated;
- (e) the job classifications for the positions to be exempted; and
- (f) any other factors that the director deems necessary to consider;

(12) any employee employed in agriculture:

- (a) if the employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor;
- (b) if the employee is the parent, spouse, child or other member of the employer's immediate family; for the purpose of this subsection, the employer shall include the principal stockholder of a family corporation;
- (c) if the employee: 1) is employed as a hand-harvest laborer and is paid on a piece-rate basis in an operation that has been, and is customarily and generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) commutes daily from the employee's permanent residence to the farm on which the employee is so employed; and 3) has been employed in agriculture less than thirteen weeks during the preceding calendar year;
- (d) if the employee, other than an employee described in Subparagraph (c) of this paragraph: 1) is sixteen years of age or under and is employed as a hand-harvest laborer, is paid on a piece-rate basis in an operation that has been, and is generally recognized as having been, paid on a piece-rate basis in the region of employment; 2) is employed on the same farm as the employee's parent or person standing in the place of the parent; and 3) is paid at the same piece-rate as employees over age sixteen are paid on the same farm; or
- (e) if the employee is principally engaged in the range production of livestock or in milk production;

(13) an employee engaged in the handling, drying, packing, packaging, processing, freezing or canning of any agricultural or horticultural

commodity in its unmanufactured state; or
(14) employees of charitable, religious or nonprofit organizations who reside on the premises of group homes operated by such charitable, religious or nonprofit organizations for persons who have a mental, emotional or developmental disability.

50-4-22. Minimum wages.

A. An employer shall pay an employee the minimum wage rate of six dollars fifty cents (\$6.50) an hour. As of January 1, 2009, an employer shall pay the minimum wage rate of seven dollars fifty cents (\$7.50) an hour.

B. An employer furnishing food, utilities, supplies or housing to an employee who is engaged in agriculture may deduct the reasonable value of such furnished items from any wages due to the employee.

C. An employee who customarily and regularly receives more than thirty dollars (\$30.00) a month in tips shall be paid a minimum hourly wage of two dollars thirteen cents (\$2.13). The employer may consider tips as part of wages, but the tips combined with the employer's cash wage shall not equal less than the minimum wage rate as provided in Subsection A of this section. All tips received by such employees shall be retained by the employee, except that nothing in this section shall prohibit the pooling of tips among employees.

D. An employee shall not be required to work more than forty hours in any week of seven days, unless the employee is paid one and one-half times the employee's regular hourly rate of pay for all hours worked in excess of forty hours. For an employee who is paid a fixed salary for fluctuating hours and who is employed by an employer a majority of whose business in New Mexico consists of providing investigative services to the federal government, the hourly rate may be calculated in accordance with the provisions of the federal Fair Labor Standards Act of 1938 and the regulations pursuant to that act; provided that in no case shall the hourly rate be less than the federal minimum wage.

50-4-22.1. Temporary state preemption; saving clause.

A. Except as provided in Subsection B of this section, cities, counties, home rule municipalities and other political subdivisions of the state shall not adopt or continue in effect any law or ordinance that would mandate a minimum wage rate higher than that set forth in the Minimum Wage Act [50-4-20 NMSA 1978]. The provisions of this subsection expire on January 1, 2010.

B. A local law or ordinance, whether advisory or self-executing, in effect on January 1, 2007 that provides for a higher minimum wage rate than that set forth in the Minimum Wage Act shall continue in full force and effect until repealed.

50-4-24. Employers exempt from overtime provisions for certain employees.

A. An employer of workers engaged in the ginning of cotton for market, in a place of employment located within a county where cotton is grown in commercial quantities, is exempt from the overtime provisions of Subsection D of Section 50-4-22 NMSA 1978 if each employee is employed for a period of not more than fourteen weeks in the aggregate in a calendar year.

B. An employer of workers engaged in agriculture is exempt from the overtime provisions set forth in Subsection D of Section 50-4-22 NMSA 1978. As used in this subsection, "agriculture" has the meaning used in Section 203 of the federal Fair Labor Standards Act of 1938.

C. An employer is exempt from the overtime provisions set forth in Subsection D of Section 50-4-22 NMSA 1978 if the hours worked in excess of forty hours in a week of seven days are:

- (1) worked by an employee of an air carrier providing scheduled passenger air transportation subject to Subchapter II of the federal Railway Labor Act or the air carrier's subsidiary that is subject to Subchapter II of the federal Railway Labor Act;
- (2) not required by the employer; and
- (3) arranged through a voluntary agreement among employees to trade scheduled work shifts; provided that the agreement shall:
 - (a) be in writing;
 - (b) be signed by the employees involved in the agreement;
 - (c) include a requirement that an employee who trades a scheduled work shift is responsible for working the shift so agreed to as part of the employee's regular work schedule; and
 - (d) not require an employee to work more than: 1) thirteen consecutive days; 2) sixteen hours in a single work day; 3) sixty hours within a single work week; or 4) can be required as provided in a collective bargaining agreement to which the employee is subject.

50-4-25. Posting of summary of the act.

Every employer subject to the Minimum Wage Act [50-4-20 NMSA 1978] shall keep a summary of it, furnished by the labor commissioner [director of the labor and industrial division] without charge, posted in a conspicuous place on or about the premises wherein any person subject to the Minimum Wage Act is employed, and the summary shall clearly and conspicuously set forth the current minimum wage.

50-4-26. Enforcement; penalties; employees' remedies.

A. An employer who violates any of the provisions of the Minimum Wage Act is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

B. The director of the labor relations division of the workforce solutions director may institute in the name of the state an action in the district court of the county wherein the employer who has failed to comply with the Minimum Wage Act resides or has a principal office or place of business, for the purpose of prosecuting violations. The district attorney for the district wherein any violation hereof occurs shall aid and assist the director in the prosecution.

C. In addition to penalties provided pursuant to this section, an employer who violates any provision of Section 50-4-22 NMSA 1978 shall be liable to the employees affected in the amount of their unpaid or underpaid minimum wages

plus interest, and in an additional amount equal to twice the unpaid or underpaid wages.

D. An action to recover such liability may be maintained in any court of competent jurisdiction by any one or more employees for and on behalf of the employee or employees and for other employees similarly situated, or such employee or employees may designate an agent or representative to maintain such action on behalf of all employees similarly situated.

E. The court in any action brought under Subsection D of this section shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow costs of the action and reasonable attorney fees to be paid by the defendant. In any proceedings brought pursuant to the provisions of this section, the employee shall not be required to pay any filing fee or other court costs necessarily incurred in such proceedings.

F. In addition to any remedy or punishment provided pursuant to the Minimum Wage Act, a court may order appropriate injunctive relief, including requiring an employer to post in the place of business a notice describing violations by the employer as found by the court or a copy of a cease and desist order applicable to the employer.

G. Civil actions and appeals of civil actions brought to collect unpaid or underpaid wages, interest and any other amounts due under this section shall be heard by the court at the earliest possible date and shall be entitled to a preference over all other civil actions, to the same extent as civil actions to collect contributions pursuant to Section 51-1-36 NMSA 1978, on the calendar of the court.

50-4-26.1. Retaliation prohibited.

It is a violation of the Minimum Wage Act [50-4-20 NMSA 1978] for an employer or any other person to discharge, demote, deny promotion to or in any other way discriminate against a person in the terms or conditions of employment in retaliation for the person asserting a claim or right pursuant to the Minimum Wage Act or assisting another person to do so or for informing another person about employment rights or other rights provided by law.

50-4-27. Authority of labor commissioner [director of the labor and industrial division] to promulgate rules; hearing on rules; notice; publication.

The state labor commissioner [director of the labor and industrial division] shall have the authority to promulgate and issue rules and regulations necessary to administer and accomplish the purposes of the Minimum Wage Act [50-4-19 to 50-4-30 NMSA 1978]. Such rules and regulations shall be adopted after notice and public hearing. A copy of the notice of hearing together with a copy of the proposed regulations shall be filed with the librarian of the supreme court library at least twenty days prior to the hearing. In addition, a copy of the notice of hearing shall be sent to all known interested persons. Any interested person shall have the right to appear and present evidence.

Any VIOLATIONS should be reported promptly to the New Mexico Department of Workforce Solutions, Labor Relations Division at:

Albuquerque Office 121 Tijeras NE, Suite 3000, Albuquerque, NM 87102 (505) 841-4400
Las Cruces Office 226 South Alameda Blvd, Las Cruces, NM 88005 (575) 524-6195
Santa Fe Office 1596 Pacheco Street, Suite 201, Santa Fe, NM 87501 (505) 827-6817

Appendix E

Day Laborer Act Regulations

Issuing Agency: New Mexico Department of Labor, Labor and Industrial Division.

Scope: All day labor employers in New Mexico.

Statutory Authority: Section 50-15-1 to 50-15-7 NMSA 1978.

Duration: Permanent.

Effective Date: June 17, 2005

Objective: The purpose of this rule is to define regulations necessary for the enforcement of the Day Laborer Act.

Definitions:

1. "allowable deduction" means a deduction or fee charged to a day laborer that has the express written authorization of the day laborer.
2. "check cashing service" means a business that for a fee offers to cash checks or other payment instruments or that advertises that it cashes checks or other payment instruments;
3. "day labor" means employment that is under a contract between a day labor service agency and a third-party employer, that is occasional or irregular and that is for a limited time period;
4. "day labor service agency" means an entity, including a labor broker or labor pool, that provides day laborers to third-party employers and that charges the third-party employer for the service of providing day laborers for employment offered by the employer. The provisions of the Workers' Compensation Act [52-1-1 NMSA 1978] shall apply to day labor service agencies with three (3) or more employees.
5. "day laborer" means a person who contracts for day labor employment with a day labor service agency or directly with a person or a business;
6. "department" means the New Mexico Department of Labor;
7. "employment" means a laborer acting in an employer's interest, who engages or suffers to work.
8. "employer" means any person or entity that directly or indirectly, through an agent, day labor
 - a. service agency or any other entity acting in the employer's interest, engages, suffers or permits a day laborer to work or otherwise exercises control over the wages, hours or working conditions of a day laborer. The term includes day labor service agencies and third party employers as defined in this act.
9. "high percentage of workers" in 50-15-5(C) means if 10% or more of the workers at any given time speak a language other than English, Spanish or Navajo than check cashing notices must be posted in that language.

10. "hours worked" means time day laborer spent actually working, time spent by a day laborer in travel as part of his/her principal activity, such as travel from job site to job site during the workday, is work time and must be counted as hours worked, consistent with existing wage and hour law. A day laborer who is *required* to remain waiting or on call on the employer's premises is working while waiting or "on call", consistent with existing wage and hour law. Further, any preparation time *required* by the employer at an employer's premises or at a prescribed work place will be counted as hours worked, consistent with existing wage and hour law.
11. K. "payment instrument" means a paycheck, payment voucher or other negotiable instrument from an employer provided to an employee to pay for hours worked; and
12. L. "third-party employer" means a person that contracts with a day labor service agency for the employment of day laborers.

Exempt Employers:

1. business entities registered as farm labor contractors;
2. temporary services employment agencies where advanced applications, a screening process and job interviews are required;
3. alaborunionhiringhall;and
4. a labor bureau or employment office operated by a business entity for the sole purpose of employing a person for its own use.

Pursuant to 50-4-10 NMSA Any Employer of a Day Laborer Shall:

1. Designate regular paydays, not more than sixteen days apart, as days fixed for the payment of wages to all employees paid in this state. The employer shall pay for services rendered from the first to the fifteenth days, inclusive, of any calendar month by the twenty-fifth day of the month during which services are rendered, and for all services rendered from the sixteenth to the last day of the month, inclusive, of any calendar month by the tenth day of the succeeding month. [50-4-2 NMSA 1978]. Where day labor employment lasts less than one week, wages shall be paid at the end of each workday.
2. Any person who hires a day laborer and who fails to pay a day laborer for work performed or time due is liable for full payment of the wages not paid and civil damages equal to twice the value of the unpaid wages, court costs and attorney fees and costs. Additionally, any person who violates this provision of the day laborer act and/or any provision of 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and upon conviction for a first offense shall be sentenced pursuant to Section 31-19-1 NMSA 1978. A person who is convicted of a second or subsequent offense of violating or failing to comply with any provision of Sections 50-4-1 through 50-4-12 NMSA 1978 is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 and shall be fined no less than two hundred fifty dollars (\$250) and not more than one thousand

dollars (\$1,000) for each offense for which the person is convicted, which fine shall not be suspended, deferred or taken under advisement.

Pursuant to the Day Laborer Act, Every Day Labor Service Agency and Third Party Employer Shall:

1. Compensate day laborers for hours worked by providing or making available commonly accepted payment instruments that are payable in cash, on demand, at a financial institution.
2. Provide each day laborer with an itemized statement showing in detail each allowable deduction made from wages.
3. Not charge a day laborer any fees or make deductions from wages without the express written authorization of the day laborer. Authorization must specify the amount and purpose of the fee or wage deduction. Authorization must be obtained in a language understood by the day laborer or orally if the day laborer is illiterate.
4. Ensure that any deductions made other than those required by federal or state law, do not reduce a day laborer's wages below federal minimum wage for the hours worked.
5. Pay a day laborer for all hours worked or otherwise due and owed to the day laborer. Failure to pay for each day and all hours worked is a violation of the Day Laborer Act [50-15-1 NMSA 1978].

Pursuant to the Day Laborer Act Every Day Labor Service Agency Shall:

1. Not restrict the right of a day laborer to accept a permanent position with a third-party employer to whom the day laborer has been referred for work or restrict the right of a third-party employer to offer employment to a day laborer. A day labor service agency may collect a reasonable placement fee from a third-party employer.
2. If it also provides a check cashing service or is operating a check cashing service within the office, not charge a day laborer an amount in excess of two dollars (\$ 2.00) for cashing a check or payment instrument that is issued by the agency.
3. Not charge any fees for cashing a check or payment instrument unless the day laborer: is given the option of being paid with a check or payment instrument that is payable without a fee at a local financial institution; and voluntarily elects to cash the check or payment instrument at the day labor service agency or at a check cashing service operating within the office of the day labor service agency. The day labor service agency must have the day laborer voluntarily sign a waiver, indicating that the day laborer is aware they have the right to be paid with a payment instrument that can be cashed at a bank free of charge and they have voluntarily elected to cash their check with the day labor service agency. This waiver must be kept on file for one (1) year from the date it is signed.
4. Post notices in the area where cashing of checks or payment instruments occurs. The notices shall be clearly visible and easily readable and shall state the fee for cashing a check or payment instrument. The day labor service agency is responsible for establishing a relationship with a local bank at which day laborers can cash checks for free. The day labor service agency shall post a notice of a

bank location day laborers can cash their paychecks for free. Notices shall be posted in English, Spanish and any other written language where a high percentage of the workers speak that language. In areas where the day labor service agency employs Navajo workers and the check cashing service cashes checks of Navajo workers, notice shall be posted in Navajo.

5. Maintain true and accurate records of the day laborers employed and of the hours worked and wages paid to the day laborers for at least one year after the entry of the record. Such records shall be open at all reasonable hours to the inspection of the state labor commissioner [Director of the Labor and Industrial Division], his agents or agent, record of which is required to be kept as herein provided for.
6. Keep a summary of the Day Laborer Act, furnished by the Director of the Labor and Industrial Division without charge, posted in a conspicuous place on or about the premises wherein any day laborer is seeking employment.

Day Laborer Act Complaints:

1. Complaint forms alleging a violation of the Day Laborer Act are available at the Labor and Industrial Division, 501 Mountain Rd. NE Room 106 Albuquerque, NM 87102 and on the Department of Labor website (<http://www.dol.state.nm.us>) in English and Spanish.
2. Day Laborer Act complaint forms should be completed in English or Spanish, signed and returned to the Labor and Industrial Division, 501 Mountain Rd. NE, Room 106, Albuquerque, NM 87102.
3. Upon receiving a complaint under 50-15-5(C) (check cashing signage) of the Act the Labor and Industrial Division will do an onsite inspection of the day labor agency within 3 days of receiving the complaint to verify non-compliance.
4. Upon receiving a complaint under any other provision of the Act, the Labor and Industrial Division (LID) will notify the affected employer of the day laborer claim filed against him/her and allow ten (10) business days for him/her to file a written response. If the day labor service agency does not respond a finding will be made in favor of the complainant. If the day labor service agency disputes the claim, his/her written response will be given to the day laborer who will be allowed ten (10) business days in which to rebut the claim in writing.
5. The labor law administrator (LLA) may schedule an administrative hearing when, in their judgment; it would facilitate resolution of the complaint. The conduct of the hearing is not governed by the Administrative Procedures Act, but rather by procedures established by the LID. (50-1-2).
6. The LLA(s) may issue a Subpoena Duces Tecum to compel the production of records they believe are necessary for the resolution of the complaint.
7. The LLA(s) will issue a written decision whenever they have sufficient evidence upon which to base their determination or within sixty (60) days, whichever is sooner.
8. The LLA(s) may accept a notarized acknowledgment of indebtedness from the day labor service agency if they believe it is the best way to resolve the complaint.

9. The LLA(s) may file a proof of claim on behalf of day laborers in any U.S. bankruptcy court when a day laborer files a wage claim, when in the LLA(s) judgment it is appropriate for the resolution of the claim.
10. A person who violates the provisions of the Day Laborer Act: on a first offense, is guilty of a misdemeanor and upon conviction shall be sentenced pursuant to Section 31-19-1 NMSA 1978; and for a second and subsequent offense, is guilty of a misdemeanor and shall be sentenced pursuant to Section 31-19-1 NMSA 1978 and shall be fined no less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000) for each offense for which the person is convicted, which fine shall not be suspended, deferred or taken under advisement. In addition to any other fees or fines that may be imposed on an offender convicted pursuant to this section, the court may order the offender to pay restitution pursuant to Section 31-17-1 NMSA 1978. Each occurrence of a violation for which a person is convicted is a separate offense. Multiple violations arising from transactions with the same person or multiple violations arising from transactions with different people shall be considered separate occurrences.
11. It is the duty of the Director of the Labor and Industrial Division of the Labor Department to report to the District Attorney of the district in which such violations occur, any violation of labor and industrial laws of New Mexico, and it is the duty of the District Attorneys of the several districts, upon the complaint of the Director, to prosecute all violations of law which may be reported to the District Attorney by the Director pursuant to 50-15-7 NMSA 1978.

Appendix F
Day Wage Labor Claim Form

New Mexico Department of Workforce Solutions

Labor Relations Division
625 Silver Ave. SW, Suite 410

FOR OFFICE USE ONLY

CASE #: _____

Albuquerque, NM 87102
Phone (505) 841-4400

COUNTY: _____

STATEMENT OF DAY LABORER WAGE CLAIM

INSTRUCTIONS:

1. Please print clearly in black ink.
2. Please notify us immediately if you change your address, phone number, or contact person.

YOUR INFORMATION
INFORMATION

CONTACT

(complete this section if you do not currently have a permanent address)

Name: _____

Name: _____

SSN # (optional): _____

Address: _____

Address: _____

Phone Number: _____

City: _____

Address: _____

State & Zip Code: _____

City: _____

State & Zip

Code: _____

Type of Work Done: _____

EMPLOYER INFORMATION

Name: _____

Address: _____

City: _____

State & Zip Code:

Telephone Number: _____

Name of Person in Charge: _____ Date Hired: _____

COMPLAINT INFORMATION

DESCRIBE COMPLAINT:

TYPE OF COMPLAINT (please check):

- Pay stub issue (no statement given or deductions not itemized)
- Check cashing issue (charged more than \$2.00 by agency)
- Restricted right to accept permanent employment (applicable only to day laborer agencies)
- Wage issue

For Wage Issues:

Type of Violation Claimed (please check)

- Not paid state minimum wage
- Not paid state minimum wage after deductions (except those required by federal or state law)
- Not paid for all hours worked
- Not given option to be paid with check or other payment instrument that is payable at a bank without a fee

If deductions were made what were they for? _____ Amount: \$_____

Pay period in which deductions were made: _____

Approximate dates and hours for which wages have not been paid:

Rate of pay: \$_____ per hour, day, week **(Circle One)**

Total amount owed: \$ _____

Describe situation if you were not given the option to be paid with a check:

In signing this form, I hereby certify the following:

That this is a true statement of violations of the Day Laborer Act to the best of my knowledge and belief.

DATE: _____ SIGNED: _____

NOTARY PUBLIC

STATE OF NEW MEXICO)

COUNTY OF _____)

On the _____ day of _____, 20____ before me personally appeared _____ known to me (or proven to be such person) to be the person whose name is subscribed to this writing and acknowledged that he/she executed the same for the purpose herein contained as his/her free act and deed.

MY COMMISSION EXPIRES: _____

Notary Bond filed with the Secretary of State

(NOTARY PUBLIC)

Appendix G Wage Claim Form

**NEW MEXICO DEPARTMENT OF
WORKFORCE SOLUTIONS**

Labor Relations Division
121 Tijeras Ave. NE Ste. 3000

Albuquerque, NM 87102

Phone (505) 841-4400 Fax (505) 841-4424

FOR OFFICE USE ONLY

CASE NUMBER:

COUNTY:

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**

PLEASE NOTE THE FOLLOWING:

This claim form will be returned to you if it is incomplete or unreadable. This division has jurisdiction over **wage issues only**. We cannot assist you in obtaining payment for time not worked (**holiday pay, vacation, PTO severance pay, bonuses etc.**) or for expenses, tax issues, or pension plan issues.

Name: _____
—

Address: (**Street & Number**) _____

City: _____

Your Telephone Number: _____

Name of Company:
(**Employer**) _____

Company Address: (**Street & Number**) _____

City: _____

Employer's Telephone Number: _____

Name of Person Supervisor: _____

Number of hours per week: _____

City where work was performed: _____

Was work under a union agreement? Yes ___ No ___

Approximate date's wages have not been paid: _____

Approximate hours worked not been paid: _____

Rate of pay: \$ _____ per hour, day, week **(Circle One)** Total amount claimed:
\$ _____

State & Zip Code Position/Title
held _____

State & Zip Code: Date
Hired: _____

Quit ___ Discharged ___ Date of Separation County _____

TYPE OF WAGES CLAIMED (Please check)

___ Commission(s), Task, Piecework, Flat Rate Schedule ___ Minimum wage (\$7.50)
___ Overtime wages (time and one-half) ___ Not paid for all hours
worked
___ Final paycheck not received or incorrect ___ Unauthorized Deductions

OTHER REMARKS:

STUDENTS ONLY: If not a high school graduate, please specify your age: . **If under the age of 18 Parent/Guardian must sign**

In signing this form, I hereby certify the following:

This is a true statement of wages due me to the best of my knowledge and belief.

Signed _____ **Date** _____

NOTARY PUBLIC
STATE OF NEW MEXICO COUNTY OF _____

I, _____, certify
that _____ Signed the foregoing document willingly and freely in
my presence and that the signature is genuinely his/hers

Subscribed and sworn to before me this _____ day of _____, 20_____

MY COMMISSION EXPIRES: _____

Notary Bond filed with Secretary of State

(Notary Public)

PUBLIC WORKS PROJECTS

CONSTRUCTION ONLY: Did you work on a construction project funded with state or local dollars?(school, courthouse, senior citizens center, etc.) Yes or No **(Circle One)**

If yes, give name and location of project:

Name of Primary/General

Contractor: _____

Wage Decision #: _____ Were wage rates posted? Yes or No **(Circle One)**

Job Title: _____

Duties:

Tools used:

Other employees who worked with you or had knowledge of your work:

Appendix H

Monitoring and Evaluation

The McKinley Worker Justice Coalition will monitor any policy activity on a local level that may emerge in the upcoming years. In thinking about policy implications in the future, the coalition anticipates a potential county or city ordinance for businesses to be required to attend training on wage theft and discrimination upon renewal or new licensure applications. If any local or state level policy may impact low wage workers, our partners within the coalition will be monitoring these activities.

Evaluation Questions:

How were affected populations involved in the HIA process?

How was the community experience utilized as evidence?

What new collaborations have developed as a result of the HIA process?

Are there any indicators that health outcomes have changed as a result of the education on wage theft and stronger enforcement of wage theft laws?

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