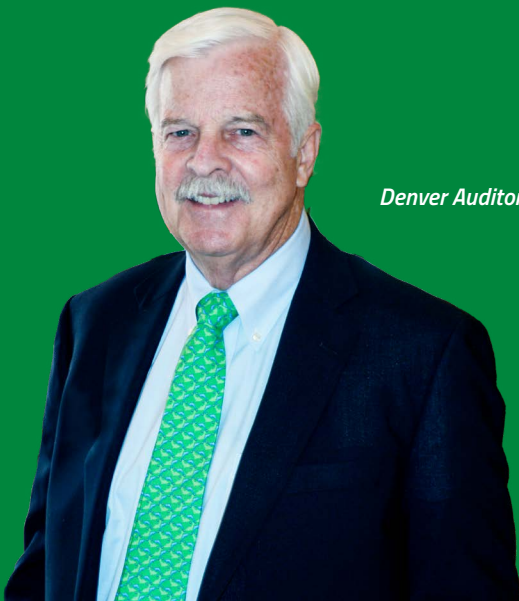


2022 Denver Labor Wages Report



Denver Auditor Timothy M. O'Brien, CPA

THIS DOCUMENT SERVES AS THE REQUIRED REPORTING
ON MINIMUM WAGE AND CIVIL WAGE THEFT WORK
IN DENVER LABOR, A DIVISION OF THE DENVER AUDITOR'S
OFFICE, FOR THE CALENDAR YEAR 2022.



What We Do



In 2022, Denver Labor broke records: Our team put more money than ever back into the hands of workers who were not paid according to the law. We passed the \$1 million mark for worker restitution in October and kept building on that to close the year with \$1.1 million returned. That is money collected from employers and returned to the workers who earned it, not including outstanding or ongoing investigations.

Auditor O’Brien, Denver Labor Executive Director Jeffrey Garcia, and our team of labor analysts work with both businesses and workers to resolve wage compliance issues in ways that work for everyone. We take an education-first approach to wage law compliance and enforcement.

In 2022, members of the team held weekly public trainings in both English and Spanish — and provided other materials online and in person in multiple languages. This allows for an ongoing, inclusive, and accessible dialogue about the city’s processes.

We audit 100% of certified payrolls and investigate 100% of wage complaints.

Our office enforces both minimum wage and prevailing wage laws. In 2022, the

TOTAL NUMBER OF
CASES FOR MINIMUM
WAGE AND PREVAILING
WAGE IN 2022

450

minimum wage rate in the City and County of Denver was \$15.87 per hour, with few exceptions, and it will increase to \$17.29 per hour in 2023.

In 2022, the Denver City Council voted to change the contractor minimum wage so it would increase annually at the same time as the citywide minimum wage. Employers must pay the greatest applicable wage rate for any work performed in the city or on city projects — therefore, the lower contractor minimum wage rate would not apply in Denver.

Wage Rates timeline

DENVER CITYWIDE
MINIMUM WAGE

- Jan. 1, 2022: \$15.87/hour.
- Jan. 1, 2023: \$17.29/hour.
- Jan. 1, 2024: \$17.29/hour plus Consumer Price Index.

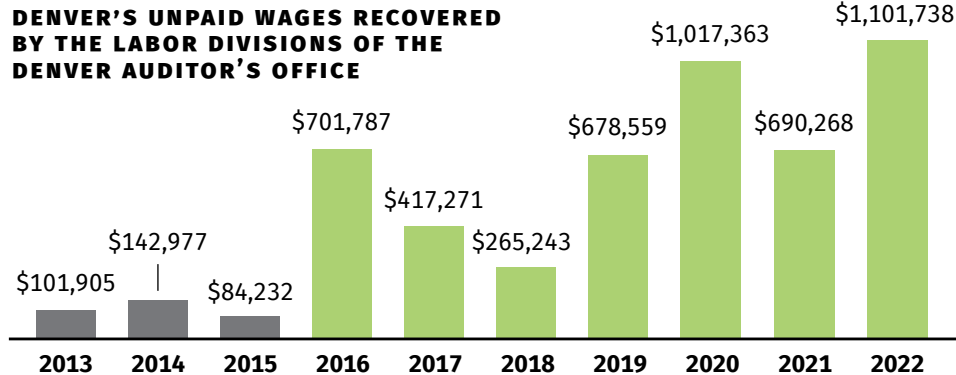
PREVAILING WAGE

Determined by the Denver Office of Human Resources. A series of wages based on job classification.

ARE YOU OWED MONEY?

If you were underpaid at work, our office might have a restitution check waiting for you. Check for your name on our website.

[DenverGov.org/DenverLabor](https://denvergov.org/denverlabor)





In November 2019, the Denver City Council created Section 58-16 of the Denver Revised Municipal Code, which sets the local minimum wage for Denver and prescribes the means for setting, enforcing, and complying with the new local minimum wage.

New in 2022, the ordinance allowed our team of analysts to proactively begin investigations of businesses considered to be high risk. We investigated employers in industries and locations such as those along Denver’s boundaries, national brand companies, restaurants, home care services, salons, and valet parking companies.

Common mistakes we identified included businesses claiming the tip credit when they should not, businesses thinking they are outside Denver’s boundary when they are not, and businesses paying a wage based on the employer’s office location instead of where the work was done.

Denver Labor’s goal is to protect Denver’s employers and employees and ensure everyone is paid according to the law.

Our office believes education for both employers and the public is the key to a successful citywide minimum wage ordinance. This year, we continued our live “Wages Wednesday” series on Facebook — in both English and Spanish.

We are also in the community to do presentations, raise awareness, and build relationships with community groups.

We offer several useful tools for both employers and employees on our website — including a regional address finder to help determine whether work performed was in the boundaries of the City and County of Denver, a minimum wage and tip calculator, an employer underpayment calculator, a tips tracker for the food and beverage industry, and complaint forms in English and in Spanish.

SOURCES OF MINIMUM WAGE INVESTIGATIONS

| | 2021 | 2022 |
|--------------------|------|------|
| Employees | 22 | 21 |
| Third Parties | 5 | 8 |
| Anonymous | 3 | 3 |
| Active Enforcement | 0 | 49 |
| TOTAL | 30 | 81 |

\$187,865.98

Largest dollar amount recovered in a single investigation for minimum wage.

720

Total number of employees who received restitution under the minimum wage ordinance.

404

Largest number of employees impacted by a single minimum wage investigation.

1

Number of repeat minimum wage offenders in 2021, none in 2022.

INVESTIGATED

81
new
investigations

21
closed
with restitution

17
closed with no
underpayment

RESTITUTION RECOVERED UNDER THE MINIMUM WAGE ORDINANCE

720
employees

220,402
total hours

\$442,865.89
in 2022 — \$146,682.56 in 2021

Here are some examples of how we worked with both employers and employees this year to recover unpaid wages in accordance with the minimum wage ordinance:

Minimum Wage Restitution Stories

Denver Labor Recovers Unpaid Wages for Afghan Refugee

Third parties can submit a wage complaint on behalf of an underpaid worker. In this restitution case, the African Community Center of Denver reached out to Denver Labor because an Afghan refugee the center had helped find employment to perform construction work was being paid below Denver's citywide minimum wage of \$15.87 per hour. When Denver Labor notified the local contractor about the wage investigation, the contractor eagerly worked with our office to resolve the underpayment and returned the unpaid wages in less than one week. The employer also raised the worker's hourly wage to \$16 per hour.

Janitorial Employees Receive More Than \$32,000 in Restitution

A janitorial contractor cleaning a college campus in Denver failed to pay employees Denver's citywide minimum wage for a year and a half. After an employee submitted a complaint to Denver Labor, the contractor increased all employees' hourly rates to at least meet the minimum wage and 25 janitors received \$32,089.27 in restitution.

Valet Parking Company Returns \$38,900 to Employees

After identifying valet parking as a high-risk industry for underpayments, Denver Labor conducted a routine compliance audit on a national valet parking company. The company's payroll records showed it was taking a tip credit for the tips received by its employees — but this is allowed only for businesses in the food and beverage industry to reduce their minimum wage obligation as long as their workers receive that amount in tips. When Denver Labor notified the business that it could not claim a tip credit, the company worked with our team to raise wages and resolve the underpayment. Forty-nine employees received \$38,895.97 in restitution.

PENALTIES ASSESSED

| Penalty | Description of penalty | Municipal code | 2021 total | 2022 total |
|----------------------------|--|----------------|------------|------------|
| Underpayment | First violation: up to \$50 per person per day of underpayment, at Denver Labor's discretion. | 58-17(b)(2) | \$37,150 | \$35,277 |
| | Second or third violation: mandatory \$10-\$75 per employee per day of underpayment AND mandatory fine between \$1,000-\$2,500. | | | |
| | Fourth or greater: mandatory \$50-\$100 per employee per day of underpayment AND mandatory fine between \$2,500-\$5,000. | | | |
| Failure to report | \$1,000 for failure to furnish certified payroll. | 58-17(b)(5) | \$2,000 | \$7,000 |
| False reporting | \$1,000 per instance of false reporting. | 58-17(b)(6) | | |
| Retaliation | \$5,000 per instance of retaliation | 58-17(b)(7) | | |
| Miscellaneous | \$1,000 per violation of requirement listed in ordinance but not included in fines enumerated in 58-17(b)(2) through 58-17(b)(9). | 58-17(b)(8) | | |
| Failure to pay restitution | \$5,000 for failure to pay final calculated restitution for every employee owed over \$50. | 58-17(b)(9) | \$145,000 | \$115,000 |
| Attorney fees | Attorney fees and costs. | 58-17(c) | | |
| Total Penalty Assessed | | | \$184,150 | \$157,277 |

PENALTIES FOR EMPLOYERS

| | Collected | Sent to Collections | Pending — Assessed but not collected or sent to collections |
|-----------------------|----------------------------|-----------------------------|---|
| 2021 Penalties | \$4,980 for one employer | | \$179,170 for two employers |
| 2022 Penalties | \$8,777 for four employers | \$143,500 for two employers | \$3,000 for three employers |

Thirty-Three Employees Receive \$24,900 in Restitution

The Denver Labor team received a minimum wage complaint through our website because a national beauty service retailer was paying its employees less than Denver's required minimum wage and was also claiming a tip credit. Our minimum wage team educated the employer about the tip credit, which Denver's citywide minimum wage ordinance allows only for the food and beverage industry. The company corrected the wages for all its employees, and our office recovered \$24,875.55 for 33 workers.

Marijuana Dispensary Updates Wages for 13 Employees

Denver Labor received a complaint about a local marijuana dispensary with multiple locations in the metro area. The dispensary was not adjusting wages to comply with Denver's citywide minimum wage when the work was performed at the Denver location. After educating the employer on how to track hours and update wages for those employees working within the City and County of Denver, our team recovered \$398.69 for 13 employees.

A National Retailer on Denver's Border Returns More Than \$25,000 to Employees

A national retailer on the Denver side of the border between Denver and Jefferson counties was paying the state minimum wage rate for two years instead of Denver's minimum wage. An employee saw a social post from our office and submitted a complaint to initiate an investigation. Upon receiving the notice of investigation and an information request from our office, the employer performed a self-audit and paid a restitution of \$25,268.47 for 45 employees. This case illustrates how some national companies with a human resources office outside Colorado may be unaware of local minimum wage laws and incidentally underpay their workers in the City and County of Denver.

CLOSED MINIMUM WAGE CASES BY INDUSTRY

| Industry (NAICS code) | Number of cases | Total restitution |
|--|-----------------|---------------------|
| Other Personal Services, including valet (8129) | 7 | \$520,897.67 |
| Support Activities for Air Transportation (4881) | 1 | \$187,865.98 |
| Personal Care Services, including salons (8121) | 8 | \$39,555.49 |
| Services to Buildings and Dwellings, including janitorial (5617) | 2 | \$32,089.27 |
| Full-Service Restaurants (7221) | 3 | \$28,782.02 |
| Book, Periodical, and Music Stores (4512) | 1 | \$25,268.47 |
| Limited-Service Eating Places (7222) | 5 | \$25,250.14 |
| Performing Arts Companies (7111) | 1 | \$8,978.03 |
| Other Miscellaneous Store Retailers, including dispensaries (4539) | 7 | \$8,186.39 |
| Sporting Goods, Hobby, and Musical Instrument Stores (4511) | 2 | \$7,405.14 |
| Specialized Design Services (5414) | 1 | \$3,223.79 |
| Data Processing, Hosting, and Related Services (5182) | 1 | \$2,521.98 |
| Facilities Support Services (5612) | 1 | \$880.23 |
| Building Material and Supplies Dealers (4441) | 1 | \$650.88 |
| Automotive Equipment Rental and Leasing (5321) | 1 | \$198.63 |
| Home Health Care Services (6216) | 3 | \$124.80 |
| Building Finishing Contractor (2383) | 1 | \$35.25 |
| Other Textile Product Mills (3149) | 1 | |
| Limited-Service Eating Places (7223) | 1 | |
| Gasoline Stations (4471) | 1 | |
| Other General Merchandise Stores (4529) | 1 | |
| Clothing Stores (4481) | 1 | |
| Depository Credit Intermediation (5221) | 1 | |
| Total | 52 | \$891,914.16 |



Prevailing Wage

By revamping the city's prevailing wage ordinance in 2016, Auditor O'Brien changed the way Denver does business on all projects and changed how work is performed on city property. Now, his growing team works to bring all parties together to make Denver a good, efficient place to work. The Auditor's prevailing wage team works with both contractors and workers on all Denver projects to ensure compliance and payment according to the law.

We have enforced prevailing wage requirements in Denver since the 1950s. Contractors and subcontractors doing work at or in connection with the operation of any public building or doing public work on behalf of the City and County of Denver must pay their workers the prevailing wage.

Prevailing wage is required on contracts of \$2,000 or more for construction, improvement, repair, maintenance, demolition, or janitorial work. Through education, outreach, and investigation, our prevailing wage team works with both employers and employees. Our work helps support businesses in compliance with the law and we strive to put city funds into the hands of contractors and workers as quickly and efficiently as possible.

Wage reporting software, easy-to-use tutorial videos, and public question-and-answer sessions all help streamline the process. Our analysts work with employers to ensure employees are classified correctly, and we also work with employers to guide them through the reporting process.

We can accommodate training and event requests in English and Spanish, both virtually and in person.

Here are some examples of how we worked with both employers and employees this year to recover unpaid wages in accordance with the prevailing wage ordinance:

Prevailing Wage Restitution Stories

Denver Labor Recovers More Than \$207,000 for Waste Services Employees

Employees working on trash removal services and disposal-site contracts received \$207,428.94 in restitution. The prevailing wage team found the workers were classified correctly but the contractor failed to meet prevailing wage requirements by claiming fringe credit that had not been approved by our office. Fringes are guaranteed benefits that an employer provides for the employees' health and welfare, such as health insurance, paid time off, or a 401(k). For it to count toward their prevailing wage requirements, contractors must translate

these benefits into an hourly fringe credit, which must be approved by our prevailing wage analysts. Denver Labor worked cooperatively with the contractor to obtain accurate documentation, approve fringes retroactively, and calculate the restitution for 35 employees.

Apprentice Receives \$2,654 in Restitution for Prevailing Wage Work

Denver's prevailing wage ordinance requires all apprentices to be enrolled in an apprenticeship program registered with the U.S. Department of Labor's Bureau of Apprentice Training. A team member in our prevailing wage division found that a city contractor classified and paid an employee as an apprentice for three months before registering them in an approved apprenticeship program. Until the employee received the required apprentice certificate, the employee should have been classified and paid as a journey worker for all work performed on the prevailing wage project. After identifying the issue, Denver Labor helped recover \$2,653.68 in restitution for the employee.

The prevailing wage team prioritizes educating employers about the law and workers about their rights. Sometimes mistakes still happen and workers get paid less than what's required. Every dollar matters to Denver's workers and every case matters to Denver Labor.

Read dozens more restitution stories on our website.

\$658,861.84

Total amount of restitution recovered under the prevailing wage ordinance in 2022.

\$207,428.94

Largest dollar amount recovered in a single investigation for prevailing wage.

1,343

Total number of employees who received restitution under the prevailing wage ordinance.

43

Largest number of employees impacted by a single prevailing wage investigation.



Wage theft is the failure to pay workers the full wages to which they are legally entitled. On Jan. 9, 2023, the Denver City Council passed the Civil Wage Theft Ordinance.

- Every worker has the right to be paid the wages they've earned and are entitled to. These could include, for example, the minimum wage, overtime, paid sick time, money for all of the time a person spends working, and the wages a person is promised.
- Civil wage theft happens whenever somebody isn't paid the wages they're entitled to, as promised and required by law.
- Civil wage theft is one of the most common legal violations in the country. Researchers estimate that every year, it affects millions of people and costs tens of billions of dollars.

Employers must provide all workers with an Auditor-approved wage notice detailing the Denver's minimum wage, that wage theft is a crime, that workers are entitled to civil recovery of unpaid wages, and that complaints alleging wage theft may be submitted to the Auditor's Office.

Research conducted during the development of the ordinance shows employers may use any number of tactics to get out of paying employees, including the following:

- Maintaining insufficient funds in their bank account, so that employees cannot cash their paychecks when they try to do so.
- Claiming they cannot pay employees because their general contractors have not paid them.
- Paying daily, then paying weekly, then gradually failing to pay in full or in part.

- Promising to pay accumulated wages on the next project (called "kiting").
- Promising to pay on Fridays but disappearing before payment is due.
- Intentionally misclassifying workers as independent contractors to get out of payment.

Wage theft occurs when a worker is paid less than the full wages to which they are legally entitled. It includes:

- **Overtime violations** - failing to pay nonexempt employees less than time and a half for hours worked in excess of 40-hours per week.
- **Off-the-clock violations** - asking employees to work off the clock before or after their shifts.
- **Meal break violations** - denying workers the legal meal breaks.
- **Illegal deductions.**
- **Employee misclassification violations** - misclassifying employees as independent contractors to pay a wage lower than the minimum or to avoid paying overtime.

Often, employers contract with other employers to provide services. For example, a hotel might hire a cleaning company, which provides workers for janitorial services; or a general contractor on a construction site might hire other employers to provide labor for electric work, plumbing, drywall installation, painting, or something else.

"Up-the-chain accountability" means that any employer who ultimately benefits from a worker's labor may be required to

pay their wages. If the cleaning company hired by the hotel can't or won't pay workers what they're owed, then Denver Labor can collect from the hotel. Denver Labor will always try first to collect from somebody's direct employer.

In 2023, the Denver Labor team is working to build its team and start responding to civil wage theft complaints, in accordance with the ordinance and the newly finalized rules. Our rulemaking process included community groups and stakeholders from both labor and business organizations. We will report on this work in 2024.





Business Resources



Our team offers many types of resources to support Denver's businesses, including tools on our website, work site posters, pamphlets and educational materials, training opportunities, and one-on-one availability with our analysts.

We know underpayments are most commonly the result of honest mistakes, not intentional wrongdoing. As a result, we strive to prioritize education — and when we find businesses owe significant restitution, we work cooperatively to find solutions to help managers pay their employees while keeping their businesses going.

On our website, employers can find tools like a map of Denver where employers can see whether the citywide minimum wage applies to their employees, a restitution calculator spreadsheet, and prevailing wage rates for each job classification.

When we conduct minimum wage investigations, we:

- Receive a complaint or begin a proactive enforcement investigation.
- Assess the complaint to ensure it meets initial investigation requirements.
- Contact the employer to request employee, payroll, and compliance documentation.
- Evaluate the complaint to consider all information provided by any complainant and the employer.

- Determine underpayment and fines, and inform both parties of any restitution that might be required.
- Resolve the complaint.

Once the employer provides evidence of a completed restitution payment, the case is closed. If no restitution was required, the case will be closed. When there is not sufficient evidence, the case is referred to another agency for investigation or to an outside firm for collection of restitution.

Under the minimum wage ordinance, employers are required to keep payroll documentation for three years for all past and current workers. The documentation should include the number of hours worked, the hourly wage paid to each worker, any deductions made from worker wages including taxes, and the net amount of wages each worker receives.

Our office's active enforcement approach to launching a minimum wage investigation can include on-site visits to speak with at-risk workers. Criteria that could trigger active enforcement include:

- Prior violations by a business owner.

- A pattern of noncompliance within an industry.
- Credible information from a state or federal agency.
- Data indicating an employer is likely violating the minimum wage law.

Employers may reduce their minimum wage obligation up to \$3.02 per hour if they are in the food and beverage industry and their employees receive that amount in tips. Employers must keep documentation showing employees received at least that amount in tips to claim the full tip credit. Employers of unemancipated minors performing work as part of a certified youth employment program can pay those minors 15% less than the minimum wage.

Employers on prevailing wage projects in the City and County of Denver are required to submit their certified payrolls every two weeks in the LCPtracker system. Our analysts audit 100% of payrolls. Current wage determinations for all classifications are available on our website. We also offer tutorial videos and an LCPtracker setup form on our website to help contractors get started on each project.

We encourage any employer who is unsure about how to stay compliant with the law to let us know. Call or email our team, and our analysts are happy to help.



Denver Labor

DENVER LABOR

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