

Annual Wage Theft Report



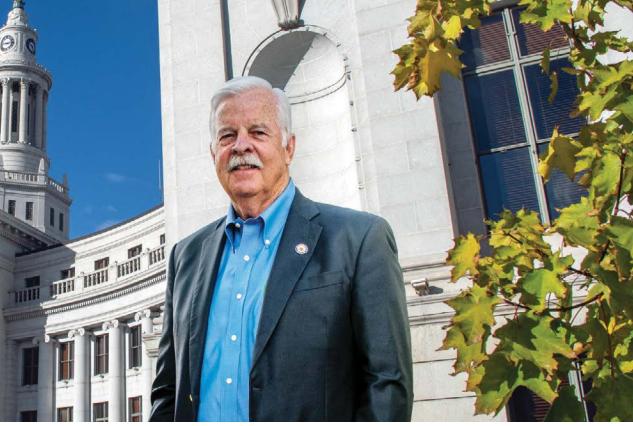
2023



March 29, 2024

Office of the Auditor, City and County of Denver

Timothy M. O'Brien, CPA, Denver Auditor



March 29, 2024

Denver's wage protections are some of the strongest in the United States. Through enforcement and education, we help workers of all income levels receive the wages they earned according to law. We also help ensure a level playing field for Denver's vibrant business community.

As required by city ordinance, we issue an annual wage report by the end of March overviewing our work, results, and impacts from the prior year. I am pleased to present the 2023 Annual Wage Theft Report.

In our 2023 reporting year, we set records, took on significant new work, and began protecting every single worker in the city and county. We are proud of the results we have achieved, and I look forward to our continued growth on behalf of the whole community.

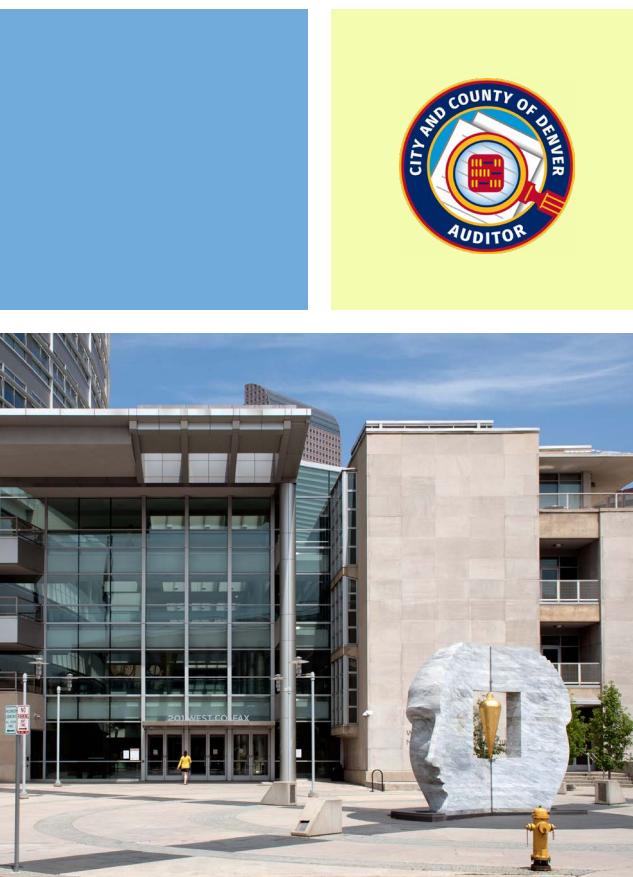
In this report, you will find information about the impacts and costs of wage theft in our communities, our work to educate and proactively investigate cases throughout the year, and opportunities for growth and improvement in the year ahead.

Our work is performed on behalf of everyone who cares about the city, including its residents, workers, businesses, and decision-makers. Our mission is to deliver independent, transparent, and professional oversight to safeguard the public's investment in the City and County of Denver.

In 2023 the Denver City Council supported the growth of Denver's wage protections by passing the civil wage theft ordinance. Thanks to this continued support, we are able to help more people than ever throughout every district in the city. I am grateful to city leaders and our many community partners for their continued support in this important work.

Follow us on social media, sign up for our monthly email newsletter, or reach out to us directly by emailing Auditor@DenverGov.org to share your thoughts, concerns, or questions. Read this report in Spanish on our website.

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Denver's Civil Wage Theft Ordinance

On Jan. 9, 2023, the Denver City Council passed the city's Civil Wage Theft Ordinance, empowering and obligating the Denver Auditor to find, fix, and deter wage theft in all its forms.¹ Through its Denver Labor division, the Auditor's Office now has significant authority to protect the rights and interests of Denver's well-meaning employers and all the city's workers and residents.

This report details Denver Labor's work in its 2023 reporting year, which ran from Nov. 1, 2022, through Oct. 31, 2023.

In many ways, this was Denver Labor's most successful year to date. The City and County of Denver made crucial investments in creating a level playing field and fair economy, as shown through Denver Labor's results. Denver Labor set new records for restitution, productivity, and community engagement. Our office recovered more than \$2 million for 3,570 workers. We audited about 96,000 payroll records, attended more than 45 community events, updated internal policies and procedures, and conducted extensive rulemaking to implement and clarify the Civil Wage Theft Ordinance.

At the same time, these successes highlight how much more work must be done. Research indicates that in the City and County of Denver alone, tens of thousands of workers are victims of wage theft every year. Every day, those who make Denver great are denied their basic rights to be paid the minimum wage, earn overtime, take paid rest breaks, accrue paid sick leave, and receive just compensation for honest work.

But just over one year since the Denver City Council passed the Civil Wage Theft Ordinance, the law is making a substantial difference in the lives of working people.



Wage theft and why it matters



WHEN AND HOW WAGE THEFT HAPPENS

Wage theft has a simple definition: It occurs whenever a worker is denied the wages or benefits to which they are legally entitled under local, state, or federal law. This includes contract law. Common examples of wage theft include:

- **Minimum wage violations:** When employers do not pay workers at least Denver's minimum wage for every hour worked (that is, \$15.87 per hour in 2022, \$17.29 per hour in 2023, and \$18.29 per hour as of Jan. 1st, 2024).
- **Overtime violations:** When employees are not paid at least one and a half times their regular rate of pay for time worked beyond 12 hours in a day or 40 hours in a workweek.
- **Prevailing wage violations:** When employers working on publicly funded construction projects or service contracts do not pay the required prevailing wages.
- **Paid sick and safe leave violations:** When employers do not allow employees to earn at least 1 hour of paid sick and safe leave for every 30 hours of work, or when they refuse to allow employees to use accrued paid leave as required by law.
- **Rest break violations:** When employees do not receive at least a 10-minute rest break for every four hours of work or extra compensation in place of a break.

*Civil wage theft
includes any denial
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Denver Labor enforces these rights and more. In addition, Denver Labor protects workers from retaliation when they ask about, discuss, or otherwise assert their wage-based rights.²

BY THE NUMBERS

In 2017, the Economic Policy Institute analyzed minimum wage violations in the 10 most populous states. The policy institute found that every year in these states:

2.4 million
workers suffer
minimum wage
violations

*This wage theft
costs these workers
more than*
\$8 billion

*The average
affected worker
loses out on about*
\$3,300

THE PERSONAL AND SOCIETAL COSTS OF WAGE THEFT

Wage theft is pervasive and has significant effects. Its most frequent victims are the working poor, who both need money the most and are least able to enforce their rights.³ Across America, wage theft affects millions of workers, reduces personal incomes by thousands per year, and collectively costs low-wage workers billions in unpaid earnings.⁴

In total, researchers estimate minimum wage violations cost working people around \$15 billion annually — exceeding the combined cost of all other property crimes (like burglary, larceny, and car theft).⁵ Crucially, however, minimum wage violations are only one kind of wage theft. That \$15 billion figure does not account for violations of laws guaranteeing workers overtime, paid sick leave, paid rest breaks, and more.

While wage theft can affect anybody, it is not a crime that affects all people the same. Instead, certain kinds of people are especially vulnerable. Nonunion workers, people of color, women, younger workers, those with limited formal education, and workers with an irregular immigration status are more susceptible to abuse than others and far more likely to have their wages stolen.⁶

These facts hold true in Colorado. The Colorado Fiscal Institute estimates that every year, about 440,000 workers lose more than \$728 million to wage theft. Employers are significantly more likely to violate the basic wage rights of women and Latino workers.⁷ In addition, these acts cost our state more than \$45 million in lost tax revenue.

But wage theft is about much more than economic loss. In disproportionately affecting the most vulnerable members of society, it reinforces centuries-old hierarchies based on race, gender, immigration status, and background. In artificially lowering taxable income, wage theft starves key social safety net programs — including unemployment, Medicare, and Social Security — of crucial funding. Experts estimate that in Colorado alone, wage theft results in lost contributions of more than \$1 million to the state's unemployment fund each year.⁸

Finally, in robbing the working poor of their much-needed money, wage theft drives its victims to hardship and despair.

When people who live paycheck to paycheck are denied their earned wages, they face unfair choices. Too often, workers must decide whether to pay their rent or purchase food, prioritize their heating or water bills, or skip going to the doctor when they are sick. It is no surprise that low-income victims of wage theft often describe powerful feelings of anger, depression, and hopelessness when their rights are violated.⁹

In short, wage theft is a social problem: It is both a cause and an effect of economic insecurity. People

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with low incomes are significantly more likely to have their wages stolen, and those acts themselves perpetuate the cycle of poverty. Because wage theft is so widespread, its harms reverberate beyond the individuals who experience it. It deprives families, neighborhoods, and communities of a stunning amount of money.

Beyond forcing people into economic insecurity, wage theft affects other aspects of their lives. Poverty has long been connected with a wide range of evils, including shorter lifespans, health problems, increased rates of eviction, and dangerous neighborhoods.¹⁰ Recognizing the link between wage theft and the ills of poverty, public health experts argue wage theft is itself a threat to public health.¹¹



Denver Labor's work in 2023

DENVER LABOR'S MISSION AND STRUCTURE

Denver Labor's mission is to protect Denver's workers and employers and ensure everyone is paid according to the law. The division is responsible for enforcing three city laws:

- The Minimum Wage Ordinance.
- The Civil Wage Theft Ordinance.
- The Prevailing Wage Ordinance.

Civil wage theft itself includes any denial of lawfully earned wages. All three ordinances could apply to an individual case, and employers are expected to pay the highest applicable wage rates.

Denver Labor has three work groups: Two primarily enforce the Prevailing Wage Ordinance, while the third enforces Denver's Minimum Wage and Civil Wage Theft ordinances. In addition, Denver Labor employs a policy analyst and contract administrator. It is led by a director and executive director.



IMPLEMENTING THE CIVIL WAGE THEFT ORDINANCE

Denver Labor's most important task in 2023 was to implement the new Civil Wage Theft Ordinance consistent with best practices, existing law, and the Denver City Council's intent.

To accomplish this goal, the division and the Auditor's Office's communications team collaborated to:

- **Attend more than 45 community events to educate business owners, industry groups, labor unions, and community members about their rights and responsibilities under Denver law.** These events included presentations to community organizations and staffing booths at citywide events.
- **Conduct extensive rulemaking to explain and clarify Denver Labor's interpretation of the Civil Wage Theft Ordinance.** Our office engaged with more than 40 stakeholders representing both employers and workers; solicited, received, and

reviewed comments on proposed rules; and released the final rules on March 13, 2023.

- **Conduct extensive rulemaking to create clear and detailed Rules of Procedure for Hearings and Appeals.** Our office again engaged with a large group of stakeholders and solicited and reviewed comments on proposed rules. Denver Labor released final rules on June 22, 2023.
- **Hire new staff to meet our growing needs.** In total, Denver Labor experienced a net gain of seven and a half full-time employees, while our office's communications team hired one additional full-time employee dedicated to community engagement.

- **Release hundreds of media pieces to educate workers and employers.** These engagements included "Ask the Auditor" segments on Denver8 TV, Wages Wednesday presentations on

Facebook Live, restitution stories on our public website, interviews with the news media, direct engagement on social media platforms, and monthly email newsletters to around 30,000 individuals.

- **Update internal policies to reflect our new authority.** These cover how we:
 - Investigate all forms of wage theft.
 - Apply enhanced penalties of up to \$25,000 per violation.
 - Impose 12% annual interest on unpaid wages.
 - Collect up to 300% of unpaid wages as damages, which are used to compensate workers.

We will continue this work in 2024 to ensure all who work in the City and County of Denver, including both employers and employees, understand and enjoy the protections of the law.

UP-THE-CHAIN ACCOUNTABILITY

The civil wage theft ordinance established up-the-chain accountability for wage violations for all employers who benefit, directly or indirectly, from a worker's labor. This allows Denver Labor to collect unpaid wages from businesses that don't directly employ a person, but benefit from their work. For example, a general contractor on a construction site whose subcontractor commits wage theft.

This policy makes it much easier for workers to receive the wages they've earned. For example, a construction subcontractor named Tri-M committed wage theft against seven workers. After their paychecks bounced, the employer disappeared. Denver Labor was able to collect \$5,722.82 in 2023 from the general contractor, which wouldn't have been possible without up-the-chain accountability.



COMMUNITY-BASED, EDUCATION-FIRST ENFORCEMENT

Denver's workplace laws are based around a simple ideal: honest labor deserves fair pay.

At the same time, wage theft is a tenacious, persistent social problem. To realize the promise of Denver's laws, city government must be equally tenacious and persistent in finding and addressing violations to workplace rights.

To fulfill its mission, Denver Labor adopts a community-based, education-first approach. The division embraces the fact that wage theft is a crime that harms all of us — especially the most vulnerable workers in society. Despite the legal protections and guarantees in wage and hour laws, too many people who suffer violations of their basic workplace rights have no real ability to enforce those rights.

Because of this, it is unreasonable to expect that individual workers will file complaints or lawsuits in large numbers. Many cannot obtain lawyers, do not know where to go for help, fear retaliation, or do not believe taking action will do any good.¹² Government agencies must fill in the gap, both to find instances of wage theft and prevent them from ever occurring in the first place.

To do so, Denver Labor relies on community partnerships, cutting-edge research, and cross-agency partnerships. We emphasize strategic enforcement, accept third-party and anonymous complaints, and understand that it is unreasonable to solely depend on individual workers to file complaints.

In 2023, our approach to enforcement included:

- Proactively investigating high-risk industries and workplaces, including nail salons, home health care operations, construction sites, and staffing agencies.
- Conducting employer-wide investigations.

Strategic enforcement

Strategic enforcement rejects a passive, complaint-based approach to civil rights enforcement. Instead, Denver Labor works to shift entire industries by proactively focusing on high-risk sectors and cost-effectively bringing justice to workers rather than waiting for or relying on them to step forward. Our enforcement approach is designed to use resources in the most efficient way possible and to create ripple effects that will broadly influence employers to follow the law.

- Working closely with community organizations, including nonprofits, labor unions, registered neighborhood organizations, and trade and industry groups.
- Collaborating with other government offices to share information and conduct strategic enforcement.
- Accepting complaints from third parties and anonymous individuals.
- Publicizing key determinations and naming bad actors.

- Attending dozens of events each year to engage with the community.

These efforts make a difference. Through the division's community engagement, we learned about violations and connected with workers who would otherwise not have filed a complaint with us. As a result, our 2023 reporting year saw significant increases in the number of workers we helped, the number of cases we closed after finding violations, and the amount of money we recovered for workers.





RESULTS IN 2023

Denver Labor's 2023 reporting year was the most impactful in the division's history. New staff and legal authority allowed the division to help more workers and recover more money than ever before.

	2022	2023
Restitution recovered	\$1,101,738	\$2,043,086
Workers helped	2,061	3,570
Cases closed	454	586
Penalties issued	\$155,277	\$31,232.58
Average restitution per worker	\$534.56	\$572.29
Payroll records audited as part of prevailing wage enforcement	85,000+	96,000+

Compared to our 2022 reporting year, Denver Labor collected 85% more money in restitution, assisted over 1,500 more workers, and closed 29% more cases after finding unpaid wages. Because Denver Labor's 2023 reporting year ran from Nov. 1, 2022, through Oct. 31, 2023, these numbers do not reflect full implementation of the Civil Wage Theft Ordinance in its first year. The numbers also encompass several months during which Denver Labor's authority was limited to enforcing only the Minimum Wage and Prevailing Wage ordinances.

We attribute the increases in our impact to three reasons:

- The Civil Wage Theft Ordinance expanded the scope of Denver Labor's investigatory authority.*** Previously, the division enforced only Denver's minimum wage and prevailing wage laws. Beginning in January 2023, Denver Labor was empowered to investigate wage theft in all its forms and enforce all wage-based rights that arise from private contracts or local, state, and federal law.

- The Civil Wage Theft Ordinance created bold and effective new remedies to compensate workers for the harms of wage theft.*** Denver Labor is required to impose 12% annual interest in every case and imposes between 150% and 300% of unpaid wages as damages in nearly every case.

- The City and County of Denver continues to make meaningful investments in workers' rights enforcement.*** Denver Labor received significant additional funding to implement the Civil Wage Theft Ordinance, which the division used to hire seven and half additional full-time staff in 2023.

These numbers reflect the work of the entire division, including both the prevailing wage and civil wage theft enforcement teams. Our prevailing wage teams closed 533 cases with restitution, collecting about \$621,535 for 1,707 workers; the civil wage theft team collected about \$1,421,550 for 1,863 people.



OPPORTUNITIES FOR GROWTH AND IMPROVEMENT

Through our work in 2023, we identified areas to improve the impact of our work in the community. Denver Labor's staff are dedicated, efficient, and effective. But the division's expanded authority also brought a nearly 300% increase in caseload for our civil wage theft team.

This created two areas of risk:

- The number of cases per staff member increased. And, in general, those cases were more complex and involved a broader range of alleged rights violations.
- Relatedly, Denver Labor's timeline for resolution — measured from the date we receive a complaint to the date we close a case — averaged about 101 days.

We worked hard to address these areas through hiring and training. We added a net of five staff to our civil wage theft enforcement team and conducted weekly trainings to educate staff on our new civil wage theft obligations and tools.

In 2024, we will continue to seek investments in Denver Labor's resources to address emerging risks and — above all — ensure we can thoroughly investigate cases and resolve them in a timely manner to serve both workers and well-meaning businesses.



MINIMUM WAGE AND WAGE THEFT CASE RESULTS

	2022	2023
Total new cases	81	234
Closed with restitution	21	26
Closed with no underpayment	17	51
Pending cases still open	43	157

THE BROADER CONTEXT

It is important to understand Denver Labor's 2023 results in context with the social impacts of economic insecurity and access to justice.

Most workers who come through our doors are working class, and many have low incomes. Low-wage workers frequently experience wage theft and often report that they find it frustrating, unfair, and demeaning.¹³ At the same time, they rarely take formal legal action to assert their rights: Many are afraid of retaliation, do not know how to bring a legal claim, or simply do not think it will do any good.¹⁴ These findings reflect a troubling fact: Many — if not, most — workers do not believe the government can or will protect their basic civil rights.

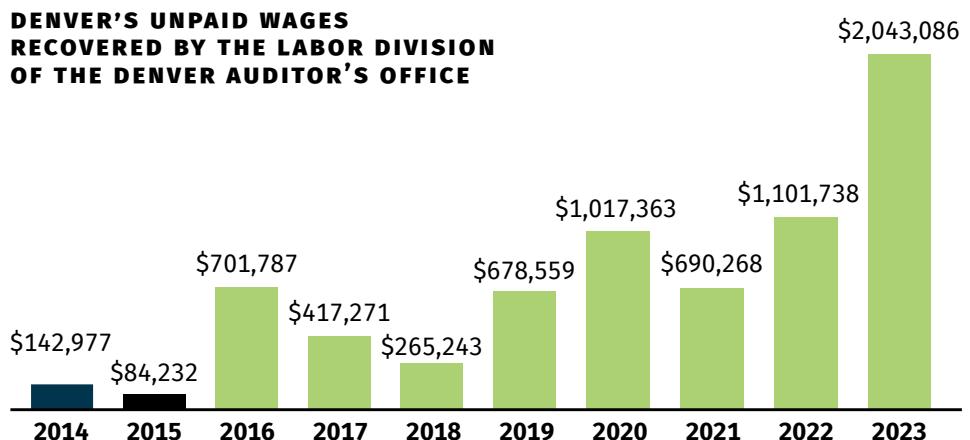
Denver Labor seeks to change this belief through our relentless dedication in seeking justice for workers who have been robbed of wages they are owed and in ensuring all businesses comply with the law.

More broadly, however, access to justice is at a crisis point in the United States and Colorado. Most people in America experience at least one civil legal problem each year. Often, these involve basic — and crucially important — needs like housing and employment.¹⁵ According to our state's Access to Justice Commission:

"On any given day, thousands of Coloradans face unresolved civil legal issues. These can have devastating personal consequences when daunting barriers prevent them from being effectively, efficiently, and equitably resolved. For particularly marginalized populations, these barriers are especially destabilizing and compounding."¹⁶

Denver Labor sees these dynamics play out every day. Workers regularly tell our investigators how their wage theft makes it significantly more difficult for them to live and thrive in Denver. This is especially troubling because, for decades, researchers have understood that the working poor are the least likely to bring legal claims.¹⁷ This is

DENVER'S UNPAID WAGES RECOVERED BY THE LABOR DIVISION OF THE DENVER AUDITOR'S OFFICE



Restitution for workers represents vindication and justice: confirmation for these workers that they and their rights matter.

not because they do not suffer rights violations. When it comes to wage theft, they are the most likely victims.

These problems are not new. But in 2023, the City and County of Denver recognized them and strove to create meaningful solutions, both by the City Council's passing of the Civil Wage Theft Ordinance and in the mayor's and City Council's investments in enforcement.

This has made a real difference both for Denver's workers and residents and for addressing access to justice. On average, Denver Labor collected about \$572 per worker in 2023. To some, this may not be a great deal of money. But to the workers our office serves, it is extremely important: It represents rent, groceries, utilities, car payments, medical bills, and other necessities of modern life. For many, it also represents vindication and justice; it is confirmation that they and their rights matter.

As important as these unpaid wages are to the people who earned them, the amounts that our office recovers are often too small to justify individual legal action. Attorneys are unlikely to bring a case involving only a few hundred dollars, and pro bono or low-cost civil legal services are extremely limited in Colorado.¹⁸ For many workers, filing a lawsuit themselves is out of the question. The legal process can be confusing and difficult to navigate, and many people lack faith that it will be able to help them.

Exacerbating these problems is the fact that many workers have given up their right to access the courts and join together in the pursuit of justice. Across the country, more than 60 million workers have signed mandatory arbitration agreements precluding them from filing a complaint in court — even small claims court — and prohibiting them from joining class action lawsuits.¹⁹

With the authority empowered by Denver's Civil Wage Theft Ordinance, Denver Labor can come to these workers' aid, support the interests of well-meaning employers, and protect all the city's residents and workers of all income levels to ensure they receive the wages they earned according to law.

LOOKING AHEAD

For many people the government is their last, best, and only hope for wage justice. Too many barriers prevent workers from successfully asserting their own rights, and it is unreasonable to expect that they will speak up in critical numbers. Today, it is more important than ever for Denver's city leaders and agencies to be proactive, creative, and closely partner with community organizations, industry representatives, and advocates in defense of those in our community who most need help.

The Denver Auditor's Office made significant progress in 2023, and we will continue to do so in 2024 to ensure Denver's laws mean what they say.

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