



**WAGE AND HOUR COLLECTS OVER \$1.4 BILLION IN BACK WAGES
FOR OVER 2 MILLION EMPLOYEES SINCE FISCAL YEAR 2001**

The Employment Standards Administration’s Wage and Hour Division (WHD) recovered more than \$185 million in back wages for over 228,000 employees in fiscal year 2008 to put the eight-year cumulative total of back wages collected by the agency at over \$1.4 billion. The agency concluded 28,242 compliance actions and assessed over \$9.9 million in civil money penalties.¹

WHD Enforcement Statistics – All Acts	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Back Wages Collected	\$131,954,657	\$175,640,492	\$212,537,554	\$196,664,146	\$166,005,014	\$171,955,533	\$220,613,703	\$185,287,827
Employees Receiving Back Wages	216,647	263,593	342,358	288,296	241,379	246,874	341,624	228,645
Complaints Registered	29,085	31,413	31,123	31,786	30,375	26,256	24,950	23,845
Enforcement Hours	998,937	1,070,600	1,032,879	1,000,739	969,776	951,971	899,406	882,419
Average Days to Resolve Complaint	139	129	108	92	85	93	97	97
Concluded Cases	38,051	40,264	39,425	37,842	34,858	31,987	30,467	28,242

The number of registered complaints declined for the fourth year, reflecting the agency’s emphasis on complaint intake strategies that screen incoming calls and correspondence to ensure that the issue is properly within WHD’s enforcement jurisdiction, allowing the agency to focus resources on targeted investigations. The percentage of WHD complaint investigations that found no violation of WHD laws remained low at 20 percent as a result of this strategy. The percentage of “no violation” cases concluded during the last ten years peaked at 41 percent in FY 1998.

¹ The concluded case numbers represent all investigations and conciliations for which the Department has completed work during the fiscal year. Cases are generally concluded when back wages are collected and distributed, civil money penalties are paid, no violations are disclosed, or no further action is appropriate.

OVER 197,000 EMPLOYEES RECEIVED FAIR LABOR STANDARDS ACT BACK WAGES

In fiscal year 2008, more than 197,000 employees received a total of \$140.2 million in minimum wage and overtime back wages as a result of Fair Labor Standards Act (FLSA) violations. WHD collected over \$123 million in back wages for FLSA overtime violations and more than \$16 million for FLSA minimum wage violations. Back wages for overtime violations represented approximately 88 percent of all FLSA back wages collected, and the number of employees receiving overtime back wages represented about 93 percent of all employees due FLSA back wages. WHD investigators examined FLSA compliance in over 24,500 of the 28,242 cases concluded during the fiscal year. They found FLSA violations in 19,000 of those cases: approximately 78 percent. Minimum wage and / or overtime violations were cited in 17,700 cases. The most frequently cited violation (in term of the number of employees affected) was the payment of straight-time pay for overtime-hours worked, which affected approximately 52,000 workers. Approximately 34,000 workers were not paid for all hours worked. WHD investigators identified approximately 1,600 workers who did not receive the minimum wage or the correct overtime pay because their employer misdesignated the employees as independent contractors. WHD also assessed employers \$3.1 million in FLSA civil money penalties.

	Violation Cases	Back Wages Collected	Percent of FLSA Back Wages	Employees Receiving Back Wages (duplicated)	Percent of Employees Receiving FLSA Back Wages
Minimum Wage	10,085	\$16,557,184	12%	42,199	21%
Overtime	10,105	\$123,686,617	88%	182,964	93%

Note: The number of employees receiving back wages sums to more than the 197,000 because one employee may be due back wages for both a minimum wage and an overtime violation. The number of violations cases sums to greater than 17,700 for the same reason.

VIOLATIONS OF THE PART 541 OVERTIME SECURITY REGULATIONS DECLINE

Of the \$140.2 million in FLSA back wages collected, nearly \$12.8 million was collected for approximately 9,600 employees as a result of violations of the Overtime Security regulations (29 C.F.R. Part 541). This compares to \$16 million collected for approximately 12,000 employees in fiscal year 2007. The violation cited in the greatest number of cases was one in which the employees did not meet the duties test required for exempt executive employees. Violations of the executive duties test were cited in 524 cases and resulted in back wages of \$3.4 million for approximately 2,600 employees. Although cited in fewer cases, back wages resulting from determinations that employees failed to meet the duties test for administratively exempt employees were nearly \$4 million and affected approximately 2,900 employees.

BACK WAGES COLLECTED FOR WORKERS IN LOW-WAGE INDUSTRIES CONTINUES TO INCREASE

In fiscal year 2008, the agency collected over \$57.5 million in back wages for approximately 77,000 workers in low-wage industries—an increase of over 77 percent of back wages collected during fiscal year 2001 for violations in the same group of low-wage industries. The number of employees receiving back wages in the nine tracked low-wage industries increased nearly 10 percent over those receiving back wages in FY 2001. WHD expended approximately 35 percent of its FY 2008 enforcement hours on cases in the nine low-wage industries listed below.

Low-Wage Industries Statistics	Cases	Back Wages	Employees
Agriculture	1,600	\$2,116,712	5,397
Day Care	746	\$1,058,579	3,070
Restaurants	3,942	\$18,917,992	23,433
Garment Manufacturing	385	\$2,596,986	2,278
Guard Services	633	\$13,595,350	13,138
Health Care	1,302	\$11,403,813	15,768
Hotels and Motels	875	\$2,445,094	5,034
Janitorial Services	507	\$3,469,956	5,417
Temporary Help	309	\$1,945,163	3,368
Total Low-Wage Industries	10,299	\$57,549,645	76,903

Low-Wage Industries Statistics	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Back Wages Collected	\$32,470,183	\$38,608,612	\$39,595,382	\$43,141,911	\$45,783,743	\$50,566,661	\$52,722,681	\$57,549,645
Employees Receiving Back Wages	69,469	86,432	80,772	84,897	96,511	86,780	86,560	76,903
Cases In Low-Wage Industries	14,267	14,016	12,962	12,625	12,468	11,172	11,382	10,299

LOW-WAGE WORKERS IN THE GULF COAST RECEIVE OVER \$11 MILLION IN BACK WAGES

Since the 2005 hurricanes, WHD has opened 1,102 hurricane-related cases and collected over \$11.3 million in back wages for 17,700 workers in concluded cases. The agency also has collected an additional \$2 million in back wages on cases not yet concluded. Since January 2006, WHD has detailed over 35 additional investigators and managers to the Gulf Coast offices

affected by Hurricanes Katrina and Rita. WHD hired four additional investigators and a manager in New Orleans, Louisiana, and two additional investigators in Gulfport, Mississippi. In addition, WHD transferred two team leader investigators to New Orleans for multi-year details and opened a satellite office space in Kenner, Louisiana, to provide greater access to the community. WHD also hired an additional investigator, a WHD technician, and a new manager in Mobile, Alabama.

In September 2008, Hurricane Ike came ashore along the east Texas Gulf Coast. In response, WHD began detailing additional staff to that section of the Gulf Coast region to investigate allegations of labor standards violations and to conduct directed investigations of government remediation and reconstruction projects. The agency also began hiring additional investigative staff, including additional Spanish-language investigators, to support the increased work associated with hurricane-related clean-up efforts.

WHD continued its work with a number of groups to provide outreach to workers in the Mississippi and Louisiana Gulf Coast region, including the Hispanic Apostolate of the Archdiocese of New Orleans, the Mexican Consulate, and the Mississippi Immigrants Rights Alliance. The WHD Houston District Office, in response to Hurricane Ike, has contacted its partners in the *Justice and Equality in the Workplace* partnership initiative to encourage workers to come forward with allegations of labor law violations.

This past January, WHD hosted a National Prevailing Wage Conference for the government contracting community, which included employers, contracting agencies, employee representatives, and advocacy organizations.

Included among the more significant cases concluded this fiscal year are:

- T.L. Wallace Construction Inc., of Columbus, Mississippi—Wallace was a subcontractor to Heritage Inc., which held the contract with the Federal Emergency Management Agency (FEMA) for the inspection and repair of trailers provided to people affected by Hurricane Katrina. The firm agreed to pay \$168,220 in back wages to 27 employees for violations of the McNamara O’Hara Service Contract Act (SCA) and the Contract Work Hours and Safety Standards Act (CWHSSA).
- LJC Defense Contracting Inc. in Dothan, Alabama—LJC entered into a contract with the U.S. Army Corps of Engineers to install blue tarps as temporary roofing protection on structures damaged by the hurricanes. The company paid \$202,508 in back wages after an investigation found that 828 current and former construction workers were not properly paid as required by the Davis Bacon Act (DBA) and the Contract Work Hours and Safety Standards Act (CWHSSA).
- ICF Emergency Management LLC, headquartered in Fairfax, Va., and Quadel Housing Services Inc., headquartered in Washington, D.C.—These private contractors were hired by the state of Louisiana to administer recovery and rebuilding “Road Home” grants to property owners. The contractors paid a total of \$225,275 in back wages to 399 current

and former housing advisors who were misclassified as exempt from the FLSA minimum wage and overtime requirements.

In June 2008, WHD filed a lawsuit against Houston-based Universal Project Management Inc. and Irving, Texas-based Fluor Enterprises Inc. for failing to pay overtime back wages amounting to more than \$1.8 million to 154 workers who were not properly paid in the wake of Hurricanes Katrina and Rita.

WHD CONTINUES STRONG CHILD LABOR ENFORCEMENT

Results for fiscal year 2008 show a total of 4,734 minors found illegally employed, an average of 4.2 minors illegally employed per investigation. The majority of child labor violations occurred when workers under the age of 16 worked too many hours, too late at night, or too early in the morning. In total, 2,785 minors were employed in violation of the child labor hours standards. Hazardous Occupation Order (HO) violations were found in 41 percent of the cases with child labor violations. Violations of HO No. 12 (paper balers) were the most common type of HO violation found, followed by violations of HO No. 11 (dough mixers). The high number of minors found illegally employed in violation of HO No. 12 is consistent with WHD's FY 2008 initiative to investigate establishments likely to employ minors in violation of this HO. WHD assessed over \$4.2 million in child labor civil money penalties in fiscal year 2008.

Child Labor Statistics	FY 2001	FY 2002	FY 2003	FY2004	FY 2005	FY 2006	FY 2007	FY 2008
Directed Child Labor Cases	2,021	2,105	2,031	2,155	1,406	952	1,285	1,269
Cases With Child Labor Violations	2,103	1,936	1,648	1,616	1,129	1,083	1,249	1,129
Minors Employed In Violation	9,918	9,690	7,228	5,840	3,703	3,723	4,672	4,734
Minors Per Case	4.7	5	4.4	3.6	3.3	3.4	3.7	4.2
Cases With HO Violations	876	747	654	459	396	361	410	466
Minors Employed In Violation of HOs	2,060	1,710	1,449	1,087	1,091	994	1,000	1,617

The percent of investigator enforcement time spent in examining child labor compliance increased from 6.7 percent of all enforcement time in fiscal year 2007 to 6.9 percent in fiscal year 2008. In addition to conducting directed child labor investigations of employers, WHD investigators examine employers' compliance with child labor laws in all on-site investigations. This past fiscal year, WHD investigators examined child labor compliance in over 17,360 investigations. Thirty-nine percent of the cases with child labor violations (438) were investigations in which the primary Act being investigated was an act other than child labor. In

most cases, the registration Act or primary Act was the FLSA or the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

Declines in the number of young workers illegally employed from FY 2001 may also be related to the continued overall decrease in the employment of workers 16 to 19 years of age. The Bureau of Labor Statistics Current Population Survey shows a drop in the employment-population ratio of 16- to 19-year-olds from 42.3 percent in 2001 to 34.8 percent in 2007. The annual employment level of 16- to 19-year-olds fell from approximately 6,740,000 in 2001 to 5,911,000 in 2006.

FAMILY AND MEDICAL LEAVE ACT ENFORCEMENT COMPLAINTS DECLINED

The number of Family and Medical Leave Act (FMLA) complaint cases concluded in fiscal year 2008 continued to decline. While the number of no violation cases concluded during the fiscal year remained constant, the number of violation cases declined by eight percent. Termination of employees seeking FMLA leave continues to be the primary reason that employees filed a complaint. The number of FMLA complaint cases has declined over the last five years. This corresponds to a similar decrease in the percentage of cases in which no violation was found. As with complaints in general, the trend reflects an emphasis on more efficient complaint intake strategies to ensure that registered complaints are those on which the agency can act.

During fiscal year 2008, WHD continued to promote FMLA compliance through its outreach program. WHD field offices participated in over 161 FMLA compliance assistance events in fiscal year 2008. Approximately 9 percent of all compliance assistance events undertaken by WHD are focused on increasing compliance with FMLA.

FMLA Enforcement Statistics	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Number of Complaint Cases	2,790	3,501	3,565	3,350	2,784	2,161	1,983	1,889
Percent of No-Violation Cases	48%	50%	54%	55%	51%	49%	45%	47%
Nature of Complaint								
Refusal to Grant FMLA Leave	629	741	815	697	647	522	459	416
Refusal to Restore to Equivalent Position	360	400	370	369	328	261	242	220
Termination	1,123	1,503	1,567	1,473	1,132	870	764	757

FMLA Enforcement Statistics	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Failure to Maintain Health Benefits	62	71	46	48	50	31	29	39
Discrimination	616	786	767	763	627	477	489	457
Status of Compliance Action								
No Violation Cases	1,343	1,766	1,911	1,848	1,429	1,069	896	894
Employer Not Covered	58	63	68	75	37	39	27	29
Employee Not Eligible	164	224	199	238	176	152	82	105
Complaint Not Valid	953	1,281	1,417	1,301	1,058	765	689	655
Other	168	198	227	234	158	113	98	105
Violation Cases	1,447	1,735	1,654	1,502	1,355	1,092	1,087	995
Number of Employees Affected	1,627	2,077	1,867	1,742	1,626	1,200	1,675	1,082
Amount of Back Wages	\$2,983,936	\$3,731,929	\$2,397,876	\$2,311,781	\$1,867,807	\$1,772,342	\$1,573,501	\$1,532,505

FISCAL YEAR 2009 INITIATIVES

WHD will maintain a presence in the Gulf Coast region, including the recently affected areas of the Texas Gulf Coast as clean-up and reconstruction activities continue. In addition to this effort, WHD regions have planned regional and local initiatives for fiscal year 2009. These initiatives continue to employ the strategies of compliance assistance, partnerships, and directed enforcement to increase compliance with the FLSA, including child labor, in low-wage industries. In FY 2009, WHD will continue to investigate employers who are most likely to employ young workers in violations of HO No. 12 (balers). These child labor initiatives are typically concentrated in shopping malls, retail stores, and theaters. WHD's fiscal year 2009 low-wage initiatives continue in those industries, such as restaurants, health care, hotels and motels, grocery stores, day care, and construction in which the agency is most likely to find minimum wage and overtime violations. WHD investigators will also continue to look for situations in which employers' misdesignation of employees as independent contractors results in FLSA violations. As it does each year, WHD will undertake regional and district enforcement initiatives in agriculture to increase compliance with the all labor standards statutes applicable to that industry and in reforestation to increase MSPA and SCA compliance. WHD will also continue to focus on increasing compliance among prior violators through both directed and complaint investigations and to effectively manage its complaint program to increase labor standards outcomes for the greatest number of workers.

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