



COMMUNITY
LEGAL SERVICES IN
EAST PALO ALTO

RAISING THE MINIMUM WAGE AND
FIGHTING WAGE THEFT FOR A HEALTHIER
SAN MATEO COUNTY

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San Mateo County exemplifies both the promise and tension in making a Silicon Valley economy work for all. While the growing tech industry has fostered a high-paid and well-treated workforce, the low- and middle-wage workers who support the tech industry—those who clean homes and offices, prepare food, drive shuttle buses, construct office buildings and housing, maintain lawns and gardens, and care for children and the elderly, among other jobs—have a different story to tell about the state of the local economy. Currently, 17 percent of jobs in the County pay less than \$15,000 per year, and the situation is likely to get worse, with over three quarters of the jobs added to the region by 2022 paying less than \$50,000.¹

Yet low pay is not the only challenge these low- and middle-wage workers face in San Mateo County. This report shows that many workers are simply never paid the wages they are owed. Problems such as wage theft detract from the overall quality of life for low-wage workers, as they harm the health and well-being of the workers themselves, their families, and entire communities. Enacting strong minimum and living wage policies, along with establishing robust enforcement mechanisms, are solid first steps to mitigating these problems.



The State of Low-Wage Work in San Mateo County

San Mateo County has experienced a polarization of the labor market, partially as a result of the growing tech industry. This “hourglass” economy creates jobs, but they are clustered either at the top or the bottom of the spectrum. For every new job in tech, 4.3 additional jobs are created, most of which are in low-wage service industries that support tech workers.² In the wake of the 2008 economic recession, the majority of total jobs created have been in low-wage service industries.³

Low-wage workers in San Mateo County work in a variety of settings. According to a sample of clients at Community Legal Services in East Palo Alto (CLSEPA), top industries include construction and maintenance, retail, restaurant and food service, janitorial, and domestic work. These findings reflect national statistics on low-wage workers (those making under \$15/hour), which show the lowest-paying sectors to be: the food service industry (88% earning under \$15/hour), personal care and service industries (78%), janitorial and maintenance (75%), and healthcare support operations (72%).⁴ These low-wage industries disproportionately employ women, people of color, and undocumented immigrants.⁵



Stolen Promises: Wage Theft in San Mateo County

Simply defined, wage theft occurs when workers are not paid the full wages that they are legally owed for the work they do.⁶ It can take many forms, including: the denial of minimum wage, overtime, meal periods, rest breaks, or sick leave; late final paychecks; mandatory off-the-clock work; unpaid reporting time; and unlawful deductions taken from paychecks. Recent cases from San Mateo County demonstrate the severity of these issues:

- One restaurant refused to pay its food service workers overtime despite its employees working fifty-five hours a week, a practice which had gone unchecked for over ten years.
- A maintenance company paid its workers by check for four days of work, and by cash for the other two days, to avoid the appearance of employees working over forty hours, which would require paying overtime.
- Domestic work and childcare agreements are often made informally and for a set rate per week or month, irrespective of the number of hours worked. These contracts often equal much less than minimum wage when divided by the actual time worked.⁷

“7,202 wage theft cases were filed by San Mateo County residents from 2005 to 2016, claiming \$14.1 million in unpaid wages and associated penalties.”

The scale of these problems in San Mateo County is immense. Out of all CLSEPA clients with employment issues, 44% had experienced a form of wage theft.⁸ According to the California Division of Labor Standards Enforcement (DLSE)—the state agency responsible for enforcement—7,202 wage theft cases were filed by San Mateo County residents from 2005 to 2016, claiming \$14.1 million in unpaid wages and associated penalties.⁹

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Since many violations go unreported, this likely captures only a small fraction of total violations. Based on national and statewide rates of wage theft, we estimate that between 10,800 and 23,700 low-wage workers in San Mateo County have experienced an instance of wage theft *within the past week*.¹⁰

A study of wage theft in three major US cities found that the average low-wage worker loses approximately \$2,634 per year—a full 15% of their income—because of wage theft.¹¹ Additionally, the Department of Labor estimates that minimum

wage violations alone reduce per-family payroll taxes by \$560-650 and income taxes by \$300, making it more difficult to fund public services. These violations also shift costs of supporting workers from employers to government, resulting in an additional \$15.6 million in student meal benefits and \$0.9 million SNAP benefits in California annually.¹²

Challenges to Enforcement

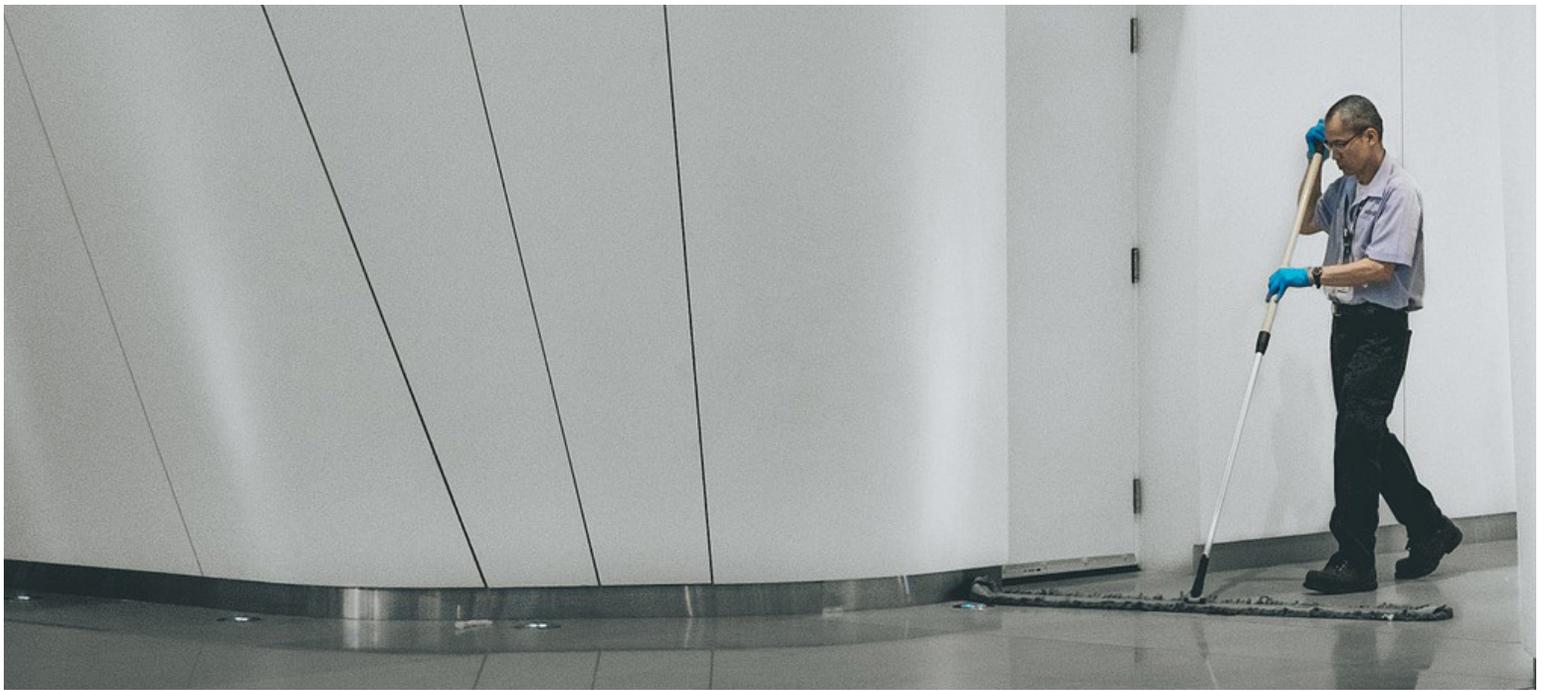
While there are many tools to fight wage theft, they all require resources. San Mateo County faces particular challenges in combating this problem due to a lack of resources at the state and local levels.

State Agencies Have Taken Admirable Steps to Curb Abuses But Have Limited Capacities

A worker’s first recourse when experiencing wage theft is to report it to the California Labor Commissioner (i.e., Division of Labor Standards Enforcement, or DLSE), which has offices throughout the state. The process is meant to be inclusive and worker-friendly: it does not require a lawyer’s help, there is language assistance available, and substantial fines are available to punish employers for violations. After filing the initial paperwork, the agency facilitates a settlement conference between the employer and employee; if a deal is not accepted, a formal hearing is set, after which the agency issues a final judgment.

Yet problems remain. One is timing: it currently takes 6-9 months from the initial filing to a final decision. This can be impractical for a worker who has not been paid for several weeks of work and has immediate obligations to pay rent and other expenses. Even when workers do receive a favorable judgment from the DLSE, it is often difficult to enforce (i.e., to actually collect the money that was awarded). Employers have been known to disappear, file for bankruptcy, and reopen their business under a different name, all to avoid paying the wages awarded to the worker. For cases filed at local DLSE offices, **less than half of all wages claimed (48%) were recovered**. Many workers win their cases but see no recovery at all. **For cases in which workers have progressed all the way through a DLSE hearing and received a favorable decision, workers only collected 22% of the wages owed**.¹³

Results are similar across the state, with 83% of workers with favorable DLSE judgments never seeing any payment at all.¹⁴ This is because employers often go to great lengths to avoid paying judgments, and the state does not have the resources to pursue them endlessly and force compliance with its rulings. As shown below, it is often difficult to find attorneys to pursue these enforcement cases because either the amount in question is too small to attract a private attorney or workers cannot find free local legal representation.



San Mateo County Has Fewer Legal Resources to Combat Wage Theft Than Nearby Counties

Legal services attorneys play a key role in communities struggling with wage theft. Attorneys can educate community members about their rights as employees and “best practices” to avoid problems before they occur, such as documenting their hours worked and asking for accurate pay stubs. They can also educate workers about their options for recovery, help fill out the required forms, and even represent them at DLSE hearings. Many workers, especially undocumented immigrant workers, do not have much interaction with government agencies, and either do not know about the Labor Commissioner process or are nervous that their immigration status precludes them from using it.¹⁵ Attorneys can assuage these fears and help channel victims into the appropriate channels.¹⁶

Unfortunately, San Mateo County is at a disadvantage in this regard due to the shortage of legal services attorneys working in this field. Community Legal Services in East Palo Alto began providing workers’ rights services in 2015 and has seen clients come from all over the County seeking assistance. The Stanford Community Law Clinic also takes a limited number of cases. Both organizations combined have less than two full-time attorneys assisting workers with wage theft, not nearly enough for a county with 91,000 low-wage workers. Aside from these, no other legal providers in the county provide worker-related services. Finally, while there is a strong union presence in the County, the vast majority of workers who experience wage theft are non-unionized. Compared to neighboring San Francisco, Alameda, and Santa Clara Counties, where there are multiple organizations and attorneys working on these issues, San Mateo County has significantly fewer available resources.

Health Impacts of Wage Theft in San Mateo County

Adequate and predictable wages are the centerpiece of healthy lives, families, and communities. The impacts of wage theft on health are well-documented and severe.¹⁷ Because wage theft disproportionately affects immigrants and people of color, who constitute a larger-than-average share of the workforce in Silicon Valley, it harms those who already suffer the harshest consequences of income inequality in the Bay Area.¹⁸



Photo credit: myfuture.com

Workers who experience wage theft often experience health problems. They have to compensate for the wages that are stolen from them by working longer and harder schedules, making it more difficult to spend less time with family, attend medical appointments, cook healthy meals, meet physical activity guidelines, and participate in their communities.¹⁹



Wage theft victims often experience increased stress and have reduced time for sleep, which can lead to diminished concentration and a heightened chance of workplace accidents.²⁰ A loss of income can also result in homelessness, given the current housing crisis in the county, or else force an increasing number of family members into one home. A diminished income, coupled with the cost of living in San Mateo County, can have devastating effects on a family's ability to buy healthy food, take care of their own health, ensure adequate and safe housing, and provide opportunities for their children.²¹

Ultimately, wage theft significantly worsens the already tenuous economic situation of low-wage workers in San Mateo County, which produces stark health inequities. For instance, residents live *19 years longer* in high-income Atherton than in East Palo Alto, where wage theft and economic insecurity are daily realities for immigrant workers.²² There is only one affordable housing unit for every four low-wage jobs in San Mateo County, and 83% of very low-income households pay more than they can afford on rent.²³ Though only several miles apart, wealthier areas of the County have an average income that is four times that of less fortunate cities. The ramifications of this inequality ripple through workers and affect families, children, school districts, and entire cities.²⁴

Policy Recommendations for San Mateo County

Policymakers in San Mateo County can take several steps to confront these serious problems.

1. Pass Strong County Living Wage and City Minimum Wage Ordinances

San Mateo County jurisdictions should follow the lead of surrounding cities and counties in the Bay Area that have passed ordinances to raise the minimum wage within their borders, or to mandate living wages for contractors. A higher minimum wage would alleviate many of the health concerns described above by allowing workers to live with more economic security.

San Francisco, Berkeley, Oakland, Emeryville, San Jose, Sunnyvale, and Palo Alto, among others, have already raised their minimum wage, and Santa Clara County has recently adopted one of the most comprehensive living wage ordinances in the country. Though facing similar or worse challenges related to the housing crisis, wage theft, and the cost of living, San Mateo County jurisdictions have not yet

taken action. They should follow the example of our neighbors and adopt strong legislation as soon as possible. While the coming statewide minimum wage increase is laudable, San Mateo County should follow a quicker timetable, since the severity of the crises here call for action well before 2022-23.

2. Establish Strong Enforcement Mechanisms to Ensure the Success of Any New Ordinance

“Wage theft shifts the costs of supporting workers from employers to government, resulting in an additional \$15.6 million in student meal benefits and \$0.9 million SNAP benefits paid in California annually.”

Raising a city’s minimum wage is a good first step, but it is not enough. Strong enforcement mechanisms ensure that workers can take advantage of the new law’s protections. These measures can be divided into elements that should be included in the ordinance itself, and those that require agency power to carry out.²⁵

First, an adequate minimum wage ordinance will include:

- **finances, penalties, and statutory damages**, both to deter potential violators and to punish violations that do occur. While state law allows for some penalties already, many local minimum wage laws include an additional flat penalty per violation per day.
- **penalties when an employer retaliates** against an employee for submitting a claim or speaking with someone about their rights. Fear of retaliation is one of the top reasons that employees—especially immigrant workers—do not report violations. Ensuring that employers face stiff penalties for interfering with employee rights can help to assuage workers’ fear.
- **the power to suspend or revoke the business license** of an employer that is found guilty of retaliation by a court or the Labor Commissioner. This policy has had a large deterrent effect in San Francisco.²⁶
- **funds dedicated to outreach and education** for both workers and employers. As mentioned above, San Mateo County already has a shortage of free legal services attorneys working on these issues. The county should empower and fund existing community based organizations with cultural and linguistic ties to different communities on the Peninsula to educate and inform workers of their rights.

- **the ability to place a lien**, or temporary hold, on the property of a violating employer until the judgment against them is paid. Wage liens are one of the most powerful tools to ensure that workers actually receive the funds that a judgment has promised them, since they prevent employers from ignoring judgments and hiding assets. A state law effective January 1, 2016, gives state agencies the power to impose liens for unpaid judgments; local ordinances would do well to also include this power for their local agencies.

Second, if resources permit, the county should **establish a local enforcement agency** to enforce the new law. As mentioned above, the state agency is under-equipped to secure fast, effective relief for workers. San Francisco’s Office of Labor Standards Enforcement has been a tremendous success story in this regard and has been able to collect wages at a higher rate than the state agency. Among other functions, that agency educates employers about the city’s minimum wage law, investigates and adjudicates complaints for unpaid wages, issues fines and penalties, contracts with community groups to conduct local outreach, and publicizes enforcement efforts to maximize the deterrent effect of enforcement. The agency is partially funded from the fees and penalties it collects.

An alternative to an independent agency for San Mateo County would be a **partnership with an agency in a neighboring city**. This would permit the sharing of expenses and still provide the opportunity for locally designed solutions apart from the DLSE. Another option would be a **city-state partnership** that outlines a division of responsibilities between the statewide DLSE and a smaller local agency. The city could delegate the most resource intensive tasks (e.g. adjudicating claims) to the state, while taking on the less intensive tasks itself. The two agencies could partner to address issues such as: tracking violators and identifying high-risk industries; initiating proactive workplace investigations; and establishing a permanent cross-agency wage theft working group.²⁷ These multifaceted solutions offer enhanced tools for the fight against wage theft, and ultimately, a fairer San Mateo County economy that works for all.

¹ Benner, Chris. Center for Regional Change, UC Davis, Jobs-Housing Fit Analysis Dataset (2013); California Employment Development Department, 2012-2022 Occupations With the Most Job Openings, Marin, San Francisco and San Mateo, *available at*: <http://www.labormarketinfo.edd.ca.gov/county/smateo.html>.

² Bay Area Council Economic Institute, December 2012, “Technology Works: High-Tech Employment and Wages in the United States,” p. 25, *available at*: <http://documents.bayareacouncil.org/TechReport.pdf>.

³ Annie Lowrey, *The New York Times*, “Recovery Has Created Far More Low-Wage Jobs Than Better Paid Ones,” April 27, 2014.

⁴ Tung, Lathrop, and Sonn, National Employment Law Project, “The Growing Movement for \$15,” November 2015, *available at*: <http://www.nelp.org/content/uploads/Growing-Movement-for-15-Dollars.pdf>, p. 7.

⁵ *Id.* at 1, 4, 9, 12.

⁶ UCLA and UC Berkeley Center for Labor Research and Education, *Enforcing City Minimum Wage Laws In California: Best Practices and City-State Partnerships*, 2015. *Available at*: <http://laborcenter.berkeley.edu/pdf/2015/minimum-wage-enforcement.pdf>.

⁷ Details of these cases have been changed to preserve anonymity. While these are paradigmatic examples of the variety of forms wage theft takes, they are also real cases that have come to the attention of local attorneys in the past six months.

⁸ Client data, Community Legal Services in East Palo Alto.

⁹ CLSEPA Public Records Request to DLSE, April 2016. Data measures cases with defendants’ address in San Mateo County.

¹⁰ Based on estimates of the number of low-wage workers (under \$15/hour) in San Mateo County from: U.S. Census Bureau, Longitudinal Employer-Household Dynamics “On The Map” & City of San Mateo, City Manager’s Office, Use of Minimum/Living/Prevailing Wages in San Mateo, November 16, 2014. Lower-range estimate calculated from U.S. Department of Labor, “The Social and Economic Effects of Wage Violations: Estimates for California and New York,” December 2014. High-range estimate calculated from Annette Bernhardt et al., “Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities,” 2008.

¹¹ See *supra* Bernhardt, p. 5.

¹² U.S. Department of Labor, “The Social and Economic Effects of Wage Violations: Estimates for California and New York,” December 2014, pp. 51, 57, 62.

¹³ National Employment Law Project Public Records Request to DLSE, 2012. The 2008-11 dataset averages cases filed with DLSE offices in San Francisco, San Jose, and Salinas—the offices most likely to process claims of San Mateo County residents.

¹⁴ Koonse, Dietz, and Bernhardt, “Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships,” UCLA/UC Berkeley Labor Center (October 2015).

¹⁵ Admirably, immigration status does not play any role in the wage claim process, and investigators do not inquire at all into a claimant’s status.

¹⁶ This is one reason to believe that the statistics reported above represent only a fraction of wage theft issues that arise every day. Workers often need assistance or encouragement to enter the recovery process.

¹⁷ See, for example, San Mateo City Manager’s Office, “Administrative Report to City Council: Use of Minimum/Living/Prevailing Wages in San Mateo,” November 16, 2015; Minkler, M., et al., “Wage Theft as a Neglected Public Health Problem: An Overview And Case Study from San Francisco’s Chinatown District” (2014), *American Journal of Public Health*; Human Impact Partners, “Health Impacts of the Proposed Los Angeles Wage Theft Ordinance” (2014); Siqueira, C. E. et al., “Effects of Social, Economic, and Labor Policies on Occupational Health Disparities. *American Journal Industrial Medicine*,” 57: 557–572 (2014).

¹⁸ See *supra*, Siqueira, C. E. et al. (2014).

¹⁹ See *supra*, Human Impact Partners; Salmon et al., “Leisure-time, Occupational, and Household Physical Activity Among Professional, Skilled, and Less-skilled Workers and Homemakers, *Prev. Med.* 30(3):191- 199 (2000); Adkins & Premeaux, “Spending Time: The Impact of Hours Worked on Work–Family Conflict, *J. Vocat. Behav.* 80(2): 380-389 (2012).

²⁰ Human Impact Partners, “Health Impacts of the Proposed Los Angeles Wage Theft Ordinance,” 2014.

²¹ Robert Wood Johnson Foundation. “Issue Brief #4: Income, Wealth and Health,” 2011.

²² Get Healthy San Mateo County, “Strategies for Building Healthy, Equitable Communities, 2015-2020” (2015).

²³ *Id.*

²⁴ *Id.*

²⁵ For more information on recommended enforcement mechanisms, see *supra*, Koonse, Dietz, and Bernhardt (2015).

²⁶ *Id.* at 5-6.

²⁷ *Id.* at 14-15.