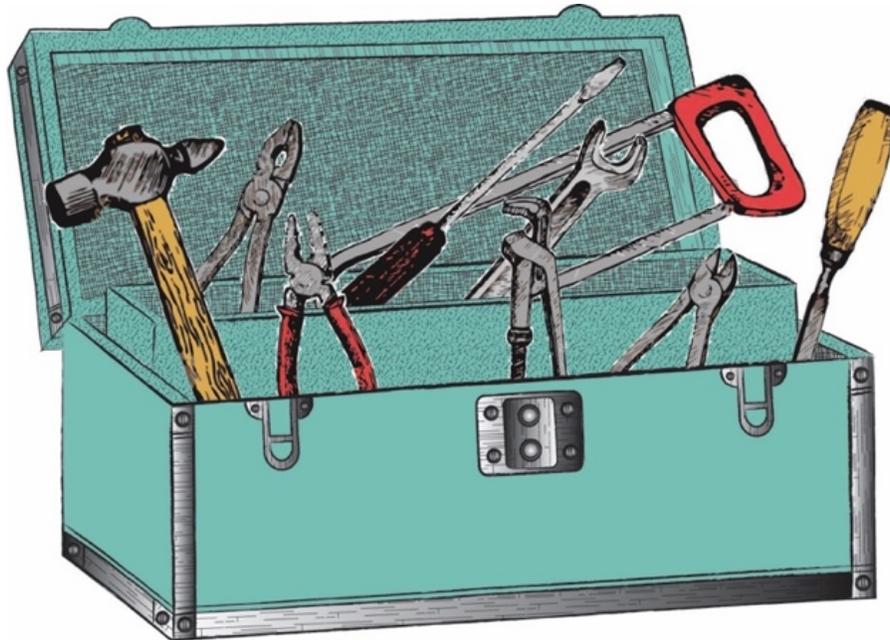


# The Labor Standards Enforcement Toolbox



## Tool 1: Complaints, Intake, and Triage

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Policy solutions that work for low-income people

## OVERVIEW

Enforcement agencies need to use their resources strategically to significantly improve compliance with laws. This begins by thoughtfully processing and triaging complaints.

## COMPLAINTS AND INTAKE

### *What*

After an agency receives a complaint, it gathers initial information from a complainant and/or complainant representative. This process is called “intake.”

### *Why*

The primary goal of intake is to collect detailed, accurate information to facilitate triage, investigation, and/or referral.

### *How*

Generally, the first step is a complainant filling out an intake form (online, by phone, or in person).

Because intake is crucial to complaint-based investigations, it should be sustainably and effectively staffed. Agencies’ intake models will vary based on needs and resources. Some agencies have one or more workers focused solely on intake. Others rotate intake duties among investigators (or a subset of investigators).<sup>1</sup> Some agencies strictly use intake to decide if there is a basis for investigation. Others go further by attempting to resolve the allegations before initiating formal complaints.<sup>2</sup>

Once the agency receives the complaint, a staff member responsible for intake has at least one conversation or interview with the complainant.<sup>3</sup> Once the intake is completed, it should be triaged.

# Intake Tips

## Throughout the Intake Process

- *Be clear about the agency's role, timelines, and enforcement process as well as what's expected of the complainant.*
- *Provide translation and interpretation services.*
- *Be explicit about retaliation policy and immigration status protections.*
- *Provide comprehensive workplace rights information and referrals to community-based organizations and other agencies.*
- *Allow third-party complaints.*
- *Do not put the burden on the complainant to know which law was allegedly violated or how much they are owed; that's the agency's job.*

## Complaint/Intake Forms

- *Use simple language.*
- *Do not require every question on the form be answered.*
- *Where information on the form is missing, obtain it in the intake interview.*
- *Include space on the form where the complainant can identify an organization with whom the agency can share information.*
- *Gather:*
  - *Employee(s) information.*
  - *Employer(s) information.*
  - *Working conditions.*
  - *Any additional evidence*
  - *Jurisdictional Information.*

## Intake Interview

- *Ask clear, open-ended questions.*
- *Follow up with specific questions to fill in gaps.*
- *Tailor questions to the industry.*
- *Ask the complainant about retaliation.*
- *Determine whether the complainant has additional records or witnesses.*

**Triage** is a system for sorting complaints into different treatment categories to help an agency efficiently manage them.

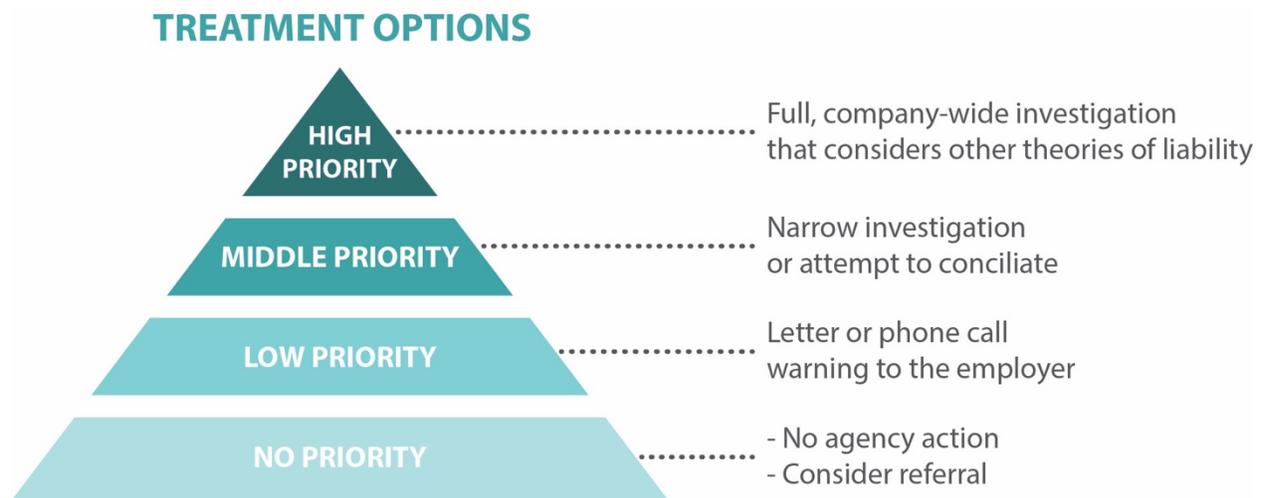
## **Why**

Virtually every labor standards enforcement agency includes intake in their investigative process. However, *triaging* intakes may be less familiar. Most agencies receive more complaints than they have the resources to process. Every complaint is consequential to the complainant, but the urgency and magnitude of each complainant's allegations can differ significantly.

Triaging intakes allows enforcement agencies to prioritize resources toward the most egregious, impactful, and/or high-risk complaints in a way that is transparent and consistent. Resources previously spent on low- or non-priority complaints can be used on proactive enforcement targeting the industries where violations are most prevalent. By doing this, agencies are engaging in a key aspect of strategic enforcement, creating a ripple effect that improves employers' behavior outside the investigation.<sup>4</sup>

## **How**

To develop a triage system, the agency must first create categories to prioritize complaints. Then the agency must determine how to treat each category.<sup>5, 6</sup>



When relevant, high-priority investigations should consider alternative theories of liability (e.g., joint employers, independent contractor misclassification, or integrated enterprise). Complaints are categorized as high priority when they meet all or most of the following factors:<sup>7</sup>

- *The complainant and/or workforce is low income or otherwise vulnerable;*<sup>8</sup>
- *More than one worker is affected;*<sup>9</sup>
- *The risk of retaliation is high or the complainant's allegations include retaliation;*<sup>10</sup>
- *The complaint falls within an industry or occupation that has been prioritized by the agency for action;*<sup>11</sup>
- *The employer is a repeat offender;*<sup>12</sup>
- *The complainant is still employed;*<sup>13</sup> and/or
- *The alleged violation is ongoing.*<sup>14</sup>

Once the agency finalizes its categories and how it will treat them, it should fully explain the triage system to complainants during intake as well as make the system available to the public.<sup>15</sup>

## EXAMPLES

The [Seattle Office of Labor Standards](#) and [West Virginia Division of Labor](#) use simple complaint forms to gather basic information before contacting the complainant for the intake interview.

The [New York City Office of Labor Policy and Standards](#) has a [general complaint form](#) as well as intake forms specific to the different laws it enforces. For example, it

provides a [separate intake form](#) for Paid Sick Leave complaints. New York City intake forms are available in eight languages, including [Spanish](#), [Chinese](#), and [Russian](#).

The **California Labor Commissioner's Office** has one complaint form to report [widespread](#) labor standards violations and another to make an [individual claim](#) for unpaid wages.

The **New Jersey Division of Wage & Hour Compliance's** [complaint form](#) includes language on undocumented workers' right to be paid for their work. It is also explicit that the agency does not share information with U.S. Citizenship and Immigration Services.

The **Colorado Division of Labor Standards and Statistics'** complaint form links to its [authorized representative](#) form. This allows complainants to designate a person or organization who can submit and receive information on their behalf.

The **Nevada Office of the Labor Commissioner** created [this video](#) to provide clear, straightforward instructions for filing a complaint.

## **Triage**

**California's** triage system considers urgency, need, and impact when prioritizing cases. Each intake is assigned a rank from 1 to 10 based on the number of affected employees, the type of allegations, and whether the workers are low wage. California assigns "super priority" to complaints when it can access engaged workers. For instance, super priority may be given when trusted community groups refer workers and/or can assist in setting up worker interviews. This access enables more effective investigations.

**Seattle's** triage system is a two-step process. First, it assesses allegations to determine whether the intake meets priorities. Seattle prioritizes low-wage workers, ongoing violations, retaliation, and repeat offenders. If the intake is *not* a priority, the complainant is referred to community partners, lawyers, and/or other enforcement agencies. If the intake *is* a priority, Seattle selects the right tool to address the allegations (based on their egregiousness).

**New York City's** triage system creates capacity for more proactive investigations. It focuses on two factors: 1) identifying which complaints are specific to the complaint and which might indicate company-wide problems; and 2) identifying cases where workers have been terminated in retaliation for exercising rights.

## ***Sample Procedures***

**Janice Fine** and **Tia Koonse** created a document with further recommendations on intake forms and procedures, as well as model intake questions, which is attached.

## **For additional information:**

CLASP: <https://www.clasp.org/issues/jobs-training-education/job-quality-and-worklife>

CIWO: <https://smlr.rutgers.edu/content/center-innovation-worker-organization-ciwo>

## **Endnotes**

<sup>1</sup> The time each investigator spends on intake before it rotates varies. Agencies have tried different strategies. For example, Seattle’s office of labor standards has experimented with rotating intake among investigators on a daily, weekly, and quarterly basis.

<sup>2</sup> Both strategies have proven successful. Each agency should assess its intake needs and resources as well as develop and implement an intake process based on that assessment. Then it should evaluate the effectiveness of the process. Keep in mind: adjusting and refining the intake process is a necessary feature in developing a successful system.

<sup>3</sup> Effective intake requires more than reviewing the complaint form. Intake interviews should be conducted for each complaint to ensure the most vulnerable complainants are able to access services. Additionally, intake staff should be trained to elicit key information in different ways and through different types of evidence.

<sup>4</sup> There are four primary components to strategic enforcement:

- **Industries:** *Target outreach and investigations to industries in which workers are most likely to experience—and least likely to report—labor standards violations;*
- **Workplaces:** *Identify and investigating high-impact cases and influencing broader industry practices to achieve industry-wide compliance;*
- **Tools:** *Increase the cost of noncompliance using every available enforcement tool, including licensing revocation and suspension, maximizing fines and penalties, strong settlement agreements, and bringing criminal charges for the most egregious violations; and*
- **Networks:** *Identify formal and informal networks in which employers are embedded (including supply chains) to hold parties further up the chain jointly liable for violations. This can alter the behavior of every employer in the chain, including those who hold the most power.*

<sup>5</sup> While there are valid concerns about the impact of triaging complaints on individual complainants, it's an important component of strategic enforcement. Research shows there is little overlap between industries with the highest complaint rates and those with the highest number of violations, suggesting workers most vulnerable to labor standards violations do not complain to an enforcement agency. (See Janice Fine & Jennifer Gordon "Strengthening Labor Standards Enforcement through Partnerships with Workers' Organizations" (2010) 38:4 Pol & Soc'y 552; and David Weil & Amanda Pyles, "Why Complain? Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace" (2005) Comp Lab L & Pol'y J 59.) Likewise, agencies will never have enough resources to achieve universal compliance in their jurisdictions through traditional enforcement mechanisms. By triaging intakes and using other strategic enforcement tools, agencies can use their limited resources to achieve compliance without investigating every employer in their jurisdictions. In doing so, agencies will have an impact in high-risk industries in which vulnerable workers face barriers that render them unlikely to make complaints.

<sup>6</sup> Some agencies may be statutorily mandated to investigate every complaint they receive. Still, they can triage investigations by conducting company-wide investigations for high-priority complaints and individual investigations or conciliations for middle-, low-, and no-priority complaints.

<sup>7</sup> Factors for middle-, low-, and no-priority categories vary. Generally, the less egregious or systemic the alleged violation/s, and the less vulnerable the impacted workforce, the less of a priority the complaint will be.

<sup>8</sup> This factor focuses the agency's limited resources on workers who have few or no alternatives to address labor violations and are most at risk of dire consequences.

<sup>9</sup> Agencies can make a greater impact with single investigations by prioritizing complaints that allege harm to multiple workers.

<sup>10</sup> Retaliation, or risk of retaliation, has a broader chilling effect on the workforce. Workers are less likely to ask about their rights, speak up when their rights are violated, and participate in enforcement actions. Prioritizing high-risk and retaliation investigations can reduce widespread harm as well as alleviate a culture of fear among workers.

<sup>11</sup> This and the following factor are key elements of strategic enforcement. (See Endnote 4.) The goal with this factor is to use evidence to prioritize complaint-based investigations involving industries or occupations in which workers are most likely to suffer labor standards violations but least likely to file a complaint. By prioritizing sectors in the agency's jurisdiction that are disproportionately responsible for degrading labor standards, the agency is more likely to create a ripple effect of employers that are not subject to an investigation complying voluntarily.

<sup>12</sup> Employers that continue to violate labor standards laws following investigations need to face increasingly stringent enforcement measures. By increasing the cost of noncompliance, the agency is addressing the economic rationale underlying repeat offenders' decisions. It also sends the message that the agency prioritizes and escalates enforcement actions against repeat violators. Ideally, the agency will have various enforcement tools ranging in gradations of severity, including licensing suspension and/or revocation, increased or tiered penalties and fines, strong settlement agreements, and criminal charges. (See Endnote 4.)

<sup>13</sup> This factor ensures the agency has an engaged worker to provide evidence about current workplace conditions.

<sup>14</sup> Prioritizing ongoing violations will help ensure the agency is addressing the worst offenders as well as save resources. Violations that occurred in the past can be more difficult to prove, especially where the employer's records are unreliable and there is high turnover in the workforce. Information about ongoing violations can be more easily obtained from interviews with current workers, and the evidence does not rely on workers' memories of past events.

<sup>15</sup> A system established in advance ensures complaints will be treated consistently. And by publishing the system and explaining it to complainants, the agency's decision-making is fully transparent.