

CLASP

Policy solutions that work for low-income people



RUTGERS
School of Management and Labor Relations

Center for Innovation in Worker Organization

Labor Standards Enforcement Webinar: Strategic Enforcement

12/2017

Participants in Today's Webinar

Cities/Counties (18)

- City of LA
- LA County
- New York City
- Spokane, WA
- San Diego, CA
- San Francisco, CA
- Pittsburgh, PA
- Plainfield, NJ
- Jersey City, NJ
- Montgomery County, MD
- Minneapolis, MD
- Seattle, WA
- City of Chicago
- Oakland, CA
- City of Tacoma
- Trenton, NJ
- East Orange, NJ
- Philadelphia, PA

States/Agencies (19)

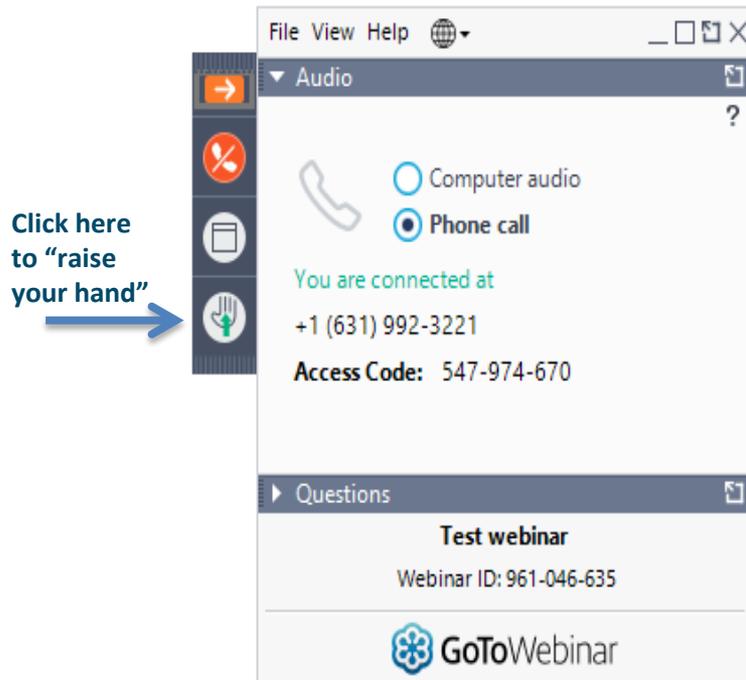
- Wyoming
- New York
- Maryland
- Washington
- Nevada
- New Hampshire
- California
- Connecticut
- Michigan
- Washington
- Alaska
- Massachusetts
- Colorado
- Tennessee
- Hawaii
- Minnesota
- Oregon
- North Carolina
- US DOL

Advocacy Groups, Funders, Research Orgs (23)

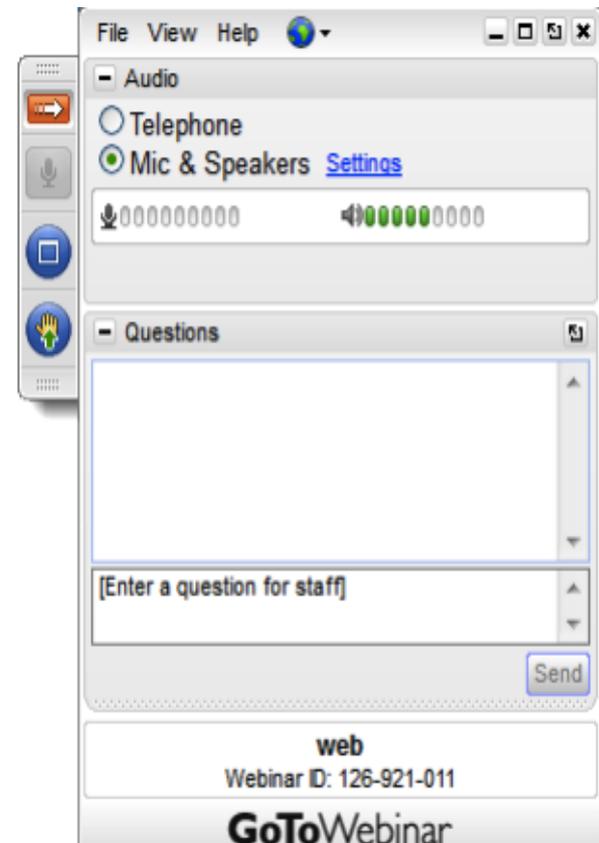
- EPI
- NELP
- CS Council
- NW Carpenters
- SEIU
- ROC-United
- NPWF
- Fast Food Justice
- Legal Aid at Work
- Women Employed
- FV@W
- Fair Work Center
- Family Forward
- AFL-CIO
- Arise Chicago
- UCLA
- Rutgers
- NILC
- CPI
- Public Welfare Foundation
- Florida Carpenters Regional Council
- The Partnership for Working Families
- Neighborhood Funders Group

Ask Us Questions!

Raise your hand to be unmuted and ask a question verbally...



...or type in your question





Speakers



RUTGERS
School of Management and Labor Relations
Center for Innovation in Worker Organization

David Weil, Dean and Professor, Heller School for Social Policy and Management, Brandeis University; former Wage and Hour Administrator, US Department of Labor

Donna Nass, Wage and Hour Investigator, Alaska Department of Labor and Workforce Development

Resa Spaziani, Field Supervisor for the Wage and Workplace Standards Department, Connecticut Department of Labor, Division of Wage and Workplace Standards

ReNika Moore, Labor Bureau Chief, Office of the New York State Attorney General

Janice Fine, Associate Professor, Rutgers School of Management and Labor Relations and Director of Research and Strategy, Center for Innovation in Worker Organization

Pronita Gupta, Director of Job Quality, CLASP

Laura Fortman, former deputy administrator of US Wage And Hour Division, US Department of Labor

STRATEGIC ENFORCEMENT: REFLECTING ON THE WHD EXPERIENCE

David Weil, Brandeis University

December 20, 2017

One year ago (more or less...)

Feds to ban firm that stiffed Senate cafeteria workers over \$1M in wages



By Theodore Schleifer, CNN

Updated 3:07 PM ET, Fri December 30, 2016



A view of a closed Senate cafeteria at the US Capitol on October 1, 2013 in Washington, DC.

MORE FROM CNN



5 things for December 15: Paul Ryan, tax overhaul, net neutrality



How Australia's PM went swimming 50 years ago and vanished...

JDRF
5 MILLION AMERICANS COULD HAVE T1D
BY 2050
Learn more

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WHD mission statement

Promote and **achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce**

-or-

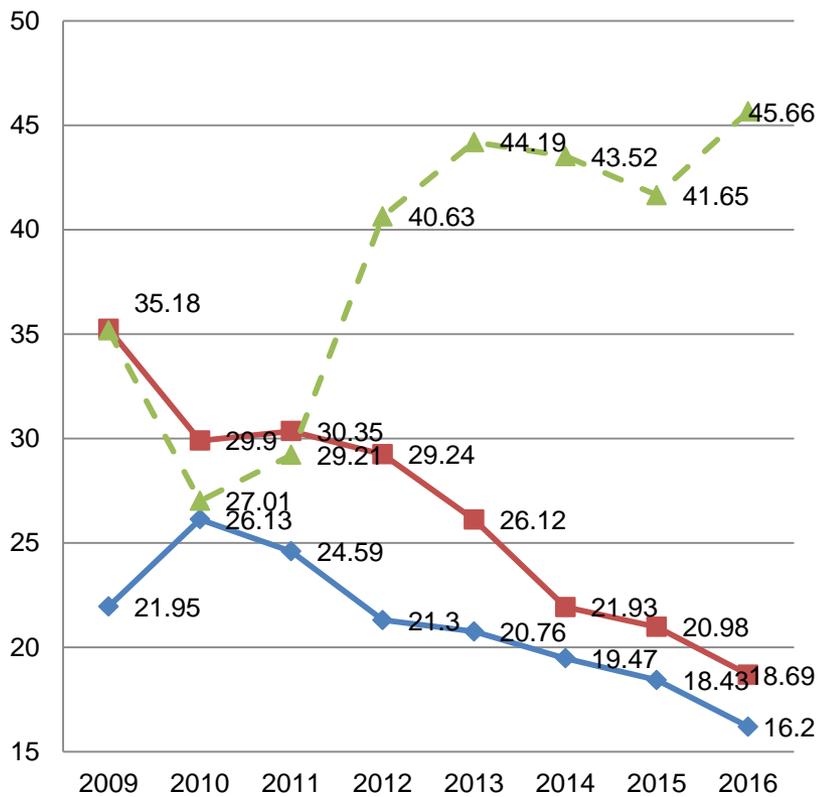
A Fair Day's Pay for a Fair Day's Work

Elements of strategic enforcement

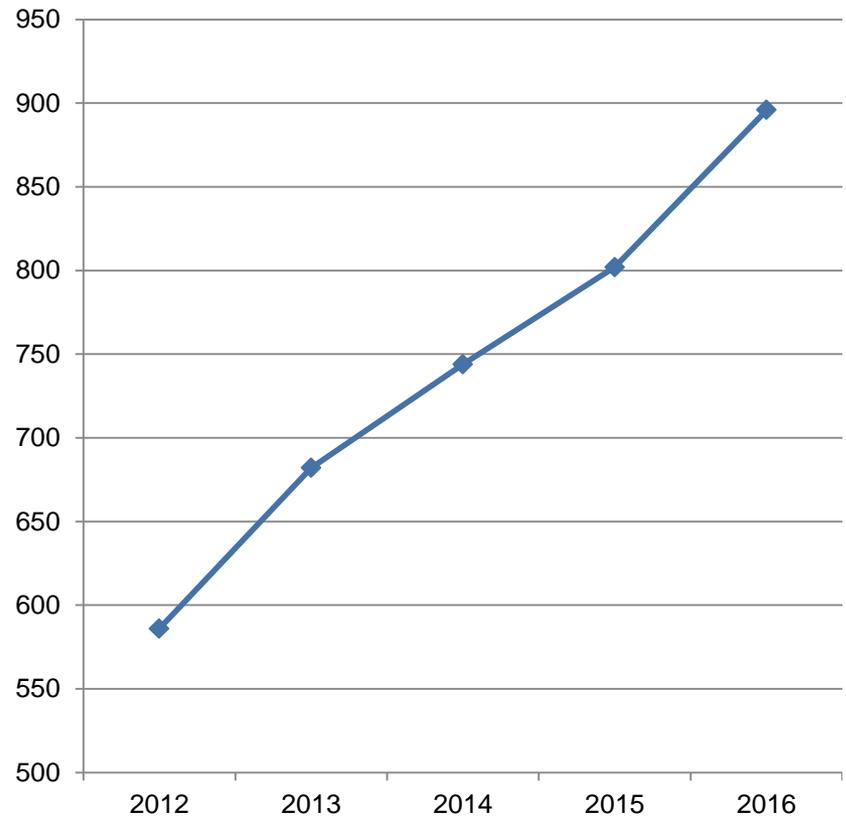
- Moving to a proactive approach
- Setting enforcement priorities
- Using all enforcement tools
- Improving outreach to workers and worker advocates
- Improving outreach to business and regulated organizations
- Creating strategic communications
- Crafting sustainable regulatory agreements
- Building a culture of planning, evaluation, review, and continuing improvement

Progress in strategic enforcement

Percent of Complaint and Directed Investigations with No Violations



Back Wages per Employee Directed Investigations



Strategic enforcement: A framework for learning



“Our work matters”: Telling the WHD story

WHAT DOES \$1,000 MEAN?

\$1,000 represents multiple paychecks to typical workers in many industries*

**Maid /
Housekeeper**

2.9 Paychecks



Security Guard

2.4 Paychecks



Janitor

2.8 Paychecks



**Landscaping /
Groundskeeper**

2.4 Paychecks



Retail Cashier

3.5 Paychecks



(*based upon BLS data for average wage rates and weekly hours per occupation)

“Our work matters”: Telling the WHD story

WHAT DOES \$1,000 BUY?

More than five weeks of groceries

at \$185/week



More than a month's rent

at \$800/month



More than three months of utility bills

at \$300/month

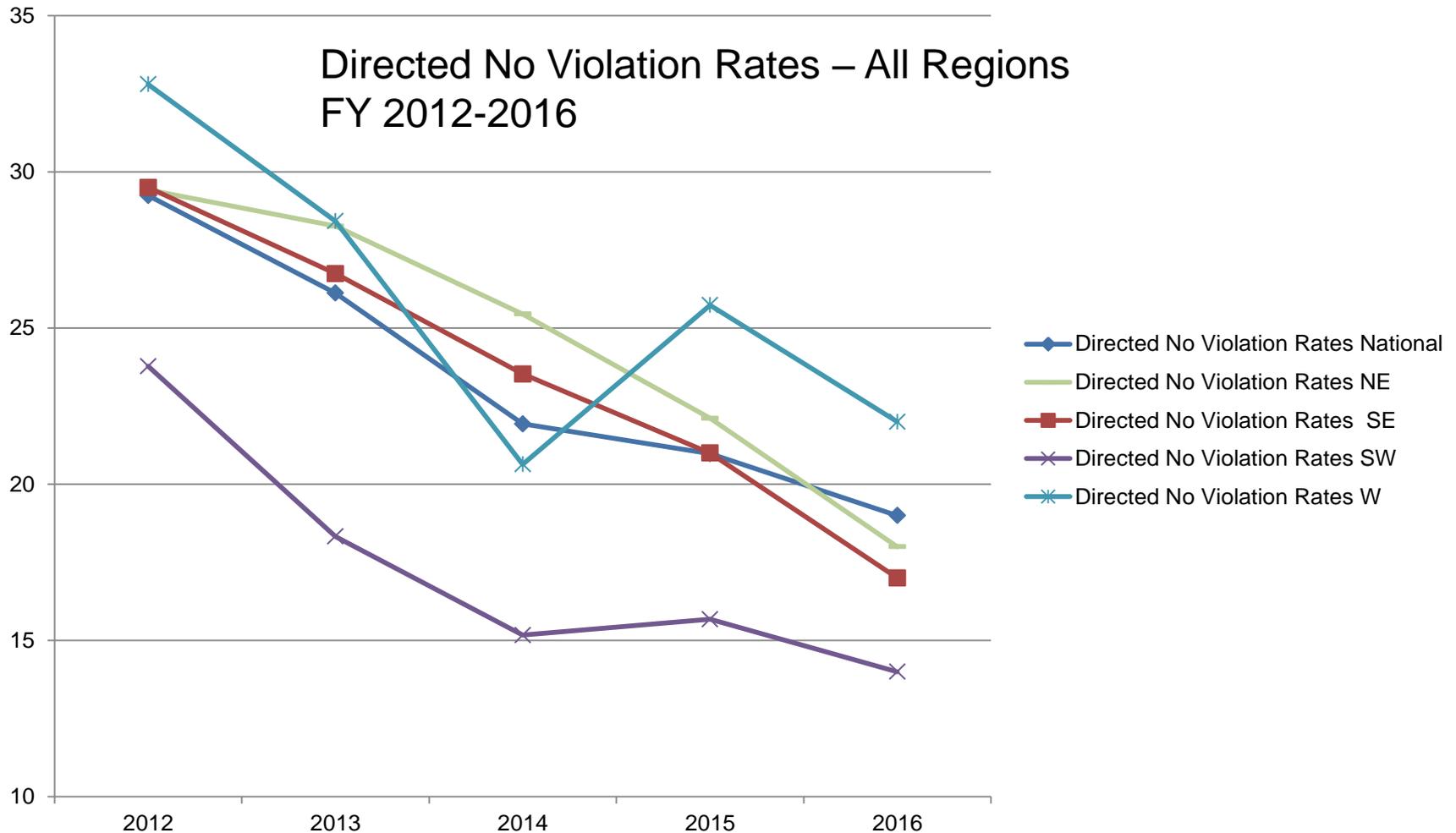


More than 5 weeks of childcare

at \$185/week



Driving and refining strategic enforcement through performance evaluation and review



Building WHD capacity for strategic enforcement

Roles

- WHIs
- CORPS
- Branches
- Managers
- Forensic accountants
- Data analysts

Processes

- Training
- Resource management
- Data management
- Learning and evaluation
- Change management
- Next generation MODO

Capabilities

- Data analytics
- Industry and corporate knowledge
- Multi-Media engagement
- Stakeholder engagement
- Digital tools
- Data-driven decisions
- Agile
- Cross-branch coordination
- NO/Field Coordination

WHD Mission Statement

Promote and **achieve compliance with labor standards to protect and enhance the welfare of the Nation's workforce**

-or-

A Fair Day's Pay for a Fair Day's Work

Donna Nass

Wage and Hour Investigator, Alaska
Department of Labor and Workforce
Development

TACO KING AND GALLO'S MEXICAN RESTAURANT



Alaska Wage and Hour
CASE STUDY

Donna Nass, Investigator II
Anchorage Regional
Office

donna.nass@alaska.gov
907-269-4909

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josephdunham@alaska.gov

The Decision

- ▶ The Department received a complaint call.
- ▶ Multiple educational/warning letters about non-payment of overtime were sent over multiple years.
- ▶ Gallo's Mexican Restaurants, Taco King, and Burrito King cumulatively had six prior investigations (complaint driven) for unpaid wages, unpaid overtime, prohibited deductions, and record keeping.
- ▶ The six investigations resulted in the collection of \$29,954 dollars in wages and \$16,126 in liquidated damages. The Department waived \$59,708 in combined liquidated damages and penalties.
- ▶ Gallo's Mexican Restaurants, Taco King and Burrito King did not appear to correct their pay practices.





Factors Considered

The following criteria was considered before moving forward with the directed compliance investigation.

- ▶ Systemic – whether the alleged problem is company-wide or unique to an individual.
- ▶ Substantiated – whether the alleged violation can be supported with substantive evidence.
- ▶ Significant – whether the alleged violation is egregious, whether the industry has a high rate of violations, what number of employees may be affected, and whether there are criminal implications.
- ▶ Scope – the time period the alleged violations occurred and whether the employer owns multiple businesses.

The Process

Alaska patterned their process after the USDOL

- ▶ A request for a Directed Compliance Audit (DCA) and enforcement was submitted and reviewed for approval. The request outlined the issues and contained a coverage recommendation.
- ▶ A notice of intent to conduct a compliance investigation is mailed to the employer. An “opening conference” is scheduled and an “ACTION NEEDED” section lists the documents and information the employer needs to prepare.
- ▶ The notice contains a general outline of what to expect during the investigation and contains the statutory and regulatory authority to conduct the compliance audit.
- ▶ ~~The employer complies, and the opening conference goes as planned.~~
- ▶ Prepare for delays and issues.



THE ISSUES

- ▶ Wage and Hour resources
- ▶ Employer attempts to delay
- ▶ Employer records
- ▶ Opening Conference
- ▶ Tolling the statute of limitations
- ▶ The audit results





MORE ISSUES

- ▶ Employer foul play discovered
- ▶ Employer wants a payment plan
- ▶ Processing the payments
- ▶ Finding employees

The Learning Process

- ▶ Changes to the process
- ▶ Variations of the process
- ▶ Publication of the results



Press Release



December 14, 2016

No. 16-45

For more information: Deborah Kelly, Labor Standards and Safety Director
907-269-4961, Deborah.Kelly@Alaska.Gov

Gallo's Mexican Restaurants and Taco King to Pay \$835,000 in Overtime and Damages Owed to 159 Employees

JUNEAU, Alaska—The Alaska Department of Labor and Workforce Development has secured an agreement from Gallo's Mexican Restaurants and Taco King, Inc. to pay more than \$835,000 in overtime and liquidated damages owed to 159 employees in Alaska. This represents one of the largest recoveries of overtime wages secured by the department's Wage and Hour Administration.

A recent investigation by the department found that Gallo's Mexican Restaurants and Taco King, with multiple locations in Anchorage and Fairbanks, violated the overtime provision of the Alaska Wage and Hour Act and failed to maintain accurate payroll records. Previous investigations into the businesses found they were in violation of Alaska's wage and hour laws and resulted in the collection of over \$50,000 in unpaid wages and damages.

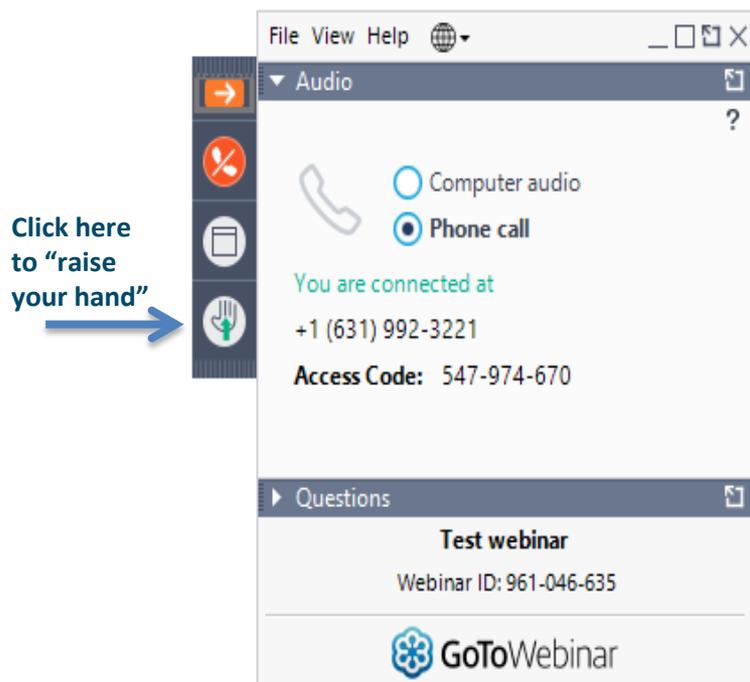
"Wage violations are not uncommon in the restaurant industry where workers may not know their rights or are afraid to speak up," said Labor Commissioner Heidi Drygas. "This enforcement puts money back where it belongs – in the pockets of hardworking people and their families."

Increased collaboration between the U.S. Department of Labor and the Alaska Department of Labor and Workforce Development contributed to the success of this investigation. The partnership has enabled information and resource sharing between the agencies, allowing them to stand together to protect workers and responsible employers from the consequences of wage theft.

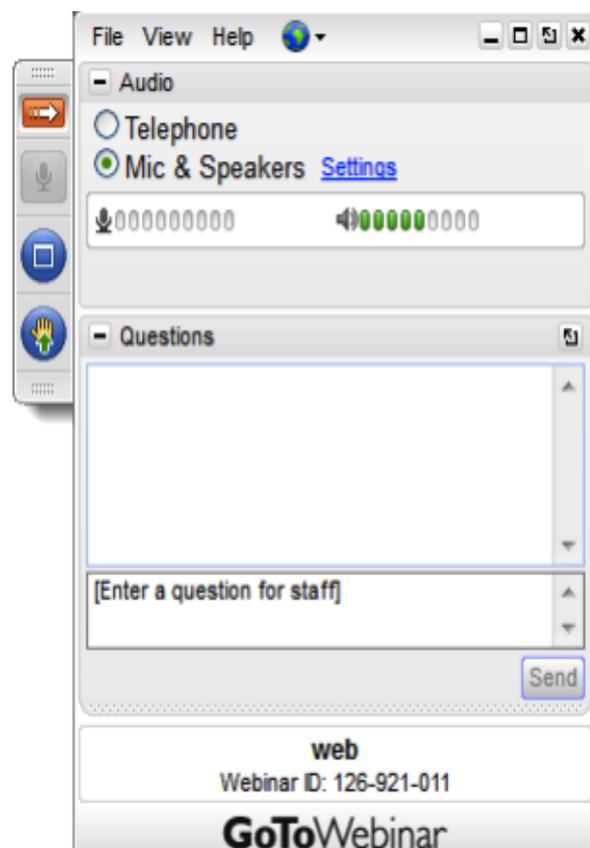
Alaska's wage and hour laws require the payment of at least the state minimum wage for all hours worked, and overtime pay for hours worked beyond eight in a day or 40 in a week for all covered, nonexempt employees. This applies to all workers in Alaska, regardless of how they are paid, whether by time, piece, commission or otherwise. Paycheck deductions for broken dishes, cash register shortages, or unpaid patron meals are illegal. Tips belong to the employee and may not be offset against minimum wage. Employers with questions about Alaska wage laws are encouraged to contact the Wage and Hour Administration. For more information, please visit <http://labor.alaska.gov/lss/whhome.htm>.

###

Raise your hand to be unmuted and ask a question verbally...



...or type in your question



Resa Spaziani

Field Supervisor for the Wage and Workplace
Standards Department, Connecticut
Department of Labor, Division of Wage and
Workplace Standards

ENFORCEMENT FUNCTIONS

- Minimum Wage and Overtime Laws
- Wage Payment Laws
- Prevailing Rate Laws, Stop Work Orders, Workers Compensation
- Working Conditions Law (child labor, FMLA, etc.)
- 163 Statutes Enforced

YEARLY ACTIVITY

- 5,000 claims received.
- 40-50 planned sweeps
- \$8.9 million is collected wages
- \$1.7 million collected penalties
- Arrest of approximately 75-100 employers for noncompliance

Strategic Enforcement

A Regular Business Practice

Planning Phase...

Choose the industry:

1. Construction
2. Bodegas
3. Nail Salons
4. Massage Parlors
5. Car Washes
6. Restaurants and Bars

Engage Assistance

- Police Departments
- Local and State Health Departments
- Revenue Services
- DMV Enforcement
- Liquor Control
- Licensing Boards
- Unions
- Create business networks

Enforcement Tools

CGS 31-59 Investigation “right to enter place of business or employment.....”

CGS 31-76 Enforcement “may investigate work and operations...”

CGS 31-76a (b) “may issue subpoenas.....”

CGS 31-69a “ \$300.00 for each violation, per incident...”

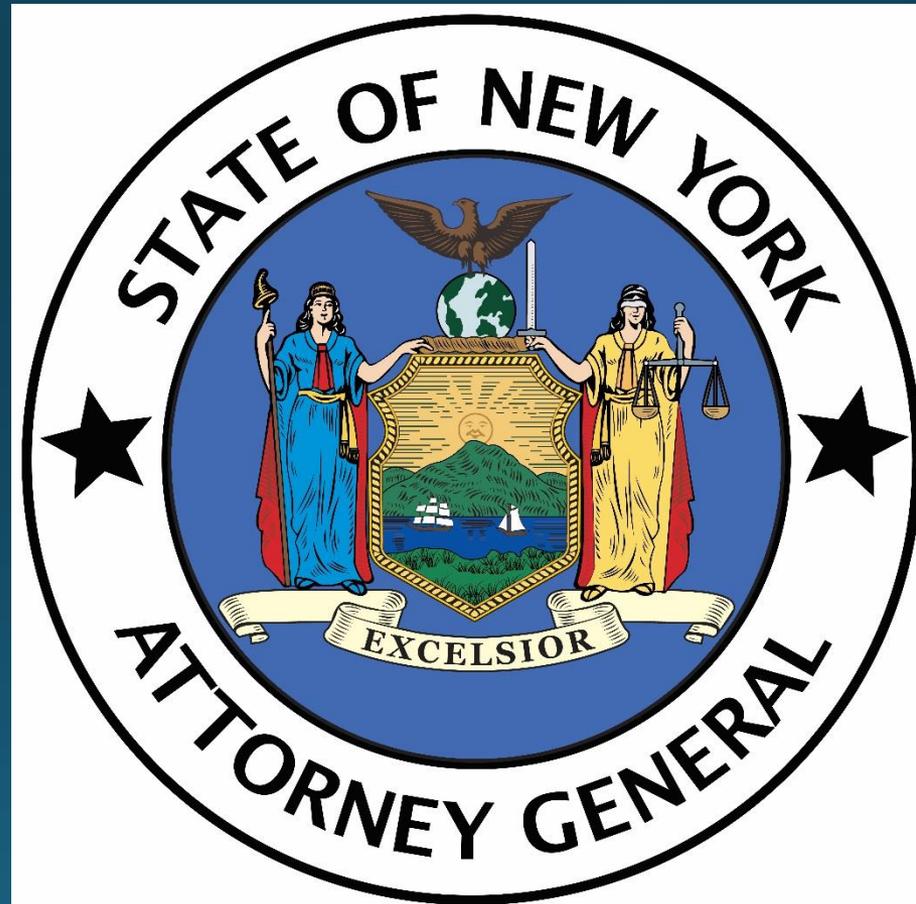
CGS 31-288 Stop Work Order “ Ordered to cease all business operations.....”



ReNika Moore

Labor Bureau Chief, Office of the New York
State Attorney General

New York State Attorney General Eric T. Schneiderman



Labor Bureau Mission

Strategically enforce core workplace rights on behalf of New York's most vulnerable workers.

- Civil and criminal prosecutions for MW, OT, Retaliation and other critical labor laws on behalf of low-wage workers – mostly immigrants and workers of color – in construction, fast food, home health care, transportation
- Legal impact work – joint employer liability, employer misuse of non-competes, and payroll cards
- Defend NYDOL in appeals of its enforcement actions of W&H, UI, Workers' Comp laws



OAG Civil Authority

NY Executive Law § 63(12) authorizes OAG to investigate and prosecute repeated fraudulent or illegal acts...in the carrying on, conducting or transacting of business"

- Statutory violations (e.g., NY Labor Law and FLSA)
- Pre-filing subpoena power to obtain documents and testimony
- Confidential investigations
- May file summary proceeding



OAG Criminal Authority

- NY Labor Law and Workers Comp Law
- NY Executive Law §63(3) referrals
- Typical prosecutions:
 - Failure to Pay Wages (or MW, OT, PW)
 - Failure to Establish, Maintain and Preserve Payroll Records
 - Failure to Keep Records



Enforcement Partners

- Government
 - USDOL
 - Municipal gov't and agencies
- NGOs
 - Unions
 - Worker Centers
 - Plaintiffs' counsel



Relief OAG Typically Seeks

- Assurance of discontinuance (reserving our right to prosecute if employer fails to comply)
- Restitution to workers (full back pay + liquidated damages)
- Penalties on behalf of the state (UI, Workers' Comp)
- Postings/Notification in language understood by workers
- Supervisor training
- Monitoring
- Recordkeeping and reporting



Additional Info

How Enforcement Partners can help

- Facilitate interviews with workers
- Provide or identify language translation services
- Identify neutral, convenient meeting locations for worker interviews, check distributions, etc.
- Provide complementary investigatory tools (e.g., background research on employer, industry, historical or parallel workplace issues)



Additional Labor-related Criminal Statutes

- Failing to Pay the Prevailing Wage
- Retaliation
- Failure to Secure Workers Compensation Insurance
- Penalties for Fraudulent Practices
- Criminal Tax Fraud



Questions?

Office of the New York State Attorney General

Labor Bureau

212-416-8700

<https://ag.ny.gov/bureau/labor-bureau>

120 Broadway

New York, NY 10271

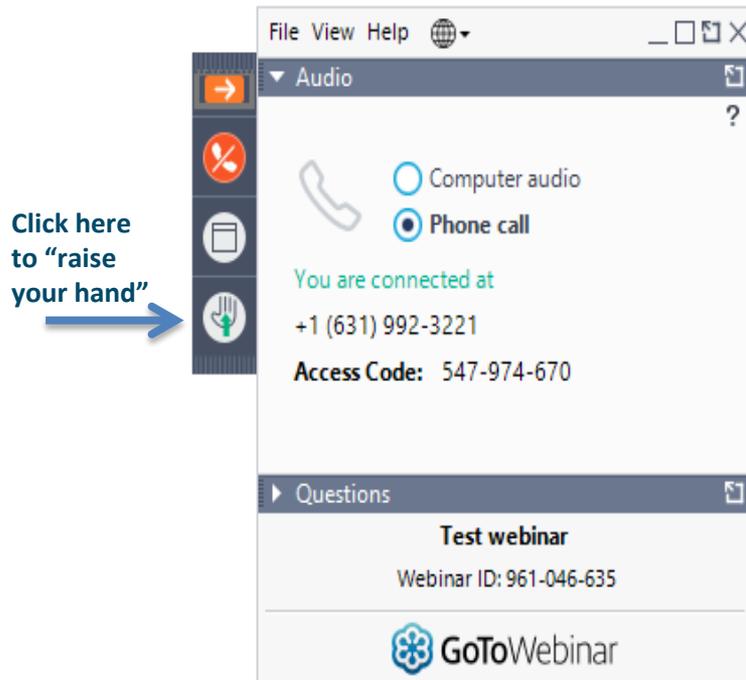
ReNika Moore, Labor Bureau Chief

E: ReNika.Moore@ag.ny.gov T: 212-416-6280

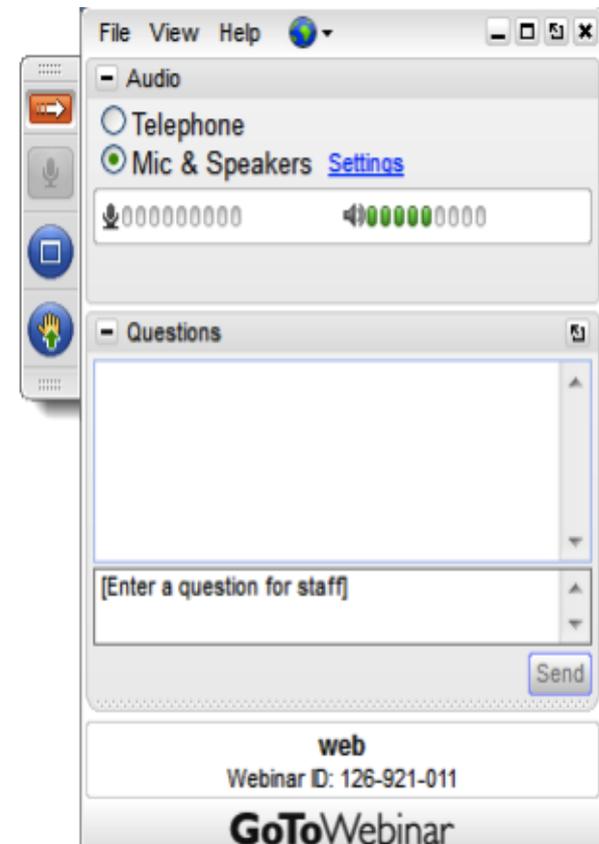


LABOR BUREAU

Raise your hand to be unmuted and ask a question verbally...



...or type in your question





Thank You For Joining!



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