

# Labor Standards Enforcement Webinar Intake and Triage

April 3, 2017



- Laura Fortman, consultant for Center for Law and Social Policy (CLASP)
- Steven Kelly, Office of Labor Policy and Standards, New York City
- Jenn Round, Office of Labor Standards, Seattle
- Julie Su, California Labor Commissioner
- Janice Fine, Center for Innovation in Worker Organization (CIWO)
- Liz Ben-Ishai, CLASP

# Participants in today's webinar

## Cites and Counties (18)

- Emeryville, CA
- Jersey City, NJ
- Los Angeles County, CA
- Los Angeles, CA
- Minneapolis, MN
- Montclair, NJ
- Montgomery County, MD
- New York City, NY
- Newark, NJ
- Oakland, CA
- Plainfield, NJ
- San Diego, CA
- San Francisco, CA
- Seattle, WA
- Spokane, WA
- Tacoma, WA

## States (21)

- Arizona
- California
- Colorado
- Connecticut
- District of Columbia
- Hawaii
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Montana
- Nebraska
- New Hampshire
- New York
- Ohio
- Oklahoma
- Oregon
- Texas
- Washington
- Wisconsin
- Wyoming

## Advocacy and Research Orgs (13)

- California Immigrant Policy Center
- Chinese Progressive Association (San Francisco)
- Economic Policy Institute
- Employee Rights Center (San Diego)
- Fair Work Center (Seattle)
- Mixteco/Indigena Community Organizing Project (Ventura County, CA)
- National Employment Law Project
- Partnership for Working Families
- PathWays PA
- Rutgers Center for Women & Work
- San Francisco Day Labor Program & Women's Collective
- SEIU
- Young Workers United (San Francisco)

# Outline of today's webinar

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1. Introduction
2. How do intake and triage practices fit within the larger context of strategic enforcement? What do we mean by “strategic enforcement”?
3. Intake policies and practices
4. Triage policies and practices
5. Audience Q &A (and throughout)

# Strategic enforcement: Why is it Necessary? What is it?

Need for Resources > Available Resources ➡ Strategic Enforcement

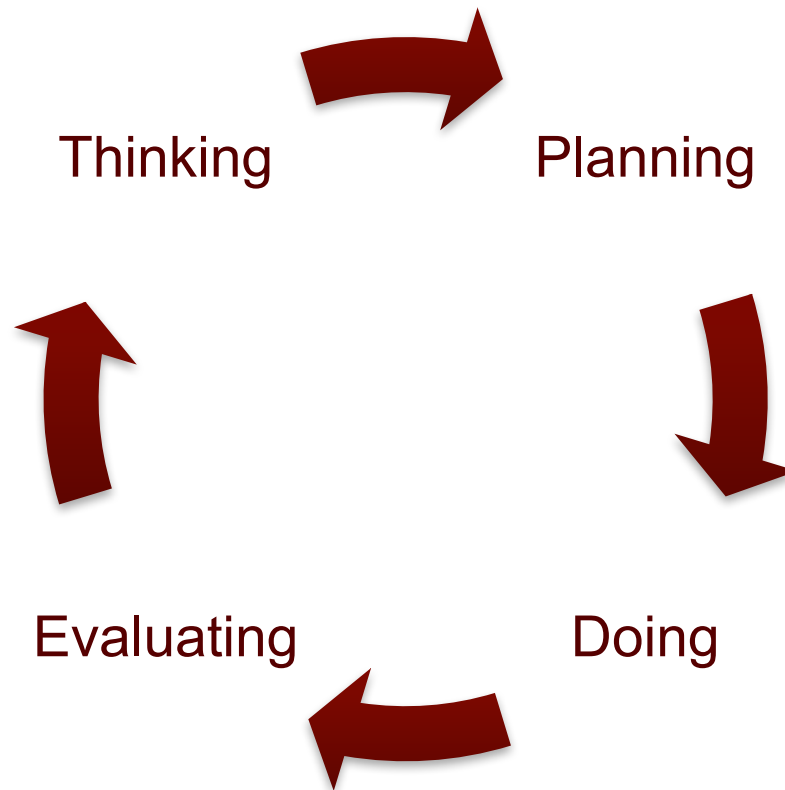
- Develop a Strategy for Achieving Compliance:

- Where are the greatest problems?
- Which workers are least likely to complain?
- Where will we have the greatest impact?

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# Strategic enforcement is a process

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# Speakers

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**Laura Fortman**, Consultant for CLASP, Former Deputy Administrator,  
Wage and Hour Division, U.S. Department of Labor

**Steven Kelly**, Associate Commissioner, Office of Labor Policy and  
Standards, New York City

**Jenn Round**, Enforcement Supervisor, Office of Labor Standards, Seattle

**Julie Su**, California Labor Commissioner

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

**Liz Ben-Ishai**, Senior Policy Analyst, CLASP



City of Seattle  
Office for Civil Rights  
Office of Labor Standards

## Contact Us

Disclaimer: The City of Seattle is subject to Washington statutes relating to public records. SOCR and OLS are responsible for responding to public disclosure requests and should assume that data entered into entellitrak is subject to release upon request unless specifically exempted under the Public Records Act RCW 42.56.

Please provide the following information. The incident location, description, and phone number or email is required. Providing your name on this form is optional. Reasonable accommodation / language interpretive services is available upon request.

Incident Location

Description or Question

First Name

Last Name

Phone

Email

What are you contacting us about? (Select all that apply)

- ☐ Employment Discrimination
- ☐ City Of Seattle Employment Discrimination
- ☐ Housing Discrimination
- ☐ All-Gender Restrooms
- ☐ Public Accommodations
- ☐ Fair Contracting
- ☐ Conversion Therapy
- ☐ Paid Sick and Safe Time
- ☐ Criminal Records in Employment Decisions
- ☐ Minimum Wage
- ☐ Wage Theft

Do you need interpretation or a reasonable accommodation?

# Intake forms

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- [New York City](#)
- [California](#)



## What is triage?

Triage is a system an agency uses to sort cases into different treatment categories and to decide which complaints to prioritize for full investigations, such as those where:

- The worker is still employed
- The issue is ongoing, not in the past
- More than one worker is affected
- Risk of retaliation is high
- Wage theft is occurring frequently in the industry or occupation involved
- Business is a repeat offender



## Seattle OLS Priorities

1. Lower wages.
2. The private right of action doesn't apply because the employer is too small or the alleged violation happened before the private right of action was an option; and
3. The economic recovery is so low that private counsel would not likely take the matter.
4. Employment status.
5. Retaliation.
6. Hotel Work Initiative.

### Possible Exceptions

1. OLS **may** take a case in one of the following priority industries even if the wages are above the cap:
  - a. Construction
  - b. Food services and drinking places
  - c. Health care
  - d. Home health care
  - e. Hotel & motel
  - f. Manufacturing, transportation & warehousing
  - g. Personal & repair services (e.g. nail salons, car washes)
  - h. Retail trade
  - i. Security, building & grounds services (e.g. security guards, janitorial services, landscaping)
  - j. Social assistance, education & childcare
2. Employers - OLS may take a case that falls outside of priorities in one way or another if the employer is a priority or repeat offender.



PSST			
Less Severe		More Severe	
No Investigation		Investigation	
Referral	Mailing	Narrow Investigation or Negotiation	Charge
<ul style="list-style-type: none"> <li>• Single worker over wage cap – retaliation, use, and accrual allegation for private right of action<sup>1</sup></li> <li>• Company-wide worker over wage cap – use, accrual or retaliation for private right of action</li> <li>• All allegations, consider grievance if unionized workforce</li> </ul>	<b>Model and Letter<sup>2</sup></b> <ul style="list-style-type: none"> <li>• Workplace Poster</li> <li>• PSST Policy</li> </ul>	<b>1. Narrow Investigation<sup>3</sup> when current worker below wage cap alleges:</b> <ul style="list-style-type: none"> <li>• Accrual &amp;/or Use, 1 person</li> <li>• Carry-over</li> <li>• Notification of Balance</li> </ul> <b>2. Above allegations by former worker below wage cap:</b> <p><b>Model and Letter</b></p> <ul style="list-style-type: none"> <li>• Only if OLS Investigators have capacity</li> </ul> <p><b>Negotiation<sup>4</sup></b></p> <ul style="list-style-type: none"> <li>• If caseloads permit and allegation a priority</li> </ul> <b>3. 1 worker alleging retaliation - narrow investigation:</b> <ul style="list-style-type: none"> <li>• Retaliation if current worker below wage cap</li> <li>• Retaliation any wage if discharge</li> <li>• If capacity, take egregious retaliation allegation without respect to wage or employment status</li> <li>• Give PCP option of co-party</li> </ul>	<b>1. If &gt;1 current worker below wage cap:</b> <ul style="list-style-type: none"> <li>• Accrual &amp;/or Use</li> <li>• Retaliation</li> <li>• Violation of all rights</li> <li>• Consider grievance if workforce unionized</li> </ul> <b>2. If &gt;1 worker and retaliatory discharge, any wage</b> <p>If capacity take egregious retaliation without respect to wage or employment status</p>



Complaint Triage Criteria			Criteria Factor Analysis
	Worker Analysis	High Risk Workforce	<ul style="list-style-type: none"> <li>Immigrant workforce</li> <li>Method of payment</li> <li>Misclassification</li> </ul>
		Unlawful Termination	<ul style="list-style-type: none"> <li>Allegation(s) include unlawful termination</li> </ul>
		Labor Standards Violations/Wage Theft	<ul style="list-style-type: none"> <li>Allegation(s) include wage theft or other labor standards violations</li> </ul>
		Health and Safety Violation Allegation(s)	<ul style="list-style-type: none"> <li>Allegation(s) include worker(s) being subject to harmful or unsafe working conditions</li> </ul>
		Discrimination Allegation(s)	<ul style="list-style-type: none"> <li>Allegation(s) include employer treating workers differently on the basis of a protected category</li> </ul>
	Industry Analysis	High Risk Industry	<ul style="list-style-type: none"> <li>Complainant works in an industry from which the agency has received few complaints</li> </ul>
		Number of Complainants	<ul style="list-style-type: none"> <li>Multiple complainants filed complaints against the same employer</li> </ul>
		High Risk Business	<ul style="list-style-type: none"> <li>Allegation(s) made against a business that fits agency's high risk criteria</li> </ul>
		Licensing Information	<ul style="list-style-type: none"> <li>Allegation(s) made against a business licensed by regulatory agency</li> </ul>
		Recidivism	<ul style="list-style-type: none"> <li>Repeat offender</li> </ul>

## Retaliation Triage

Retaliation Triage						
	Allegations in Complaint	Initial Agency Contact	10 days later →	20 days later →	30 days later →	40 days later →
	Employer denied complainant's sick leave request	NOI and 30-day comprehensive document demand	Agency waiting for document production		Agency receives and reviews records <b>OR</b> employer fails to produce	Violation(s) identified during investigation and liability outlined for Employer <b>OR</b> final document demand issued <b>OR</b> preparing to file charges
	Employer failed to provide paid sick leave to complainant and other employees					
Employer fired complainant after she complained	NOI, 10-day limited document demand <b>AND</b> demand for <u>backpay</u> and reinstatement	Worker reinstated with <u>backpay</u> <b>OR</b> agency receives and reviews records <b>OR</b> employer fails to produce records	<b>Charges filed</b>			



**QUESTIONS • COMMENTS • IDEAS**

# Save the date

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## **Strategies for Effective Investigations**

**Tuesday, June 6, 10am PT/1pm ET**



**RUTGERS**

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

