

Worker Stories

Each person listed can be made available to press to provide more background on their individual experiences regarding the pattern of wage theft outlined in the lawsuit.

To reach a worker, please contact Emmanuelle “Neza” Santillan, (505) 307-5034.

The following four stories summarize the allegations of the named plaintiffs in this lawsuit:

Gallup--José “Pancho” Olivas

Pancho of Gallup, who is a Somos member, was hired in 2014 to work at 505 Burgers and Wings in Farmington. Pancho remodeled and prepared the commercial space that would become the fast food restaurant. He continued working in the restaurant after it opened for business in September 2014 as a full-time employee—sometimes working as many as 80 hours per week.

Although Pancho’s employer rarely paid him all the wages due to him on payday, the employer promised to do so once the restaurant opened. However, by February 2015, with a wage debt that reached \$15,000, Pancho decided to leave his employment.

Pancho filed a wage claim with the DWS in March 2015, reporting these violations of the wage statutes. Shortly afterwards, the DWS mailed Pancho a letter informing him that the department would not investigate the case because it does not accept wage claims over \$10,000. Instead, the DWS told Pancho that he would have to file a lawsuit in court himself. However, the only attorney who would consider taking Pancho’s case required a \$5,000 retainer, which Pancho could not afford.

DWS’s policy of refusing to accept claims worth more than \$10,000 is illegal and has no basis in the wage laws. The department has a duty to investigate all wage claims to determine whether they are valid and enforceable. Once the DWS determines that the claim is valid, the department must either file the case in court or refer it to a district attorney, who must prosecute it.

Santa Fe--Blake Cahill

Blake worked at a Santa Fe ski shop from approximately November 2013 to January 2015. He regularly worked between 45 to 65 hours per week, but was illegally never paid time-and-a-half for his overtime hours, except for his last week of work. That week, after Blake asked his employer why he didn’t receive overtime wages, his employer paid him the correct overtime rate for his last week only and then fired him.

When Blake filed his wage claim with the DWS one day after he was fired, he mistakenly wrote that his date of separation from employment was January 5, 2014 rather than 2015. However, he also submitted payroll and time records proving he and others worked overtime throughout 2014. In spite of the obvious error and the evidence he submitted, the department refused to take enforcement action against Blake’s employer because it claimed Blake had not filed the claim within the DWS’s illegal one-year lookback period.

This is an example of DWS illegally permitting employers to avoid liability for all but one year of unpaid wages, even though the Legislature changed the law in 2009 to require employers to pay back wages for a minimum of three years, and even further back when the violation is part of a continuing course of conduct. This case also shows how DWS's administrative red tape results in the illegal closure of valid wage claims -- here, by not looking into the validity of the claim beyond the claim form.

Albuquerque--Alvaro Bravo

Alvaro Bravo was unable to collect any of the back wages he was owed because DWS's Wage and Hour Bureau refused to investigate his claim. From April 2014 to September 2015, Alvaro was employed as a janitor in Albuquerque for a company called Commercial Maintenance Systems. He usually worked at least eight hours a day, seven days a week, but never received time and a half overtime wages for hours over 40. Instead, the company paid him a flat rate of \$60 per day.

After his employment ended, Alvaro went to El Centro de Igualdad y Derechos for help collecting the wages owed. There, he learned that he should have been paid the Albuquerque city minimum wage of \$8.75 and overtime wages under state law -- a combined total of over \$10,000. Alvaro tried to file a claim with DWS in November 2016, but the agency would not accept his claim form because the claim was worth over \$10,000 and his dates of work were more than one year ago.

Santa Fe--Octavio Rios Olivas

Octavio Rios Olivas is legally blind and cannot read. He is a monolingual Spanish-speaker who understands only limited amounts of spoken English. Octavio worked for a company called Universal Janitorial Maintenance in Santa Fe from April 2015 to June 2016, and was never paid time-and-a-half overtime wages for the 16 hours of overtime he worked every week.

When Octavio tried to file a claim form, the DWS would not accept it until he removed the request for wages going back to April 2015, because of the department's policy that wage claims can only go back one year. A DWS employee told him that he had to scratch out "April 2015" and replace it with "June 1, 2015."

Because the DWS did not provide its claim form and correspondence in Spanish and did not accommodate his vision impairment, Octavio could not have filed or pursued his claim at all without the assistance of English-speaking children and friends.

As it was, Octavio's case was administratively closed for an illegal reason. The department found that Octavio had been underpaid, but closed the case without any investigation because Octavio did not know his employer's corporate address. The department did nothing to learn the correct address, even though it has investigatory powers that would enable it to do so.

The following stories are from workers who are not plaintiffs but who were impacted by the DWS's illegal policies and practices:

Albuquerque--Maria Sabina Armendariz and Nirma Armendariz

Sabina and Nirma are sisters and were both employed by a childcare center called Hope Head Start in Albuquerque. The women were forced to leave their jobs in November 2015 when their employer, Hope Head Start, refused to pay them several paychecks and they could no longer work for free. Over a year later, they have not been paid. The impact on their lives was severe. Beyond the immediacy of life expenses that were hard to cover, it took over two months for Sabina and Nirma, a single mother and a mother of two, respectively, to find work.

When they went to the DWS Wage and Hour Bureau office in Albuquerque to file wage claim, Sabina and Nirma could not read the English-language claim form because they speak Spanish. DWS used to have a bilingual claim form, but this administration changed it to an English-only version in approximately 2010. DWS did not offer any translation assistance to fill out the claim form which, per the instructions, was to be filled out in English. Sabina's daughter had to translate it for them.

After their claim was assigned to a DWS employee, Sabina and Nirma went to the DWS Wage and Hour Bureau approximately five times over the course of the next year to request information about the status of their claims. Each time, because no translation assistance was available at DWS, they had to coordinate the visits for times that Cindy was not in school so that she could translate for them. Reflecting on her experience with DWS, Sabina said, "If I didn't have my daughter translating I wouldn't have been able to pursue my case because forms, letters, requests for information, are all in English. Lots of other workers in my situation would have had their cases closed if they couldn't find their own interpreter."

Sabina and Nirma are active members of El CENTRO de Igualdad y Derechos, an Albuquerque-based immigrants' rights and workers' justice organization with over 3,500 members, the majority of whom are low-wage workers. At El CENTRO, they learned about the prevalence of wage theft in New Mexico and were inspired to work with El CENTRO members and others to strengthen protections for all New Mexico workers.

Las Cruces--Francisco Lopez Saucedo

Francisco is a resident of Las Cruces, New Mexico and from 2006 to about March 2015 Francisco worked as a laborer for a concrete company in Las Cruces, New Mexico.

He was paid \$200 per week for approximately 70 hours of work, a rate of approximately \$2.85 per hour. With the assistance of an English-speaking acquaintance, Francisco filed a wage claim with DWS in March 2015, reporting his employer's minimum wage and overtime violations.

At an administrative hearing on April 16, 2015, Francisco testified that he was owed over \$16,900 for work performed in the past year. His employer attended the hearing and did not dispute the wage debt. Nonetheless, the assigned the DWS Labor Law Administrator closed Francisco's case, claiming the department had no jurisdiction because the case was worth more than \$10,000.

Española-- Verónica Quintana Peña

Veronica, a monolingual Spanish speaker, worked for a now defunct Santa Fe restaurant called the Green Owl Coffee Café from February 2012 to May 2013. Her employer rarely paid her complete wages on payday, claiming that he did not have enough money. Veronica's unpaid wages had reached \$7,000 by the time she left her employment.

All of the form letters the Department of Workforce Solutions sent to Verónica while her claim was pending were in English, a language she cannot read and does not understand. When Verónica's employer did not pay his wage debt to her, DWS scheduled a hearing on her claim. Afterwards, the assigned labor law administrator issued a decision letter stating that DWS had closed the case with prejudice because Verónica had filed the claim more than one year after her last date of work, even though the law states that workers have three years from the date of the last wage violation to file a complaint.

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