

FACT SHEET

New Mexico has some of the country's strongest state-level protections against wage theft.

These include:

- Mandatory statutory damages to victims of wage theft, calculated as full unpaid wages, plus interest, plus an additional amount equal to twice the unpaid or underpaid wages. (NMSA 1978 § 50-4-26)
- At least a three-year statute of limitations and statutory tolling when the violation is part of a “continuing course of conduct.” (NMSA 1978 §§ 37-1-5; 50-4-32)
- A minimum wage of \$7.50 and overtime pay for hours over 40 at one-and-one-half times the worker’s regular hourly rate. (NMSA 1978 § 50-4-22)
- Prohibitions against employer retaliation. (NMSA 1978 § 50-4-26.1)
- A requirement that the Department of Workforce Solutions (DWS) must investigate and take legal action on valid and enforceable claims filed by workers who cannot afford private attorneys. (NMSA 1978 §§ 50-1-3, 50-4-8, 50-4-26)

The lawsuit is seeking an injunction to change the following illegal policies:

- DWS has illegally imposed a \$10,000 cap on wage theft: the Department does not investigate or take any enforcement action on wage claims worth \$10,000 or more.
- DWS has illegally imposed a one-year time limit on liability for wage theft: the Department does not investigate or take any enforcement action on claims for unpaid pay that go back more than one year from the date an employee files a claim, despite the N.M. Legislature’s 2009 decision to extend the statute of limitations for wage claims to three years.
- DWS illegally does not hold employers liable for any statutory damages at the administrative enforcement phase of a case, thereby eliminating the financial deterrent for engaging in wage theft, despite the Legislature’s 2009 decision to double the penalty for engaging in wage theft.
- DWS has adopted policies and procedures that require the permanent closure of wage claims for procedural reasons, such as when a claimant misses a 10-day deadline, without regard to the strength of the claim or whether the claimant received notice of the deadline.

The impacts of unchecked wage theft:

- Approximately 22% of immigrants working in New Mexico have experienced wage theft at some point, including minimum wage violations, nonpayment of overtime, off-the-clock work, or failure to issue a final paycheck.
- Over 2,500 New Mexicans filed wage theft claims with the DWS from 2014 to 2016 -- not including workers the DWS illegally turned away under the policies challenged in this case.
- There is no incentive for employers to comply with New Mexico’s wage laws. Unscrupulous employers pay far less in unpaid wages in the department’s claims process than they owe under the law – creating a perverse incentive to violate the law.
- The workers impacted by this case often cannot find an attorney to take their case, especially in rural areas, nor can they afford to hire one to file a lawsuit for their unpaid wages – that is why the law requires the DWS to take enforcement action for workers with valid claims who earn less than \$1,300 a week, and cannot afford an attorney.
- It is the department’s job to enforce the law as the legislature wrote it. The DWS cannot carve out enforcement exceptions that contradict and undermine the law.