

A Roadmap for Strategic Enforcement: Complaints and Compliance with San Francisco's Minimum Wage

Report by Daniel J. Galvin • Jenn Round • Janice Fine

Introduction

The San Francisco Office of Labor Standards Enforcement (OLSE) was established in 2001 as the first municipal labor standards enforcement agency in the country. Initially responsible for prevailing wage enforcement, OLSE has since expanded to include enforcement authority for over 25 laws. San Francisco has been at the forefront of passing innovative legislation to better protect workers, including four ordinances that were a first for any American municipality: the minimum wage, paid sick leave, formula retail, and paid parental leave ordinances.¹ As other cities look to San Francisco as a model for labor standards enforcement and as OLSE has been enforcing the municipal minimum wage ordinance since 2004, researchers with the Center for Innovation in Worker Organization (CIWO) at Rutgers, The State University of New Jersey, chose to study San Francisco's minimum wage enforcement to determine the degree to which workers' complaints in a given industry match overall industry compliance.

These findings can be used to help develop strategic enforcement* efforts designed to optimize resources and maximize impact in San Francisco. Specifically, this study analyzes the relationship between minimum wage complaints filed with OLSE and estimates of underlying minimum wage violations, using data from the U.S. government's monthly survey of labor force participation (called CPS-MORG survey data).²

Embracing Strategic Enforcement: A Complaint-Based Approach is Incomplete

Based on its annual report, in the prior fiscal year (FY 18-19), OLSE resolved 278 cases, collecting a total of \$17.3 million. This figure included \$13.4 million in restitution – back wages, penalties, and interest – to 6,845 San Francisco workers. These totals are the highest in OLSE history. In addition, OLSE restored over 7,000 hours of paid sick leave to workers through its enforcement actions. In all, OLSE's collections compare very favorably across labor law enforcement agencies.

OLSE was also the first local agency to fund community-based organizations (CBOs) to conduct targeted outreach to vulnerable workers, with a specific focus on outreach to low-wage, immigrant communities. More than 13% of

*“Strategic enforcement” refers to agencies being selective about where and how they use resources. Agencies prioritize and direct efforts to where the problems are largest, where workers are least likely to exercise their legal rights, and where the agency can impact industrywide compliance.

OLSE’s budget (approximately \$825,000) is dedicated to contracts with eight community-based organizations for proactive outreach. The CBOs strive to create outreach approaches that are responsive to the needs of vulnerable workers.

As a leader in local enforcement, OLSE is well-positioned to be the first municipal agency to embrace strategic enforcement and use data to fill gaps left by the complaint-based enforcement model. The study adopts the analytic approach used by former U.S. Department of Labor Wage and Hour Division (U.S. WHD) Administrator David Weil and Amanda Pyles in their 2005 article “Why Complain?”³ The Weil and Pyles study was notable as it found little overlap between industries with the highest complaint and violation rates. Such results suggest the traditional, complaint-based model of labor standards enforcement is ineffective for many workers who are most vulnerable to violations. As they explain, regulators typically want to know that the workers who complain are voicing genuine grievances and that the workers who are not being paid what they are legally owed are exercising their legitimate right to complain. That is, regulators wish to minimize false positives (complaints without violations) and false negatives (violations that go unreported). False negatives are the most worrisome in complaint-driven regulatory systems, as they likely include the most vulnerable and exploited workers who are fearful of complaining or are unable to complain, and are therefore falling through the cracks. Quiet industries should be compliant industries, not industries where workers are suffering silently.

Figure 1. Complaint/Compliance Matrix

	High noncompliance	Low noncompliance
High complaint rate	<p>Quadrant 1 High complaints High violations</p>	<p>Quadrant 3 High complaints Low violations</p>
Low complaint rate	<p>Quadrant 2 Low complaints High violations</p>	<p>Quadrant 4 Low complaints Low violations</p>

Following Weil and Pyles, we conceptualize the relationship between compliance and complaints as a 2 x 2 matrix

In the view of regulators, ideally all workers will be found in Quadrants 1 and 4. Those working in industries with high violation rates should have unimpeded access to the complaint process, and complaint rates should be commensurate with violation rates. Likewise, in industries with low violation rates, complaint rates should be equally low. In those two ideal-type quadrants, OLSE’s enforcement resources will be applied optimally.

Again, ideally, no workers will be found in Quadrant 2—low-complaint industries that are rife with violations—and few workers will be found in Quadrant 3—high complaints despite low violations. The existence of workers in

Quadrants 2 and 3 would indicate “significant problems in terms of enforcement resources reaching the right workplaces” (Weil and Pyles). The existence, especially, of a significant number of cases in Quadrant 2, where the high violations do not result in a corresponding number of complaints, indicates the need for proactive investigations and strategic enforcement.

Using the OLSE’s minimum wage complaint data in conjunction with the CPS data, we can begin to fill out the 2 x 2 matrix and answer the following questions: “Are industries with the most frequent and severe violations also those that show the highest frequency of worker complaints? Are there industries that we know to be serious violators that [the OLSE is] not hearing from? Do investigators spend a disproportionate amount of time on industries that are less egregious violators?” (Weil and Pyles). After presenting our empirical findings, we discuss the data and methods, and highlight some important caveats.

Table 1 compares the industries with the ten highest complaint rates and ten highest estimated violation rates under San Francisco’s minimum wage ordinance. **Table 2** compares industries with the ten lowest rates of complaints and estimated violations. Industries appearing in both high/low groups are in *italics*.

Table 1. Ten Highest Complaint and Compliance Rates by Industry, 2005-2018

Industries with highest complaint rates (OLSE)	Complaints per 10,000 workers	Industries with highest estimated violation rates (CPS)	Estimated minimum wage violations per 10,000 workers
<i>Food services and drinking places</i>	80	Private households	5098
Textile, apparel, and leather manufacturing	69	Waste management and remediation service	2857
<i>Personal and laundry services</i>	51	<i>Food services and drinking places</i>	2392
Repair and maintenance	27	<i>Personal and laundry services</i>	2273
<i>Retail trade</i>	26	<i>Rental and leasing services</i>	2143
Accommodation	22	Arts, entertainment, and recreation	1649
<i>Rental and leasing services</i>	21	Real estate	1529
Health care services, except hospitals	15	Social assistance	1524
Administrative and support services	15	Food manufacturing	1471
Construction	14	<i>Retail trade</i>	1453

Table 2. Ten Lowest Complaint and Compliance Rates by Industry, 2005-2018

Industries with lowest complaint rates (OLSE)	Complaints per 10,000 workers	Industries with lowest estimated violation rates (CPS)	Violations per 10,000 workers
<i>Finance</i>	1	<i>Publishing industries (except internet)</i>	0
<i>Professional and technical services</i>	1	Broadcasting (except internet)	0
<i>Public administration</i>	1	<i>Professional and technical services</i>	172
<i>Educational services</i>	1	<i>Finance</i>	321
Social assistance	2	<i>Educational services</i>	452
Private households	4	Membership associations and organization	526
<i>Wholesale trade</i>	4	Repair and maintenance	526
<i>Publishing industries (except internet)</i>	5	<i>Wholesale trade</i>	617
Food manufacturing	5	Construction	677
Transportation and warehousing	7	<i>Public administration</i>	714

Considering only those industries that rank among the top 10 and bottom 10 industries in each category, the 2 x 2 matrix is populated as follows:

	High noncompliance	Low noncompliance
High complaint rate	<p>Quadrant 1</p> <ul style="list-style-type: none"> • Food services and drinking places • Personal and laundry services • Rental and leasing services • Retail trade 	<p>Quadrant 3</p> <ul style="list-style-type: none"> • Repair and maintenance • Construction
Low complaint rate	<p>Quadrant 2</p> <ul style="list-style-type: none"> • Private households • Social assistance • Food manufacturing 	<p>Quadrant 4</p> <ul style="list-style-type: none"> • Publishing industries • Professional and technical services • Finance • Educational services • Wholesale trade • Public administration

The matrix shows that several industries rank among the top 10 in both violations and complaints (Quadrant 1): food services and drinking places; personal and laundry services; retail trade; and rental and leasing services. And the following industries rank among the bottom 10 in both violations and complaints (Quadrant 4): publishing industries (except internet), professional and technical services, finance, educational services, wholesale trade, and public administration. These industries should be considered the most “functional.”

However, a significant number of industries rank among the top 10 in estimated violations and among the bottom 10 in number of complaints—which is to say, they have the most false negatives and are most problematic (Quadrant 2). They include: private households; social assistance; and food manufacturing. Finally, the industries with the most false positives (Quadrant 3, where complaints significantly outstrip estimated violations) include: repair and maintenance, and construction.

Notably, in addition to the violation rate of each industry, CPS-MORG survey data also provides insight into which occupations experience high minimum wage violations. After Quadrant 2 industries have been identified, such information can help agencies further refine their inquiries when initiating proactive investigations in high violation, low complaint industries.⁴

Table 3 outlines the minimum wage violation rates for highly represented occupations in San Francisco’s most problematic industries.

Table 3. Violation Rates in SF of Occupations Highly Represented in Quadrant 2 Industries, 2005-2018

Occupations	Violation Rate
• Childcare workers	49%
• Maids and housekeeping cleaners	29%
• Personal and home care aides	22%

Examining the ‘Why’ of Complaints or Compliance

These data do not tell us *why* some industries have more/fewer complaints and violations. Potential explanations include individual-level factors like gender, citizenship status, and access to reliable information and resources. Other factors include labor market policies and protections; the existence of intermediary groups, such as hiring firms and temp agencies; the capacity of and agency partnerships with “co-enforcers,” such as unions and community organizations; and challenges associated with the complaint process. Still, it is worth noting that the industries with the most false negatives (Quadrant 2) tend to employ many women and immigrants, while industries with the most false positives (Quadrant 3) typically employ more men and historically have been more unionized.

Finally, let us consider the number of minimum wage violations associated with one complaint, or put differently, “how many violations does it appear to take to trigger one employee complaint?” (Weil and Pyles 2005). This alternative way (number of violations to one complaint) of viewing the relationship between complaints and compliance is useful because of differences across industries in the propensity to complain despite similar underlying conditions.

Table 4 reveals the ratio of total violations for an industry (based on CPS estimates) to the total number of complaints filed with the OLSE. The lower the ratio, the more “vocal” the workers in the industry, and the more attention received from OLSE inspectors. The higher the ratio, the greater the number of unreported/unknown violations, or the greater number of “employers flying under the radar.”

Table 4. Estimated Number of SF Minimum Wage Violations Associated with One Complaint Case

Industry	Ratio
Private households	1327
Social assistance	811
Public administration	655
Finance	443
Waste management and remediation service	392
Educational services	372
Food manufacturing	293
Arts, entertainment, and recreation	210
Wholesale trade	160
Professional and technical services	159
Transportation and warehousing	152
Real estate	118
Rental and leasing services	101
Administrative and support services	78
Health care services, except hospitals	60
Membership associations and organization	59
Retail trade	56
Construction	49
Personal and laundry services	45
Accommodation	34
Food services and drinking places	30
Repair and maintenance	19
Textile, apparel, and leather manufacturing	16

Notes on Data and Methods

- Complaint data covering the period 2005-2018 provided by the San Francisco Office of Labor Standards Enforcement (OLSE), May 2019.
- Employment by industry (the denominator for complaints) is from the Bureau of Labor Statistics (BLS) Quarterly Census of Employment and Wages (average annual employment, 2005-2018).
- Minimum wage violations are estimated using Current Population Survey's Merged Outgoing Rotation Groups (CPS-MORG) data, 2005-2018. It includes only those employees working in San Francisco proper. See [Online Appendix](#) for further details.
- Studies show that measurement error in the CPS-MORG data likely biases our estimates of minimum wage violations downward, meaning the estimates reported here are conservative, and actual violation rates are likely much higher. See [Online Appendix](#) for further details.
- An unknown number of complaints are filed with the state agency and the U.S. Department of Labor rather than the San Francisco OLSE. Thus, the total number of complaints likely does not reflect the total number of complaints made. The comparison of CPS estimates to OLSE complaints must therefore be interpreted cautiously and in that light.
- The definition of "strategic enforcement" is described in a publication of the Rutgers Center for Innovation in Worker Organization and the nonpartisan Center for Law and Social Policy. The report "[The Labor Standards Enforcement Toolbox/Tool 4: Introduction to Strategic Enforcement](#)," (August 2018) is authored by Tanya L. Goldman and edited by Pronita Gupta, Janice Fine, and Jenn Round.

About the Authors

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About CIWO

The [Center for Innovation in Worker Organization](#) (CIWO) is a "think and do tank" launched in 2014 and housed at [Rutgers University's School of Management and Labor Relations](#). CIWO's mission is to promote strong workers' organizations and shift the balance of power towards greater economic and social equity. CIWO leverages the resources of a highly respected research university to create a centralized go-to institution for strategic and organizational development. CIWO's primary objectives are to facilitate the generation and dissemination of ideas, strategies, and programs for worker centers, community organizations, labor unions and their local, state and national networks.

Endnotes

¹ See San Francisco Office of Labor Standards Enforcement. 2020. "FY 2018-2019 Outcomes Report." Note, Santa Fe, NM passed a minimum wage law earlier in 2003 than Francisco, but Santa Fe's law took effect in June 2004, after San Francisco's February 2004 effective date. See Brennan Center for Justice. 2005. "Appeals Court Upholds Santa Fe Living Wage Law." <https://www.brennancenter.org/our-work/analysis-opinion/appeals-court-upholds-santa-fe-living-wage-law>.

² Center for Economic and Policy Research. 2020. CPS ORG Uniform Extracts, Version 2.5 Washington, D.C.

³ Weil, David, and Amanda Pyles. 2005. "Why Complain?: Complaints, Compliance, and the Problem of Enforcement in the U.S. Workplace." *Comp. Lab. L. & Poly. J.* 27:59.

⁴ OLSE did not comprehensively track complaints by occupation from 2005 to 2018. If such data were available, a complaint/compliance matrix could be created to determine which occupations experience high rates of violations but have low complaint rates, which could inform even more precise targeting within a given industry.