

PROTECTING PAY:
MINIMUM WAGE
CLAIMS IN OHIO

A REPORT FROM
POLICY MATTERS OHIO

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Executive Summary

Policy Matters Ohio examined all of the minimum-wage cases filed between July 1, 2008, and June 30, 2009 (Fiscal Year 2009), at the Bureau of Labor & Worker Safety (LAWS) of the Ohio Department of Commerce's Division of Industrial Compliance and Labor. These included cases filed for nonpayment of the minimum wage, unpaid wages or failure to pay overtime. Information provided by LAWS and the Ohio Attorney General Labor Relations Section allowed us to update the progress through nearly all of 2009 and in many instances into the first part of 2010.

Key findings from the data were:

- The 940 wage complaints were filed in 73 of Ohio's 88 counties, and complaints resolved in favor of the worker were filed in a significant majority of Ohio counties.
- Most cases were resolved in favor of the worker, and urban counties accounted for most of these complaints.
- The accommodations and food service industry, including restaurants, accounted for by far the largest number of complaints, followed by retail trade (among those where an industry was identifiable).
- Accommodations and food services not only had by far the largest number of complaints among industries, it also had among the highest number in relation to the number of Ohioans employed in that industry. Like the arts and entertainment industry, it had twice as great a share of complaints as it does of the state's private-sector employment. Agriculture had the highest number of complaints relative to private-sector employment, but that was based on a relatively small number of complaints – 13 – and an employment total that undercounts the true total of agricultural workers in Ohio. Other industries that have a bigger proportion of complaints than of employment include transportation and warehousing, other services (except public administration) and construction. By contrast, there were few complaints at manufacturing companies.
- Claims of what LAWS classifies as “unpaid wages” accounted for the largest number of cases filed.

National studies have found that a significant portion of vulnerable workers are unlikely to lodge wage complaints because of immigration status, fear of job loss, lack of knowledge of their rights and other reasons. Ohio needs to upgrade its overall reporting on wage and hour enforcement. The lack of easily available public information is part and parcel of a wage and hour enforcement effort that has been handicapped by a lack of resources. Gathering and providing more information on wage and hour complaints is a step toward the more vigorous enforcement Ohio workers need.

Policy Matters Ohio examined all of the minimum-wage cases filed between July 1, 2008, and June 30, 2009 (Fiscal Year 2009), at the Bureau of Labor & Worker Safety (LAWS) of the Ohio Department of Commerce's Division of Industrial Compliance and Labor.¹ These included cases filed for nonpayment of the minimum wage, unpaid wages or failure to pay overtime (this report does not examine child-labor or prevailing wage cases filed with the state, also handled by the bureau). We reviewed two-page summaries of each case, provided by LAWS at our request, which itemize the basics of each case, including the name and location of the employer, the reason for the complaint, and the status of the case. LAWS also provided a summary of the cases, including information on the resolution of each case. In some instances, cases were referred to the Attorney General. The Labor Relations Section there also provided us with information on those cases. This allowed us to update the progress of some cases into the spring of 2010, while the information from LAWS covers progress nearly through calendar 2009.

Ohio workers filed 940 cases with the state related to the minimum wage, overtime and unpaid wages during Fiscal Year 2009.² While this number of cases in a private-sector workforce of nearly 4.5 million may imply wage theft is not a big problem, large numbers of employees do not complain for a variety of reasons. "Workers in many of the industries with the highest levels of noncompliance are often the most reluctant to trigger investigations through complaints due to their immigration status, lack of knowledge of rights, or fears about employment security," noted David Weil of Boston University in a recent national report for the U.S. Department of Labor Wage & Hour Division.³

Cases were filed at the Bureau of Labor and Worker Safety in 73 of the Ohio's 88 counties.⁴ The case was resolved in favor of the worker in at least 608 of these cases, in 59 different Ohio counties. Figure 1 shows a breakdown of how the cases were resolved:

¹ This report reviews only cases filed with the State of Ohio. The U.S. Department of Labor enforces the federal minimum wage, and complaints filed with USDOL are not included here.

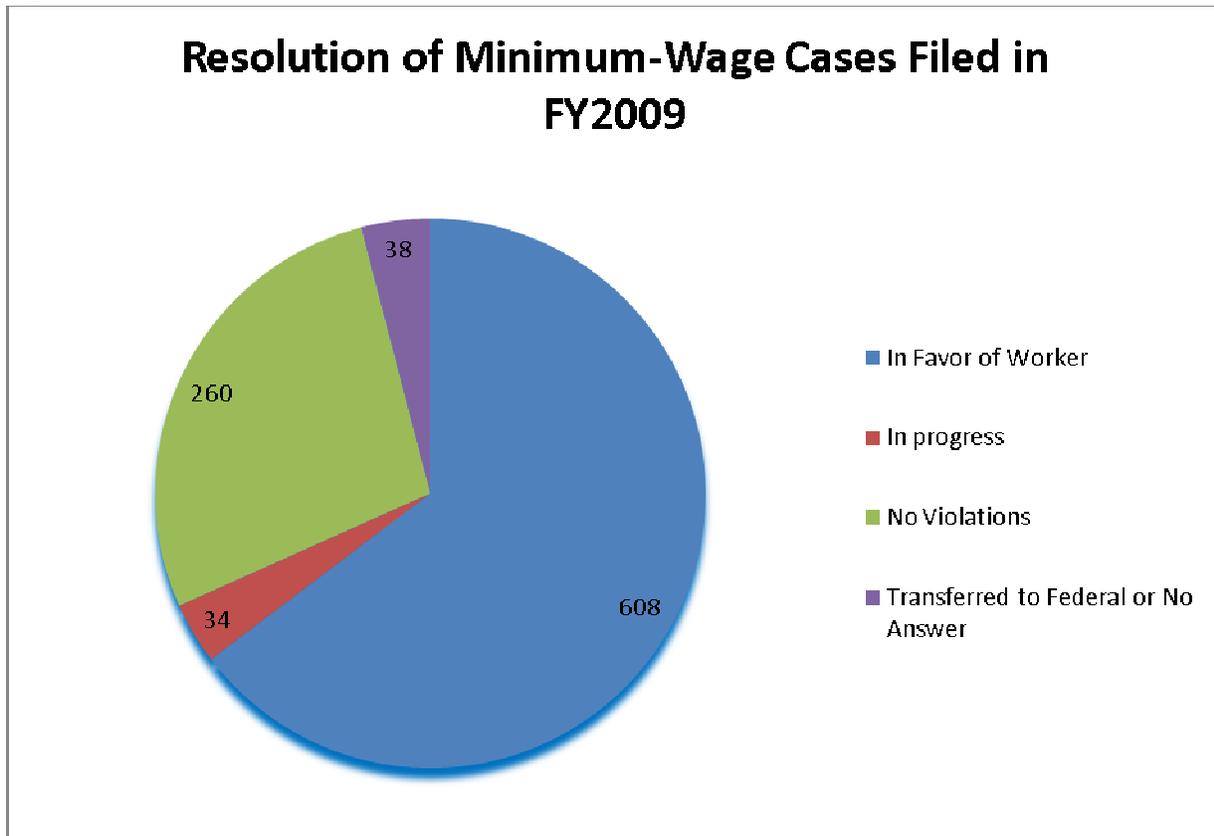
² The 940 also included 33 cases filed for other unspecified reasons (see chart below).

³ Weil, David, principal investigator, "Improving Workplace Conditions through Strategic Enforcement," A Report to the Wage and Hour Division, May 2010, p. 1. Available at <http://www.dol.gov/whd/resources/strategicEnforcement.pdf>

Other factors that make workers less comfortable filing complaints, such as lack of union representation or intimidation, can contribute. See also Weil and Amanda Pyles, "Why Complain? Complaints, Compliance and the Problem of Enforcement in the U.S. Workplace," *Comparative Labor Law and Policy Journal* 27 (Summer 2007): 101-135

⁴ Policy Matters Ohio previously reported based on data from LAWS (see "Little Known State Budget Fact: Funding for Minimum Wage Enforcement Will Cease July 1," Dec. 21, 2009, see http://www.policymattersohio.org/pdf/MinimumWageEnforcementPR2009_12.pdf) that more than 1,000 cases were filed in FY2009. A LAWS official explained subsequently that the smaller number consolidates some cases in which different employees filed involving the same employer.

Figure 1



Source: Policy Matters Ohio analysis of data from Bureau of Labor & Worker Safety

Most of the cases were filed in the six most populous counties in Ohio, but others were scattered across the state. Table 1 shows how many cases were resolved in favor of the worker in the state’s six most populous counties.⁵

Table 1

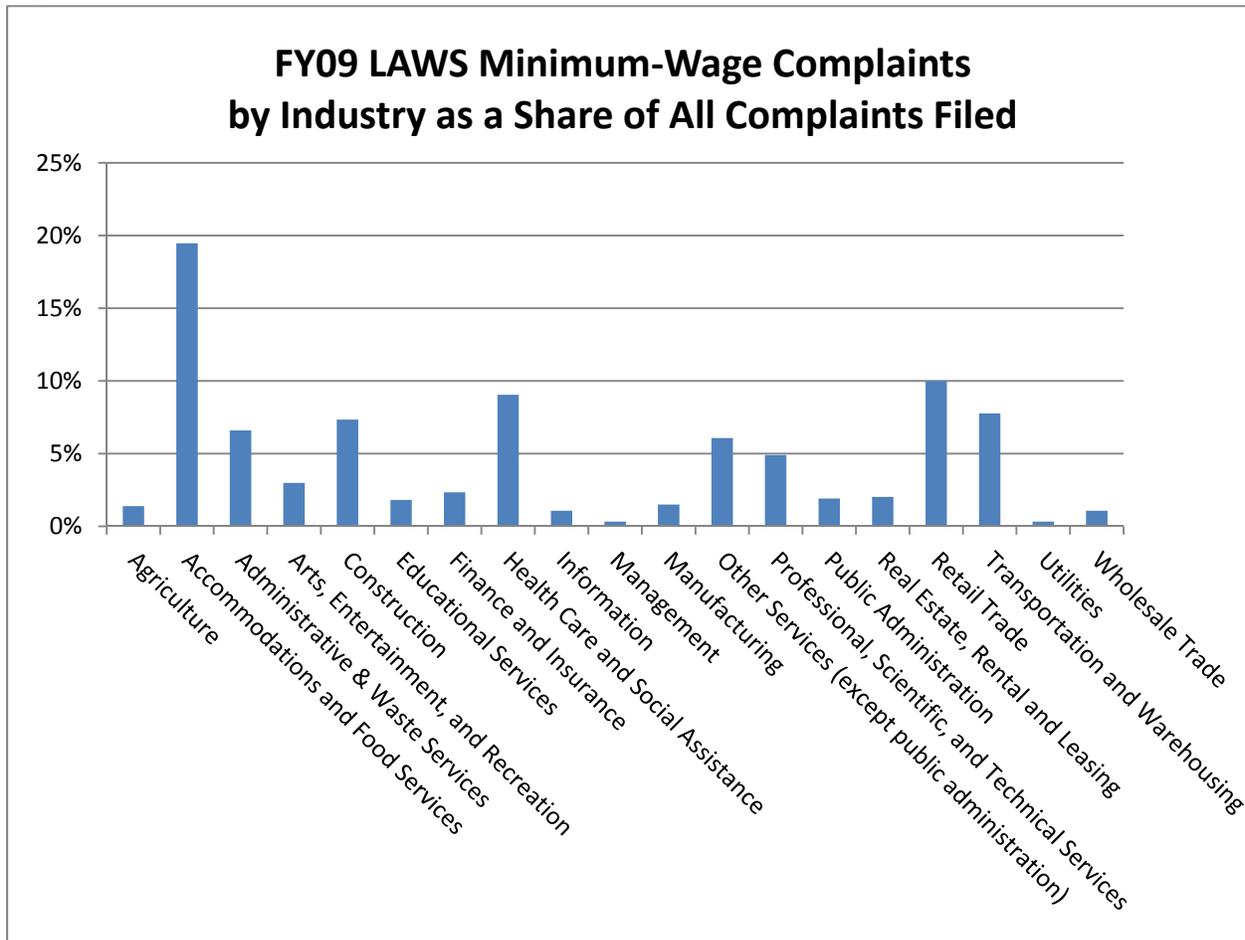
| 608 Complaints Resolved in Favor of Worker, By County | |
|--|------------|
| Franklin | 110 |
| Cuyahoga | 69 |
| Hamilton | 62 |
| Summit | 40 |
| Lucas | 37 |
| Montgomery | 29 |
| Rest of State | 261 |
| TOTAL | 608 |

Source: Policy Matters Ohio analysis of data from Bureau of Labor & Worker Safety

⁵ Workers did not receive their pay in all of these cases; in some instances, for example, the employer had gone out of business or could not be located.

The state does not categorize cases according to industry. We did so, based on the name of the employer, and identified the industry in 825 complaints. Among those where an industry was identifiable, the accommodations and food service industry, including restaurants, accounted for by far the largest number of complaints, with 183 or more than 19 percent of the total. Next highest were retail trade, with 94 or 10 percent; health care and social assistance, with 85 or 9 percent; transportation and warehousing, with 73 or 7.8 percent; and construction, with 69 or 7.3 percent. Figure 2 shows how many complaints were filed in each industry as a share of the total.

Figure 2



Source: Policy Matters Ohio analysis of data from Bureau of Labor & Worker Safety

The review also included an examination of which industries saw the greatest number of complaints in relation to private-industry employment. Based on figures from the 2008 Quarterly Census on Employment and Wages (QCEW), which tracks employment according to unemployment compensation tax reports filed by employers, agriculture had the highest number of complaints in relation to employment. However, this represented just 13 complaints, most of them at a single employer. It also probably overstates the relative extent to which agricultural

workers have filed wage complaints with the state, since the QCEW does not include agricultural workers working on small farms, the self-employed and unpaid family workers.⁶

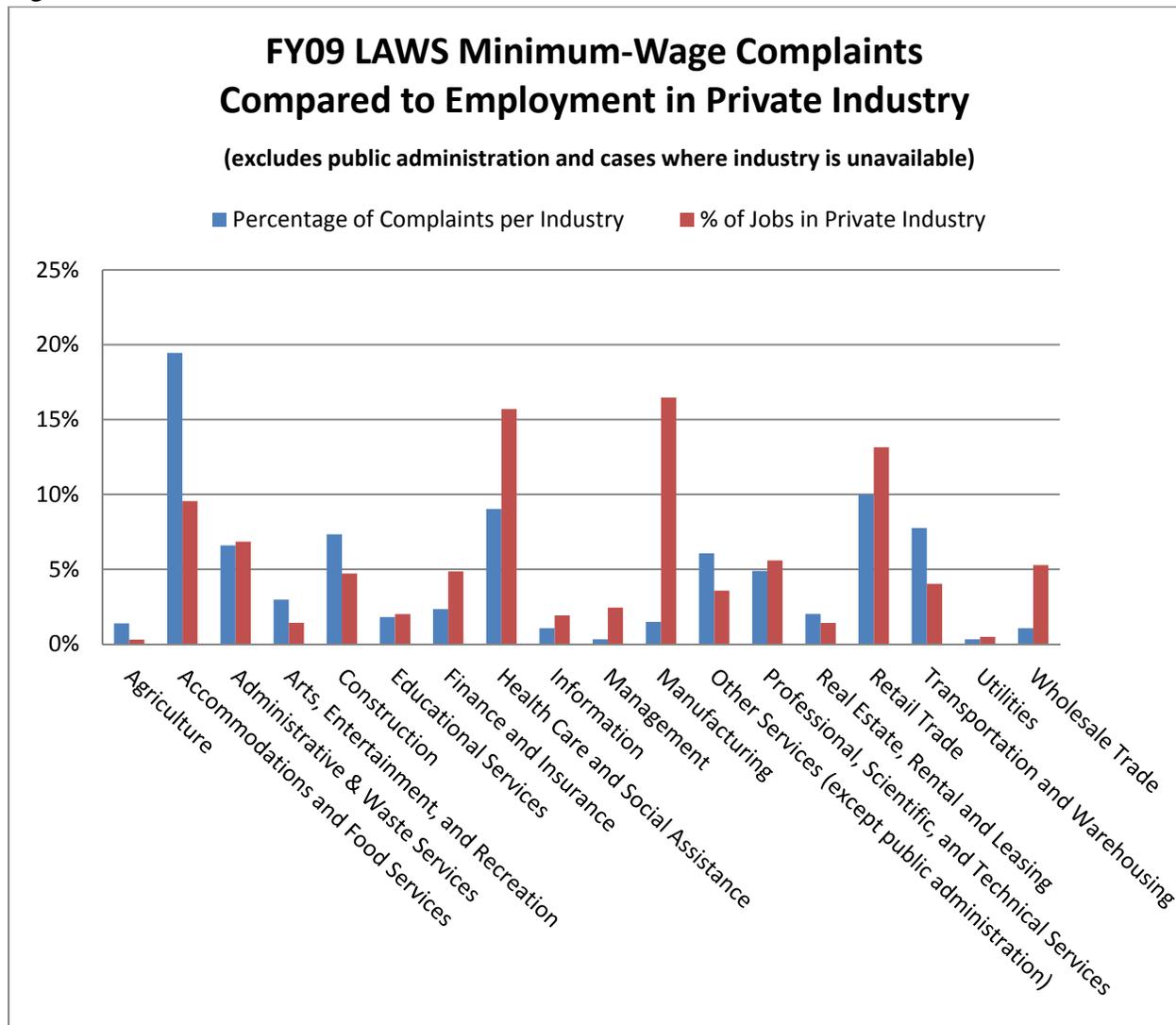
Accommodations and food services not only had by far the largest number of complaints among industries, it also had among the highest number in relation to the number of Ohioans employed in that industry. Like arts and entertainment, it had twice as many complaints as the share of private-sector employment that it represents. Other industries that have a higher proportion of minimum-wage complaints than they do of employment include Transportation and Warehousing, Other Services (except public administration) and Construction.

Conversely, some industries had lower numbers of complaints compared to their employment. In particular, relatively few complaints were filed in FY2009 involving manufacturing workers – just 14 complaints, though this sector was the largest of any, with more than 700,000 jobs. LAWS officials suggested that this could be because manufacturing often pays a good deal more than the minimum wage, and that typically cases at manufacturers involve overtime claims.⁷ In addition, more manufacturing workers belong to unions than do workers in other private industries, providing more protection against wage theft. However, this extremely low number of claims suggests that there must be additional explanations. Other industries with much lower shares of the complaint total than of employment included Management of Companies and Enterprises and Wholesale Trade. Figure 3 depicts the share of minimum-wage complaints and the share of private-sector employment for each industry (excluding public administration and cases where the industry was unavailable).

⁶ This report relied on the QCEW because overall, it is the gold standard of employment reports. However, the Current Population Survey, a survey of households, includes many agricultural workers who are not counted by the Quarterly Census of Employment and Wages. According to the U.S. Department of Labor's Bureau of Labor Statistics, the CPS showed an annual average of 52,000 Ohio workers employed in agriculture in 2008 and 44,000 in 2009 (Bureau of Labor Statistics, unpublished data, Table 14, States / Areas: Employment status of the civilian non-institutional population by race, and Hispanic or Latino ethnicity, Annual Average 2008 and 2009). By comparison, the QCEW showed a monthly average of 13,774 in 2008. Of course, farmworkers may also use federal statutes to file complaints.

⁷ Interview with then-LAWS officials Bob Kennedy and Michele Hanly, April 6, 2010

Figure 3

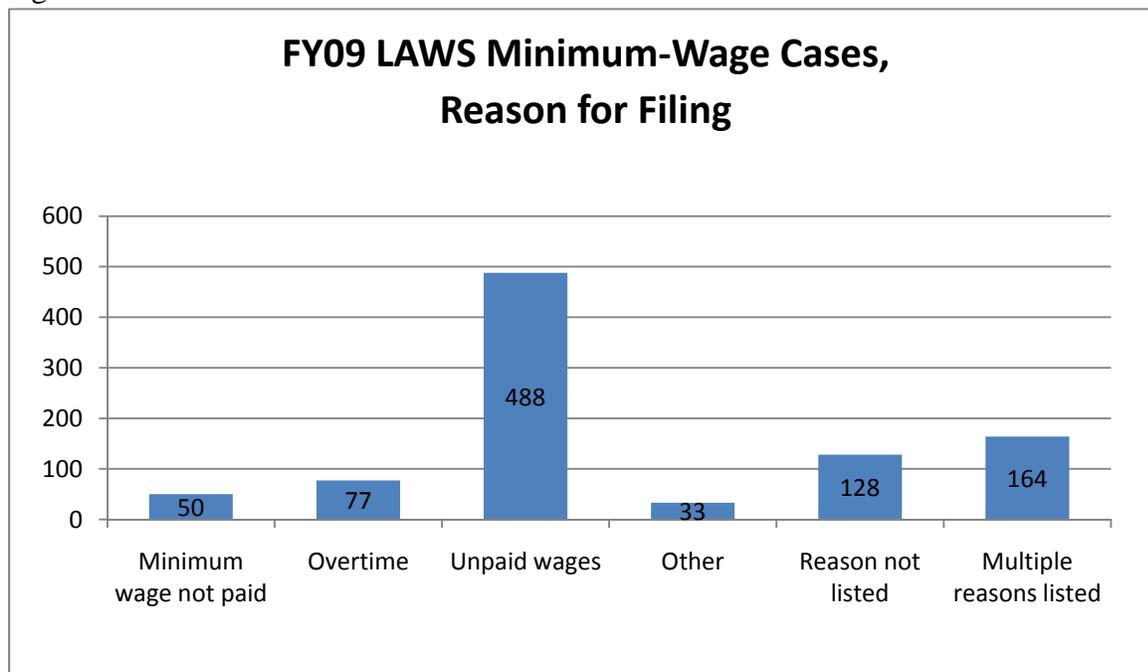


Source: Policy Matters Ohio analysis of data from Bureau of Labor & Worker Safety

Each case summary provided by the Bureau of Labor & Worker Safety included the complainant’s reason for the filing. By far the greatest number cited “unpaid wages,” one of the categories on the complaint form. These include cases where workers have not been paid at all for a period of time. However, this may be a catch-all. A smaller number of complaints claimed unpaid overtime or the minimum wage not being paid, while others listed multiple reasons or none at all. Figure 4 shows a breakdown of the reasons for complaints. Ohio law requires that workers be paid twice a month, unless a different time period is established by written contract or a longer time period is customary in a given industry. However, unlike most states, it does not require full payment of wages due, beyond the minimum. A bill proposed in the last General Assembly would have cured that omission.⁸

⁸ Senate Bill 212, 128th General Assembly, available at http://www.legislature.state.oh.us/bills.cfm?ID=128_SB_212

Figure 4



Source: Policy Matters Ohio analysis of data from Bureau of Labor & Worker Safety

Overall information on Ohio state minimum-wage and related cases is sparse. The Ohio Department of Commerce includes in its annual reports only listings of the number of wage investigations completed and amounts collected.⁹ While the department readily provided information on individual cases, Policy Matters Ohio compiled the industry data in this report by going through each two-page paper summary and attempting to determine the industry. In California, by contrast, the Division of Labor Standards Enforcement of the Department of Industrial Relations issues an annual report listing the number of citations by industry, among other data.¹⁰

Ohio needs to upgrade its overall reporting on wage and hour enforcement. The lack of easily available public information is part and parcel of a wage and hour enforcement effort that has been handicapped by a lack of resources.¹¹ Unlike in other states with vigorous enforcement efforts,¹² LAWS investigators respond to complaints but do not engage in proactive

⁹ Ohio Department of Commerce, Annual Report FY2010, p. 11, available at http://www.com.ohio.gov/docs/comm_AnnualReport2010.pdf

¹⁰ State of California, Department of Industrial Relations, “2009 Annual Report on the Effectiveness of the Bureau of Field Enforcement,” available at <http://www.dir.ca.gov/dlse/BOFE-2009.pdf>

¹¹ Staffing has been significantly reduced. See Zach Schiller and Sarah DeCarlo, Policy Matters Ohio, “Investigating Wage Theft: A Survey of the States,” November 2010, p. 4, available at <http://www.policymattersohio.org/pdf/InvestigatingWageTheft2010.pdf> and “Little Known State Budget Fact: Funding for Minimum Wage Enforcement Will Cease July 1,” Dec. 21, 2009, available at http://www.policymattersohio.org/pdf/MinimumWageEnforcementPR2009_12.pdf

¹² See for instance Irene Lurie, Nelson A. Rockefeller Institute of Government, State University of New York, “Enforcement of State Minimum Wage and Overtime Laws: Resources and Procedures,” Dec. 1, 2010.

enforcement, which would target industries that stand out for the number of violations. Gathering and providing more information on wage and hour complaints is a step toward the more vigorous enforcement Ohio workers need.

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