



Highlights of [GAO-09-629](#), a report to the Committee on Education and Labor, House of Representatives

## Why GAO Did This Study

The mission of the Department of Labor's Wage and Hour Division (WHD) includes enforcing provisions of the Fair Labor Standards Act (FLSA), which is designed to ensure that millions of workers are paid the federal minimum wage and overtime. Conducting investigations based on worker complaints is WHD's priority. On March 25, 2009, GAO testified on its findings related to (1) undercover tests of WHD's complaint intake process, (2) case study examples of inadequate WHD responses to wage complaints, and (3) the effectiveness of WHD's complaint intake process, conciliations (phone calls to the employer), and other investigative tools. To test WHD's complaint intake process, GAO posed as complainants and employers in 10 different scenarios. To provide case study examples and assess effectiveness of complaint investigations, GAO used data mining and statistical sampling of closed case data for fiscal year 2007. This report summarizes the testimony ([GAO-09-458T](#)) and provides recommendations.

## What GAO Recommends

Congress should consider authorizing suspension of the statute of limitations while an investigation by WHD is ongoing. GAO also recommends that Labor reassess its complaint intake and resolution processes; explore new investigative tools and interagency partnerships; and monitor its ability to handle its workload. WHD agreed with GAO's recommendations.

View [GAO-09-629](#) or [key components](#). For more information, contact Gregory D. Kutz at (202) 512-6722 or [kutzg@gao.gov](mailto:kutzg@gao.gov).

## DEPARTMENT OF LABOR

### Wage and Hour Division Needs Improved Investigative Processes and Ability to Suspend Statute of Limitations to Better Protect Workers Against Wage Theft

#### What GAO Found

GAO found that WHD frequently responded inadequately to complaints, leaving low wage workers vulnerable to wage theft and other labor law violations. Posing as fictitious complainants, GAO filed 10 common complaints with WHD district offices across the country. These tests found that WHD staff deterred fictitious callers from filing a complaint by encouraging employees to resolve the issue themselves, directing most calls to voicemail, not returning phone calls to both employees and employers, and providing conflicting or misleading information about how to file a complaint. An assessment of complaint intake processes would help ensure that WHD staff provide appropriate customer service. To hear clips of undercover calls illustrating poor customer service, see <http://www.gao.gov/media/video/gao-09-458t/>. According to WHD policies, investigators should enter all reasonable complaints into WHD's database. However, even though all of GAO's fictitious complaints alleged violations of the laws that WHD enforces, 5 of 10 complaints were not recorded in WHD's database. In addition, WHD policy in one region instructs staff not to record the investigative work done on small cases in which the employer refuses to pay, making WHD appear better at resolving these cases than it is. Reassessing its processes for recording complaints would help WHD ensure that all case information is available.

Similar to the 10 fictitious scenarios, GAO identified 20 cases affecting at least 1,160 real employees whose complaints were inadequately investigated by WHD. Five of the cases were closed based on false information provided by the employer that could have been verified by a search of public records, such as bankruptcy records, but WHD investigators do not have access to publicly available or subscription databases. In another case, the employer claimed that the company did not meet the income requirement to be covered under federal law but did not provide documentary evidence. WHD investigators do not have access to income information collected by the Internal Revenue Service and were unable to verify the employer's claim. Obtaining more research tools and implementing information sharing processes with other agencies would assist WHD in verifying employer-provided information.

GAO's overall assessment found ineffective complaint intake and investigation processes. WHD officials often told GAO that WHD lacks the resources to conduct an investigation of every complaint, allowing employers in some small cases to avoid paying back wages simply by refusing to pay. GAO found that WHD's investigations were often delayed by months or years. Monitoring the extent to which WHD staff are able to handle the volume of complaints would provide assurance that WHD has sufficient resources available. Under FLSA, the statute of limitations is 2 years from the date of the violation, meaning that every day that WHD delays an investigation, the complainant's risk of becoming ineligible to collect back wages increases. However, in several offices, backlogs prevent investigators from initiating cases within 6 months. Suspending the statute of limitations during a WHD investigation would prevent employees from losing back wages due to delays.