



Highlights of [GAO-09-458T](#), a testimony before 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, 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. According to WHD, investigations range from comprehensive investigations to conciliations, which consist primarily of phone calls to a complainant’s employer.

In July 2008, GAO testified on 15 case studies where WHD failed to investigate complaints. This testimony highlights the findings of a follow-up investigation performed at the Committee’s request. Specifically, GAO was asked to (1) test WHD’s complaint intake process in an undercover capacity, (2) provide additional case study examples of inadequate WHD responses to complaints, and (3) assess the effectiveness of WHD’s complaint intake process, conciliations, 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 investigations, GAO used data mining and statistical sampling of closed case data for fiscal year 2007. GAO plans to issue a follow-up report with recommendations concerning resource needs and the recording of complaints. GAO also confirmed key findings with WHD officials.

To view the full product, including the scope and methodology, click on [GAO-09-458T](#). 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’s Complaint Intake and Investigative Processes Leave Low Wage Workers Vulnerable to Wage Theft

#### What GAO Found

GAO found that WHD frequently responded inadequately to complaints, leaving low wage workers vulnerable to wage theft. Posing as fictitious complainants, GAO filed 10 common complaints with WHD district offices across the country. The undercover tests revealed sluggish response times, a poor complaint intake process, and failed conciliation attempts, among other problems. In one case, a WHD investigator lied about investigative work performed and did not investigate GAO’s fictitious complaint. At the end of the undercover tests, GAO was still waiting for WHD to begin investigating three cases—a delay of nearly 5, 4, and 2 months, respectively. The table below provides additional examples of inadequate WHD responses to GAO’s fictitious complaints.

**WHD Response to Fictitious Complaints Submitted by GAO**

Employee/ location	Complaint	Result
Receptionist/ Virginia	Employee was not paid minimum wage.	<ul style="list-style-type: none"> <li>GAO’s fictitious employer agreed that she had failed to pay the minimum wage but refused to pay back wages due.</li> <li>WHD investigator accepted the refusal without question and informed the fictitious employee of his right to file a lawsuit.</li> <li>When the fictitious employee asked why WHD could not offer more help, the investigator told the employee to contact his Congressman to request more resources for WHD.</li> </ul>
Meat Packer/ California	Children using heavy machinery.	<ul style="list-style-type: none"> <li>WHD claims that among complaints, child labor complaints are its top priority, but 4 months after GAO left an anonymous child labor complaint, WHD had not conducted any investigative work.</li> <li>Complaint was never recorded in WHD’s database.</li> </ul>
House Painter/ Texas	Employee did not receive last paycheck.	<ul style="list-style-type: none"> <li>GAO’s fictitious employer told the WHD investigator he would pay, but failed to fax proof of payment to WHD as requested. Investigator never confirmed payment and closed the case as “agreed to pay.”</li> <li>After 3 weeks, GAO’s fictitious employee called back and reported that he hadn’t been paid. The WHD investigator contacted the employer and, when asked, stated “there is no penalty” for failure to pay. The fictitious employer refused to pay, and WHD informed the fictitious employee of his right to take private action.</li> <li>Complaint was recorded as “agreed to pay” in WHD’s database.</li> </ul>

Source: GAO.

Similar to the 10 fictitious scenarios, GAO identified 20 cases affecting at least 1,160 real employees whose employers were inadequately investigated. For example, GAO found cases where it took over a year for WHD to respond to a complaint, cases closed based on unverified information provided by the employer, and cases dropped when the employer did not return phone calls.

GAO’s overall assessment of the WHD complaint intake, conciliation, and investigation processes found an ineffective system that discourages wage theft complaints. With respect to conciliations, GAO found that WHD does not fully investigate these types of complaints or compel employers to pay. In addition, a WHD policy instructed many offices not to record unsuccessful conciliations in its database, making WHD appear better at resolving conciliations than it actually is. WHD’s investigations were frequently delayed by months or years, but once complaints were recorded in WHD’s database and assigned as a case to an investigator, they were often adequately investigated.