

# Department of Labor

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## Labor Investigations in New York City

Report 2022-S-17 | January 2024

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

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Division of State Government Accountability



# Audit Highlights

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## Objective

To determine whether the Department of Labor (Department) is adequately conducting labor violation investigations in New York City. The audit covered the period from January 2019 through March 2023.

## About the Program

Nationwide, labor law violations, such as wage theft, minimum wage violations, and child labor violations, have increased in the wake of the COVID-19 pandemic. In fiscal year 2021, for example, the U.S. Department of Labor's Wage and Hour Division found 2,819 minors employed in violation of the law and assessed employers with nearly \$3.4 million in civil money penalties.<sup>1</sup> Further, the Department of Labor (Department) reported a sharp increase – of 68% – in child labor law violations in New York in 2022 compared with 2021.

The Department is responsible for enforcing New York Labor Laws (Laws). These Laws, which provide requirements related to minimum wage, overtime, hours of work, child labor, and payment of wages and wage supplements (i.e., benefits such as vacation and sick pay), protect the rights of and improve working conditions for New York's workforce. The Department's Division of Labor Standards (Division), which comprises 14 District Offices, including seven<sup>2</sup> in New York City, is responsible for receiving and investigating labor complaints (claims) and has the authority to assess penalties and fines if employers are found to be in violation of the Laws.

Claims are initiated through various means, such as directly from an anonymous or named complainant, via a concerned citizen or advocacy group, or through the Division's own sweeps of industries prone to unlawful practices (e.g., nail salons). The Division's Central Intake Unit, based in Albany, processes complaints for the Division statewide. If the claim appears to be valid, it will be registered as a case in the Division's Worker's Protection Audit/Management system (WPM) and an investigation can be launched. The WPM is used to track details chronicling the history of the case.

The Division's Labor Standards' Field Investigator's Manual (Manual) provides guidance to investigators to follow when conducting wage-related investigations, including target completion dates. A case is complete when the investigator concludes the complaint is not substantiated; when the employer agrees the violation(s) occurred and agrees to pay restitution; or when the employer is unwilling to comply with the investigator's recommendations – in such cases, the Division may assess fines and penalties to the employer.

## Key Findings

We identified weaknesses in several aspects of the Department's oversight of labor investigations in New York City. Similar to a prior audit (Report [2019-S-46](#)), we found significant delays in the Division's investigation activities that, in turn, diminish the efficiency of case resolution and restitution for workers. These delays further lessen the likelihood that employers are held accountable, and in the meantime they are able to reoffend. Further, we found:

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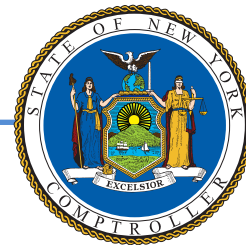
1 [U.S. Department of Labor: Increases in Child Labor Violations, Young Workers' Injuries Prompts Enhanced Outreach, Strong Enforcement by US Department of Labor, July 29, 2022](#)

2 One of the seven districts, District 5, includes the Bronx, Westchester, and surrounding areas.

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- Claims that have remained open, without resolution, for lengthy periods – delaying the start of investigations. We found this to be the case for 791 (50%) of the 1,586 Pending, Incomplete, Duplicate, No Jurisdiction, and Invalid claims.
  - Delays in completing investigations of child labor cases. For example, of the 87 child labor cases in our review, the Division did not meet the 3-month target completion timeline for 56 cases (64%), including 36 cases that took more than a year to complete or are still in Active Investigation. Moreover, the Division does not have a process in place to identify which child labor cases involve hazardous employment, which require a more stringent time frame for investigation completion.
  - Delays in completing investigations of wage-related cases (non-child labor). For example, investigations were not completed in the targeted 1-year time frame for 80% of such cases.
  - Other oversight and monitoring issues, including: cases in Active Investigation that were not reassigned timely when investigators retired or resigned; the Manual used by investigators for guidance that needs to be updated; and a lack of collaboration between the Department and the New York City Department of Education (DOE).

## Key Recommendations

- Establish a mechanism to ensure claims are reviewed promptly and labeled accurately, and explore whether a dedicated Central Intake Unit might have a role in achieving this.
- Develop guidelines to identify child labor cases involving instances of hazardous employment.
- Develop target completion time frames for all child labor and wage-related case investigations and ensure they are being followed.
- Provide additional oversight and monitoring, including revising the Manual with updated policies and procedures; ensure cases are reassigned in a timely manner upon an investigator's departure; and collaborate with DOE on child labor-related issues.



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**Office of the New York State Comptroller  
Division of State Government Accountability**

January 31, 2024

Roberta Reardon  
Commissioner  
Department of Labor  
W.A. Harriman Campus, Building 12  
Albany, NY 12240

Dear Commissioner Reardon:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report on our audit entitled *Labor Investigations in New York City*. The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

*Division of State Government Accountability*

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# Glossary of Terms

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<b>Term</b>	<b>Description</b>	<b>Identifier</b>
Department	Department of Labor	<i>Auditee</i>
Case	A claim that is determined to be valid (i.e., having merit) and is registered in the WPM with a case ID, which launches the investigation	<i>Key Term</i>
Central Intake	Central Intake Unit within the Department's Division of Labor Standards	<i>Unit</i>
Claim	Labor complaint received by the Department's Division of Labor Standards	<i>Key Term</i>
Division	The Department's Division of Labor Standards	<i>Division</i>
DOE	New York City Department of Education	<i>Agency</i>
Laws	New York Labor Laws	<i>Law</i>
Manual	Division's Labor Standards' Field Investigator's Manual	<i>Guidance</i>
Report	Director's Report	<i>Key Term</i>
WCB	Worker's Compensation Board	<i>Agency</i>
WPM	Worker's Protection Audit/Management system	<i>System</i>

# Background

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New York Labor Laws (Laws) protect the rights of, and improve working conditions for, New York's workforce. The Laws establish rules regarding minimum wage, overtime, hours of work, child labor, and payment of wages and wage supplements (i.e., benefits such as vacation and sick pay). The Department of Labor (Department) is responsible for enforcing employers' compliance with the Laws and investigating labor violations.

Nationwide, labor violations, such as wage theft (e.g., minimum wage, overtime, tips, meal break violations, and illegal deductions) and child labor exploitation, have increased, particularly in the wake of the COVID-19 pandemic. In fiscal year 2021, the U.S. Department of Labor's Wage and Hour Division found 2,819 minors employed in violation of the law and assessed employers with nearly \$3.4 million in civil money penalties.<sup>3</sup> Further, the Department reported a sharp increase – of 68% – in child labor law violations in New York in 2022 compared with 2021. Many of the violations stem from wage underpayments, hours of work, and barred employment. New York City is home to many of the industries, such as restaurants, construction, home health care, and nail salons, that are particularly at high risk of violations.

The Department's Division of Labor Standards (Division), which comprises 14 District Offices, including seven<sup>4</sup> in New York City, is responsible for receiving and investigating labor complaints and has the authority to assess penalties and fines when employers are found to be in violation of the Laws. Labor complaints (claims) can come directly from a complainant, from a concerned citizen or advocacy group, as a referral from the Worker's Compensation Board (WCB), or from the Division's own sweeps of industries prone to unlawful practices (e.g., nail salons). The Division's Albany-based Central Intake Unit (Central Intake) is responsible for processing all complaints received statewide and determining the validity of the claims. Claims that are identified as valid (i.e., having merit) are registered as cases in the Division's Worker's Protection Audit/Management system (WPM), which is used to track claim, case, claimant, and employer details, and then sent to the appropriate District Office and assigned to investigators. (See Exhibit, which illustrates the labor claim intake and case investigation processes.)

The Division's Labor Standards' Field Investigator's Manual (Manual) provides guidance to investigators to follow when conducting wage-related investigations, including target completion dates. Once assigned a case, the investigator is responsible for tracking its progress and noting key milestones in the WPM. A case is complete when the investigator concludes the initial complaint is not substantiated; when the employer agrees the violation(s) occurred and agrees to pay restitution; or when the employer is unwilling to comply with the investigator's recommendations – in these cases, the Division may assess fines and penalties against the employer.

Based on the data provided, from January 1, 2019 through June 7, 2022, the Division received 44,082 claims statewide, including 7,847 claims involving

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3 [U.S. Department of Labor: Increases in Child Labor Violations, Young Workers' Injuries Prompts Enhanced Outreach, Strong Enforcement by US Department of Labor, July 29, 2022](#)

4 One of the seven districts, District 5, includes the Bronx, Westchester, and surrounding areas.

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employers located in New York City and that were referred to one of the seven NYC District Offices. Of these 7,847 claims, 1,694 were registered in the WPM as cases for investigation.



# Audit Findings and Recommendations

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As evidenced by news reports and recent research, Laws designed to protect workers are particularly at risk of employer violation during times of economic challenges. Most at risk are child workers (younger than age 18). Child workers are typically hired to make up for labor shortages – and, as widely reported, are especially vulnerable to exploitation, many of them being unaccompanied migrant children. The Division’s oversight and monitoring of labor complaints, including claims intake processing and the subsequent investigation of cases, is critical to ensure that all workers in New York State, including the most vulnerable, are being protected as the Laws allow and that their rights and wages are safeguarded.

New York City has a large number of industries that are particularly at high risk of violations, such as restaurants, construction, home health care, and nail salons. Despite the need for vigilance in battling labor violations, we found the Department does not provide oversight of or adequate resources for the Division to ensure that claims involving New York City employers are processed accurately and efficiently and that it is effectively managing the caseload of investigations. We identified significant issues with the Division’s claims processing and investigation activities that, in turn, delayed case resolution and restitution for the workers. For example, we found:

- Claims that are classified as Pending or Incomplete have remained open for lengthy periods – in some cases over a year – delaying the start of investigations.
- Despite the Division’s commitment to prioritize and complete child labor cases in a timely manner, 64% of child labor cases in our sample were not completed within 3 months – the required time frame for cases that are referred by the WCB.
  - The Manual establishes investigation completion time frames only for child labor cases that involve hazardous employment or are referred by the WCB; other cases that do not meet these criteria could be overlooked for timely completion.
  - While the Manual stipulates that child labor cases involving hazardous employment (e.g., involving dangerous chemicals or equipment) should be completed within 1 week, the Division does not have a process in place to identify these cases and ensure these investigations are meeting the more stringent time frame.
- Delays in investigation were also common among wage-related cases (non-child labor). For 922 (80%) of 1,155 cases reviewed, investigations were not completed within the targeted 1-year time frame.

We also identified other areas for improvement, including the Department’s process for reassigning Active Investigation cases where the investigator has left the Department, which results in stalled progress. In addition, collaboration between the Department and the New York City Department of Education (DOE) – to promote early intervention on behalf of students who are at risk of being exploited in the workplace – would benefit the students and the Department.

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## Weaknesses in Claims Processing

It is critical that all claims be reviewed in a timely manner to ensure that valid claims are promptly identified for registration and launching of the investigation. The Division's Central Intake – currently comprising the Director and Assistant Director of the Division as well as three staff borrowed from another unit – is responsible for processing claims the Division receives throughout the State. The Director and Assistant Director are solely responsible for reviewing claims and assigning a claim status: either Valid or Not Valid. Valid claims are registered as a case in the WPM with a case ID. The case is then assigned to the appropriate District Office for investigation. Claims with a status of Not Valid can be either Pending or Incomplete – and remain open until resolution – or rejected as Invalid, Duplicate, or No Jurisdiction (see Table 1 for descriptions).

**Table 1 – Description of Claim Types**

Claim Type	Description
Valid	Claim is determined to have merit and is registered as a case in the WPM
Pending	Claim is waiting to be registered as a case
Incomplete	Claim does not contain enough information to make a decision; Division follows up with claimants for more information
Invalid	Claim does not have any merit
Duplicate	Same claim has previously been filed
No Jurisdiction	Division does not have jurisdiction to investigate claim (e.g., employer is out of State)

Of the 7,847 claims received by the Division that pertain to NYC employers, Central Intake determined 6,261 claims to be Valid and 1,586 claims to be Not Valid.

Our review found that 791 (50%) of the 1,586 Not Valid claims remained classified as Pending or Incomplete – and potentially valid – for lengthy periods without timely resolution (see Table 2). Particularly problematic are those 354 Pending (117) and Incomplete (237) claims going back to 2019 that were still open and unresolved as of June 2022 – 3 years after the claims were received. It is critical that all claims that remain open be reviewed in a timely manner and are followed up on promptly for any missing information so a decision regarding their validity is made and the investigation process can begin. Delays in resolving Incomplete claims and in registering Pending claims as cases in the WPM ultimately prolong the time frame that claimants go without their due wages or restitution – a scenario that is particularly critical for minimum wage earners and others who may be living at or below the poverty level.

**Table 2 – Claim Status as of June 2022**

<b>Claim Status</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>Totals</b>
Pending	117	0	5	4	126
Incomplete	237	13	5	410	665
Invalid	57	82	16	11	166
Duplicate	0	0	3	21	24
No Jurisdiction	460	105	23	17	605
<b>Totals</b>	<b>871</b>	<b>200</b>	<b>52</b>	<b>463</b>	<b>1,586</b>

When we brought the high number of open claims (Pending and Incomplete) to Division officials' attention, they acknowledged the delays in reviewing these claims and stated that they would begin looking into them. In response to the preliminary findings, they stated that many of the claims were referred by another division and either had yet to be processed or were Duplicate claims. Division officials advised us that, as of April 2023, only 72 of the 40,000 claims received during the audit period remained in Pending status, and that these 72 claims require further review or updates to account for actions taken in order to be properly accounted for and noted in the log.

The delays in reviewing these claims are most likely caused by the Division not having dedicated Central Intake staff to handle the heavily dependent manual process. The shared staffing arrangement also places an undue burden on staff who must manage dual-unit workloads. In this scenario, human error is a significant risk, which may result in delays in claims resolution, claims being miscategorized, or claims potentially involving a serious labor issue being overlooked.

## Delayed Investigations

Once a claim is registered in the WPM as a case, an investigation can be launched by a Division investigator. It is critical that investigations be conducted in a timely manner to ensure cases are resolved and that, if appropriate, complainants receive the restitution to which they are entitled.

Based on Department-provided data for the 2,107 cases related to the seven New York City districts, we identified 1,694 that were registered in the WPM as cases in the five boroughs – we excluded the 413 cases that belonged to regions outside of the five boroughs. The 1,694 cases included:

- Child labor (87)
- Wage, wage supplement, minimum wage (1,317)
- Permits and licensing, hours and meal period, mediation and retaliation, unlawful deductions, and more (290)

Given the high priority the Division places on child labor cases and the large number of wage-related cases registered in the WPM, we focused our analysis on these two types of cases, totaling 1,404.

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We determined that, generally, these case investigations were not being completed in a timely manner. Lengthy delays are not only a disservice to the victimized worker, but may discourage others from filing a claim if it is viewed as an overwhelming obstacle. Additionally, the longer cases go unresolved (e.g., due to relocation, employer transience), the less likely it is that the complainants will receive the resolution and restitution to which they are entitled and that employers in violation will be held accountable.

## Child Labor Cases

### Investigation Completion Time Frames

Division officials stated that cases that involve a minor should be handled with priority and be completed in a timely manner. In addition, the Manual contains specific provisions for certain child labor cases:

- Hazardous employment (e.g., working with dangerous chemicals or equipment): The Manual specifies that the investigation should be completed within 1 week of the claim being filed or of learning of the violation.
- WCB-referred cases (i.e., involving workplace-related injury): The Manual specifies that the investigation should be completed within 3 months of the claim being filed or of learning of the violation.
- Non-hazard/non-WCB-referred cases: The Manual does not assign a specific time frame for other child labor cases (i.e., cases involving a minor working during school hours), stating only that for “priority cases and others” the target completion is “as directed by Supervisor.” The non-specificity of this guidance invites the risk of delayed investigations and the potential for further harm to the child complainants. Given the Department’s responsibility to enforce the Laws that protect the rights of, and improve working conditions for, New York’s workforce, we urge Department officials to establish a target completion time frame.

Overall, of the 87 child labor cases, we found the Division did not meet the 3-month target completion timeline for 56 cases (64%), including 36 cases that took more than a year to complete or are still in Active Investigation. Specifically:

- We were unable to determine whether any of the 87 child labor cases involved hazardous employment and thus whether the Division was meeting the 1-week time frame for investigation completion, because this information is not recorded in the WPM. Division officials stated that the WPM does not have the functionality for them to identify hazardous employment cases in a systematic manner. Nor does the Division manually identify hazardous employment cases. This is a major shortfall and a missed opportunity for the Division not only to identify employers in violation but also to act quickly on behalf of minors who are exposed to hazardous conditions.
- Of the 87 child labor cases, the WPM shows 40 cases were referred by the WCB. For these 40, we found that only 11 investigations (28%) were completed

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within the targeted 3-month time frame. For 28 cases, the investigation took longer than the targeted 3-month period to complete. For 17 of these 28 cases, the investigation took more than 12 months to complete, including two that took 24 months or more to complete. The remaining case, with a claim date of August 2021, was still in Active Investigation status as of June 2022 – nearly 1 year later.

- Lacking a specific time frame for other, non-hazard/non-WCB-referred child labor cases, we used the Manual’s less stringent 3-month requirement as our frame of reference to assess the timeliness of investigation completion for the remaining 47 child labor cases. We found:
  - 20 cases (42.5%) were completed in 3 months.
  - 14 cases (29.8%) took more than 3 months to complete, including five that took more than 12 months to complete.
  - 13 cases (27.7%) were still in Active Investigation status as of June 2022. The claim dates for these cases ranged from July 2019 to March 2022.

Division officials attributed investigation delays to the COVID-19 pandemic lockdown, stating that they were forbidden to go on field visits until July 2021. Although this may be true of cases that started in March 2020 through July 2021, we note that the Division did not meet the target completion time frame either before or after the pandemic years. We urge the Division to identify where delays are occurring in the process and take action to resolve them. Timely resolution not only is important for the minors involved but will also encourage others who have been victimized – and for whom delays might be an overwhelming obstacle – to file complaints.

## **Assessment of Time Frames for Pivotal Investigation Stages**

While the goal is to complete an investigation within the targeted time frame, it is also vital to review each step in the investigation process to determine where bottlenecks may be occurring so that they can be mitigated. To determine where delays may have occurred within the investigation process, we selected a judgmental sample of 40 cases from the 87 child labor cases and, for each, calculated the time frames for four pivotal stages based on WPM records:

1. From Claim Received to Investigator Assigned
2. From Investigator Assigned to First Employer Contact
3. From Investigator Assigned to Initial Field Visit (this is the only stage where the Manual establishes a required a time frame – of 48 hours – excluding WCB-referred cases, which account for 14 of the 40 cases)
4. From Investigator Assigned to Investigation Completed (i.e., case closed or payment pending in wage-related cases)

Our findings are as follows:

1. Claim Received–Investigator Assigned
  - For 16 of the 40 cases (40%), an investigator was assigned within 1 week.

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- For 15 cases (37.5%), it took 2 to 4 weeks.
  - For the remaining nine cases (22.5%), it took from 5 weeks to over a year.

## 2. Investigator Assigned–First Employer Contact

- For 12 of the 40 cases (30%), an investigator’s first contact with the employer occurred within 4 weeks.
- For five cases (12.5%), this stage took more than 1 month to 6 months.
- For four cases (10%), it took more than 6 months.
- For 19 cases (47.5%), either there was no date in the WPM showing that the initial contact occurred or the employer was contacted prior to the investigator being assigned.

## 3. Investigator Assigned–Initial Field Visit Within 48 Hours

- Only one of 26 non-WCB-referred cases (4%) met the 48-hour initial field visit criterion.
- For 10 cases (38%), the initial field visit took place after 48 hours, ranging from 14 to 18 days for six cases and 30 or more days for four cases (one of which took more than 7 months until the initial field visit took place).
- For 15 cases (58%), either there was no evidence in the WPM that an initial field visit was conducted or the initial field visit took place before the investigator was assigned.

## 4. Investigator Assigned–Investigation Completed

- For 21 cases (52.5%), the investigation was completed within 7 months of the investigator being assigned (ranging from 6 months for 20 cases to 7 months for one case).
- For nine cases (22.5%), the investigation took over 1 year to complete.
- Ten cases (25%), with a claim received date ranging from February 2020 to March 2022, were still in Active Investigation status as of June 2022.

All child labor cases should be treated as true priorities. The Division needs to work on resolving child labor cases in a timely manner, including those with no required time frame for completion, to ensure violations are addressed promptly and to minimize exposing minors to employers who are in violation. For example, in one of our sampled cases, the parent of a minor called the Division on September 23, 2020, and claimed that her daughter was working from 9 a.m. to 1 p.m. on school days. The claim was registered as a case on October 1, 2020. However, the case was not assigned to an investigator until February 18, 2021 – about 5 months later. The WPM does not show any record of a visit made within 48 hours of investigator assignment. Further, it documents that a reminder was sent on June 10, 2021 for the investigator to contact the parent for further questioning. However, according to WPM data, it was more than a month later that the investigator attempted contact, via a voicemail and an email, and then sent a letter to the parent on July 29, 2021 – all with no response. As a result, the case was closed shortly after – on August 18, 2021. As this example shows, protracted delays in the various stages equate to a missed opportunity for the Division to protect child laborers and address potential violations by the employer.



## Wage-Related Cases

According to the Manual, minimum wage and overtime cases should be completed within 1 year of the claim being filed or of learning of the violation. The Manual also states that wage and wage supplement cases (e.g., benefits such as vacation time and sick pay) should be completed within 6 months of filing a claim or learning of a violation. We note that the Manual specifically states this requirement applies to the Albany-based Central Investigations Unit cases. Lacking a specified time frame for New York City cases, we applied the Manual’s less restrictive 1-year requirement as the frame of reference for our analysis of investigation completion times for New York City wage-related cases.

There were 1,317 minimum wage and/or wage and wage supplement cases during the audited period (790 minimum wage, 128 wage/wage supplement, and 399 cases that involve both minimum wage and wage/wage supplements). From the 1,317 cases, we excluded 162 cases that were received less than 1 year from when we obtained the data. Of the remaining 1,155 cases (with claim received dates ranging from January 2019 to July 2021), we determined that 233 cases (20%) were completed within the 1-year target time frame; and 922 cases (80%) were not (see Table 3 for a breakdown by year). Of the 922 cases:

- For 225 cases, the investigation took from over 12 months to 40 months to complete. The industries with the highest number of cases were related to restaurant (table service) and construction.
- For 697 cases, the investigations were still active after more than 1 year. These cases were mostly related to the restaurant, health care, retail, construction, and supermarket industries.

**Table 3 – Status of Wage-Related Case Investigations by Year**

Claim Status	2019	2020	2021 (through July)	Totals
Completed within 1 year	183	26	24	233
Not completed in 1 year	158	64	3	225
Active Investigation beyond 1 year	397	171	129	697
<b>Totals</b>	<b>738</b>	<b>261</b>	<b>156</b>	<b>1,155</b>

Although the 1-year completion timeline is a target, it is critical for the Division to improve on its ability to meet, if not exceed, the expectation – to better support the Department’s mission to protect affected New York City workers. It is important to note that this timeline represents only the investigation piece of the process; it does not include the time involved in resolution after the investigation was completed. For example, payment for wages owed to the complainant may take some time after the investigation is over.

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## Deficient Oversight and Monitoring of Active Investigation Cases

### Lag in Case Reassignments

The Division is responsible for ensuring that investigations are carried out in an effective and efficient manner. However, during our review, we determined the Division does not prioritize reassigning Active Investigation cases when the investigator leaves employment, resulting in stalled progress of cases and impeding the timeliness with which investigations are completed.

Based on Division information, there were 47 investigators for the seven New York City districts as of August 2022. Of these, we found three investigators who were no longer employed by the Department but still had active cases assigned to them in the WPM as of November 2022. One of the investigators departed in May 2022, leaving 42 cases not reassigned – two of which related to child labor. Another left in July 2022, with 11 cases that also remained not reassigned as of November 2022. The third investigator left in October 2022, with 47 cases that were not reassigned as of November 2022.

According to Division officials, there is no set deadline to reassign cases. Additionally, they advised us that immediately reassigning cases was found to be unproductive and bad for morale.

Officials also explained that each case is different and may require a different knowledge base depending on the claim allegation. They stated that cases are assigned based on the complexity of the case and the investigator's experience; inexperienced staff must learn to handle a full caseload and may not have accumulated all the required knowledge to be assigned an investigation into any allegation in any industry. Although the Manual does not provide guidance on the number of cases that should be assigned to an investigator at a given time, we identified as many as 72 cases assigned to an investigator and 67 cases assigned to another investigator who was also responsible for reviewing the staff's work, such as field visits and employee interviews. Each of them had 40 cases from 2019 that were still in Active Investigation. Given the extensive nature of the investigation work, excessive caseloads are detrimental to comprehensive, thorough, and timely investigations. We urge Division officials to develop a strategy that allows a more equitable distribution of cases among investigators to avoid case delays while maintaining morale.

### Unresolved Cases

The Division uses a Director's Report (Report) to monitor cases in New York City and to prioritize addressing old cases, issuing a report for each of the seven District Offices. The Report, formerly issued biweekly but as of 2022 issued monthly, tracks the 10 oldest cases with a status of Active Investigation or pending payment (upon conclusion of investigation in monetary cases).



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We reviewed copies of these Reports for the period of January 2019 through August 2022 – we excluded District 7 from this analysis because the Division did not have all the Reports for the requested period. We identified 18 cases that were included in the August 2022 Report that were originally listed in the Reports issued during the period of January 2019 through December 2021. Further, 14 of these 18 cases were included in the Reports for over a year, with four of them reported for more than 3.5 years. The claims for these cases were received in 2015 and 2017.

The August 2022 Reports show that five of the six districts had cases as old as 2017 and one district had cases from 2019 and 2020. However, the Report shows only the 10 oldest cases, omitting the hundreds of other aged cases we found in the WPM with an Active Investigation status. Our analysis in December 2022 identified a total of 1,224 cases in Active Investigation status in New York City (excluding District 7 for consistency with the analysis cited above), including 309 cases from 2019, 237 from 2018, and 49 from 2017.

In their response to our preliminary findings, Division officials advised us they use the Report in conjunction with case inventory reviews. Despite these tools, it is unclear why a significant number of cases are unresolved. Division officials need to develop a strategy to address these long-unresolved cases and minimize any additional delay.

## Non-Updated Manual

The Manual, which was created in 2014, is the Division’s key tool to guide investigators in their work. According to the Manual, the Division’s intent was to keep the electronic version of the Manual updated with newly issued information on a regular basis. However, we found Division officials have been issuing memos to communicate changes and/or updates to policies and procedures – a total of 77 from January 2019 through June 2022 – and have not incorporated any of these updates into the electronic version so that all current information would be readily available in a single resource. In speaking with investigators, they indicated that the Manual is still a useful guide but added that an updated comprehensive version would be helpful to both seasoned and new investigators.

According to Division officials, updating the Manual requires much time and resources and, for these reasons, they use memos to communicate new information. While the memos serve to update investigators swiftly, we believe an updated Manual, containing all the significant information that has been distributed separately over the years, would make it easier for all investigators to be aware of and comply with current policies and procedures.

## WPM Issues

We note that the Division’s WPM has some functionality limitations. For example, as previously indicated, the system does not distinguish those child labor cases that involve hazardous employment – an important function that, especially given the delays in case investigations, could significantly impact the lives of children laboring

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in hazardous conditions. According to Division officials, they have been working on a new case management system to replace the WPM since March 2022; however, they do not have an expected date for completion of the replacement. We encourage the Department to ensure the new system includes the functionality enabling them to readily identify child labor cases involving hazardous employment.

As previously indicated, the WPM documents and tracks claim information and details of case investigations including a chronological record of activities that occur during the life cycle of a case. However, as we noted previously (see “Child Labor Cases – Assessment of Time Frames for Pivotal Investigation Stages” section), we identified instances where required data such as pivotal dates were missing in the WPM. In addition, while reviewing the different cases in the WPM, we found that 35 of 68 cases pertaining to licensing and permits did not have sufficient details (i.e., notes reflecting investigators’ analysis). In one example, a case was closed the same day the investigator was assigned, and there were no details to support changes in case status from Active Investigation to Closed. This information is essential as it allows a true reflection of claim/case history to better assess delays in the investigation process. Moreover, well-documented claims/cases in the WPM provide others reviewing the case files, including new investigators reassigned to the case, with a clear understanding of the case and proper sequence of events. The Division needs to ensure that claims/cases on the WPM are completed with all the required information.

## **Lack of Collaboration With DOE**

Article 4, Section 137 of the Laws requires the Commissioner of Labor to report monthly to school district superintendents the names and addresses of all children under the age of 18 who are determined to be illegally employed. In New York City, the DOE serves approximately 1 million students, the majority of whom are less than 18 years old, in more than 1,500 public schools. Schools are in a unique position to intervene early and reduce students’ risk of being exploited in the workplace.

We reached out to DOE officials and found that they have not received such reports from the Division. Upon our inquiry, Division officials stated that they have not been generating these reports under the belief that 1985 updates to the Laws made this requirement obsolete. However, the documents provided by the Department do not support their assertion that this requirement is no longer applicable. We urge Department officials to establish regular communication with DOE to help address the potential risk of exploitation of minors by their employers (i.e., requiring minors to work more hours than the law allows or to work without an employment certificate).

We also noted that, in March 2023, Governor Hochul announced new efforts to combat child labor violations in New York State. As part of this initiative, the Department developed and leads a new multi-agency Child Labor Task Force, with participation from the New York State Police, State Education Department, Office of Temporary and Disability Assistance, Office of Child and Family Services, and others, that will work directly with local schools and municipalities to ensure

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children, parents, and employers are educated about their rights and responsibilities. Department officials stated the task force is currently focusing on education, through educational videos for the public, to help minors understand their rights and to help employers understand the Laws. We commend the Department's efforts in this direction; however, the Department should also communicate with DOE to more proactively identify and assist minors who are at risk of exploitation by employers.

## Impact of the COVID-19 Pandemic

According to Division officials, from April 2020 through December 2021 or later, the majority of their staff were assigned to assist with the Department's response to the COVID-19 pandemic crisis and they did not perform their Labor Standards duties for the period. Officials also stated that claim submissions increased significantly statewide in 2020 – by approximately 20,000, but that most of these were COVID-19-related complaints (i.e., wearing masks in the workplace and working while sick). When we inquired about the status of these complaints, they said the complaints were closed en masse in the WPM and forwarded to another division for processing.

## Recommendations

1. Establish a mechanism to ensure claims are reviewed promptly and labeled accurately, and explore whether a dedicated Central Intake Unit might have a role in achieving this.
2. Develop guidelines to identify child labor cases involving instances of hazardous employment.
3. Develop target completion time frames for all child labor and wage-related case investigations and ensure they are being followed.
4. Revise the Manual to include updated policies and procedures.
5. Ensure claim and case information in the WPM includes all relevant data, including but not limited to dates of events/activities and investigators' notes.
6. When investigators leave Department employment, ensure their cases are reassigned in a timely manner.
7. Collaborate and communicate with DOE on labor-related issues involving minors.

# Audit Scope, Objective, and Methodology

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The objective of our audit was to determine whether the Department is adequately conducting labor violation investigations in New York City. The audit covered the period from January 2019 through March 2023.

To accomplish our objective and assess the relevant internal controls, we interviewed Department officials and officials from the Division's New York City District Offices. We reviewed relevant laws and Department and Division policies and procedures, including the Manual and Reports. We assessed the adequacy of internal controls as they related to the Division adequately conducting labor violation investigations. We also assessed the reliability of the WPM data and found it overall to be sufficiently reliable to support our audit conclusions.

To assess the Division's labor violation investigations, we accompanied investigators on their site visits to employer locations and observed how they conduct investigations, including their interactions with employees and employers. We also reviewed data from the Division's WPM database, including the 44,082 claims the Division received statewide from January 1, 2019 through June 7, 2022, of which we determined 7,847 claims were for employers located in New York City. We analyzed the 1,694 cases registered in the WPM to understand how cases were handled and to assess the length of time for investigations to be completed, including 87 child labor cases. For additional analysis, we selected a judgmental sample of 40 of the 87 child labor cases primarily selected from the restaurant category with a cross-section of other industries. We did not design this sample to project to the related population and did not project its results to the related population.

# Statutory Requirements

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## Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties may be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of the Department's oversight and administration of labor investigations and enforcement.

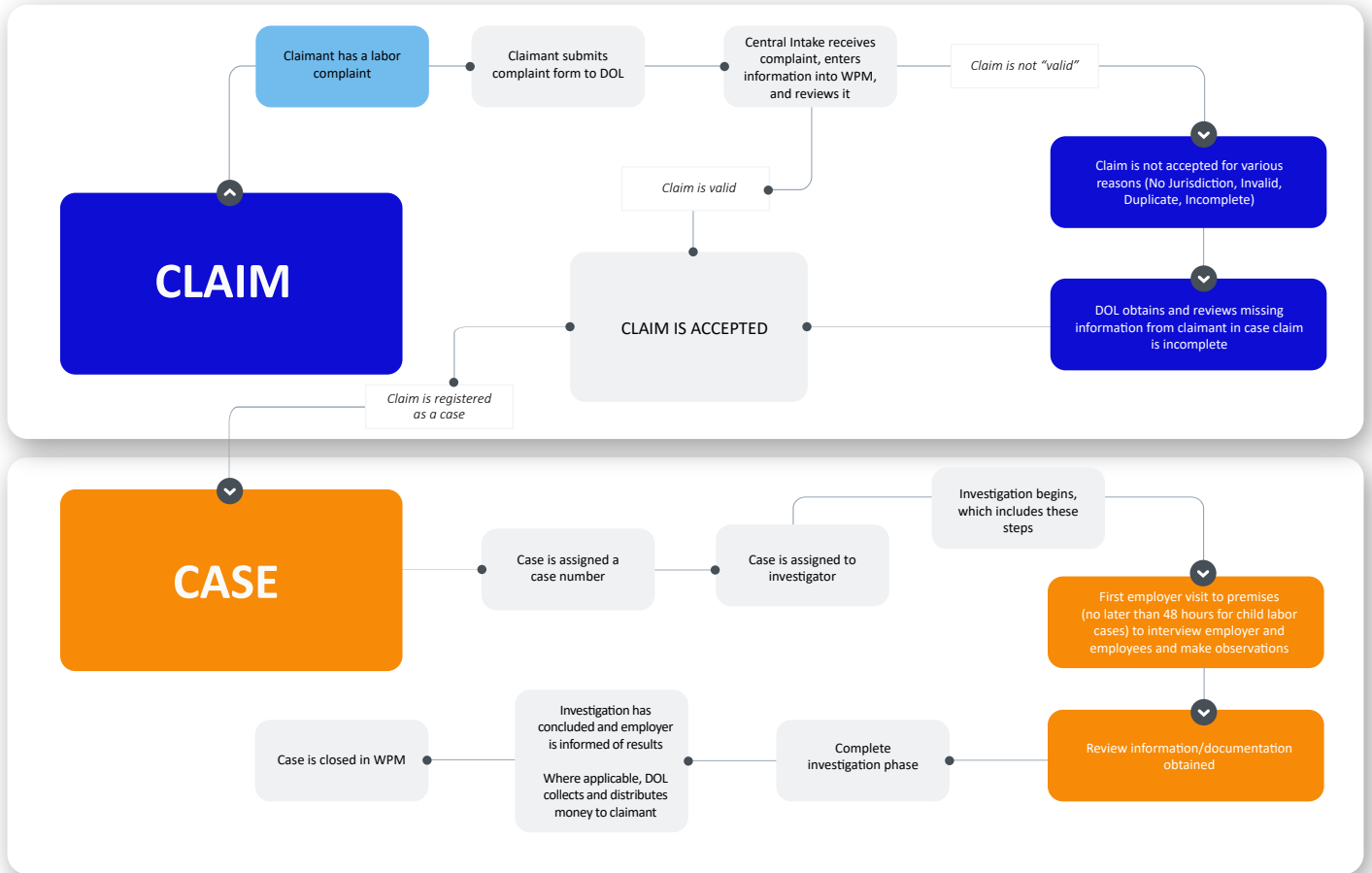
## Reporting Requirements

We provided a draft copy of this report to Department officials for their review and formal comment. We considered their comments in preparing this final report and have included them in their entirety at the end of it. In their response, Department officials agreed with our audit recommendations and indicated that actions have been and will be taken to address them. Our responses to certain Department remarks are included in the report's State Comptroller's Comments.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of the Department of Labor shall report to the Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

# Exhibit

## Labor Claim Intake and Case Investigation Processes



# Agency Comments

WE ARE YOUR DOL



Kathy Hochul, Governor  
Roberta Reardon, Commissioner

December 18, 2023

Kenrick Sifontes  
Office of the New York State Comptroller  
Division of State Government Accountability  
110 State Street, 11th Floor  
Albany, NY 12236

Re: Draft Report – 2022-S-17, Issued 11/15/2023

Dear Mr. Sifontes,

The New York State Department of Labor (NYSDOL) has reviewed the Office of the State Comptroller's (OSC) Draft Report Number 2022-S-17 titled Labor Investigations in New York City, for the period January 1, 2019 through June 14, 2022. Below are NYSDOL's responses:

**Recommendation #1:** *Establish a mechanism to ensure claims are reviewed promptly and labeled accurately, and explore whether a dedicated Central Intake Unit might have a role in achieving this.*

**NYSDOL Response:** NYSDOL has established a procedure for regular review and consistent labeling of claims which are not accepted for investigation or are pending review for validity. Additionally, NYSDOL is establishing a dedicated Central Intake Unit which will handle intake work exclusively.

[Comment 1](#)

**Recommendation #2:** *Develop guidelines to identify child labor cases involving instances of hazardous employment.*

**NYSDOL Response:** NYSDOL has added a new claim type to the Labor Standards case management system. This new claim type ensures that a complaint involving an allegation of a prohibited occupation will be categorized at the intake stage and easily identified by supervision. Child Labor Case Data is a public dashboard containing prohibited occupation violations NYSDOL has found since 2017 and is available on the Child Labor Hub, <https://dol.ny.gov/child-labor-law-hub>.

**Recommendation #3:** *Develop target completion time frames for all child labor and wage-related case investigations and ensure they are being followed.*

**NYSDOL Response:** NYSDOL is establishing a case coordinator exclusively dedicated to monitoring all child labor cases. Additionally, child labor cases are now separately docketed allowing supervisors to monitor and ensure that target resolution timeframes will be met. Child Labor Case Data is a public dashboard showing the statuses of child labor cases NYSDOL has investigated since 2017 and is available on the Child Labor Hub, <https://dol.ny.gov/child-labor-law-hub>. Finally, page 58 of the Investigators' Manual establishes target completion dates for specific types of cases. These timeframes are under review as the Division begins to utilize better case management and procedures to assist staff and supervisors in managing caseloads.

[Comment 2](#)

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**WE ARE YOUR DOL**



Kathy Hochul, Governor  
Roberta Reardon, Commissioner

**Recommendation #4:** *Revise the Manual to include updated policies and procedures.*

**NYSDOL Response:** NYSDOL's Worker Protection Administration hired a project coordinator to update manuals, policies, and procedures. Additionally, a separate training manual for child labor investigations will be drafted and implemented by June 15, 2024.

**Recommendation #5:** *Ensure claim and case information in the WPM include all relevant data, including but not limited to dates of events/activities and investigators' notes.*

**NYSDOL Response:** NYSDOL plans to update procedures and provide training on proper case file maintenance during the first quarter of 2024.

**Recommendation #6:** *When investigators leave Department employment, ensure their cases are reassigned in a timely manner.*

**NYSDOL Response:** NYSDOL is looking for a technological solution to replace using investigator names to manage a large inventory of cases and to compensate for a lack of appropriate file statuses in our case management system. This inventory management issue will be permanently resolved when NYSDOL's case management system, Management System for Protecting Workers Rights, incorporates Labor Standards investigations.

**Recommendation #7:** *Collaborate and communicate with DOE on labor-related issues involving minors.*

**NYSDOL Response:** The Governor's Child Labor Task Force formalized the relationship between NYSDOL and the Department of Education, among many other agencies, in matters related to child labor. The Child Labor Task Force meets quarterly and has already collaborated on several child labor initiatives. <https://dol.ny.gov/news/new-york-state-department-labor-hosts-inaugural-meeting-child-labor-task-force>.

[Comment 3](#)

If you have any comments, please contact Donald Temple, Director of Internal Audit (518) 457-7332.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott B. Melvin".

Scott B. Melvin  
Executive Deputy Commissioner

Cc: Roberta Reardon, Commissioner  
Jeannette Lazelle, Deputy Commissioner of Worker Protection  
Jacqueline Kagan, Associate Commissioner of Worker Protection  
Maura McCann, Director, Division of Labor Standards  
Beau Duffy, Deputy Commissioner, Strategic Communications  
Donald Temple, Director, Internal Audit  
Samantha Doran, Auditor 3, Internal Audit  
Mary Hancox, Internal Control Officer



# State Comptroller's Comments

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1. Department officials did not provide a copy of the procedure or the date it was established. Therefore, we have no assurance that claims are currently being reviewed promptly and labeled accurately.
2. We are aware of the target completion time frames currently in the Investigators' Manual. However, the cited time frames only address specific types of child labor and wage-related investigations. Our recommendation refers to developing completion time frames for other child labor and wage-related investigations.
3. The Child Labor Task Force referenced by the Department relates to the New York State Education Department. Our recommendation refers to collaboration between the Department and the New York City Department of Education.

# Contributors to Report

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