



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 10, 2022
TO: Honorable Mayor and Members of the City Council
FROM: Christiana Gauger, Chief Compliance Officer
SUBJECT: Fiscal Year 2022 Earned Sick Leave and Minimum Wage Enforcement

The purpose of this memorandum is to provide a summary report of activities conducted by the Earned Sick Leave and Minimum Wage Program (Program) within the Compliance Department, as required by San Diego Municipal Code (SDMC) §39.0113(q).

Enforcement

Investigations are initiated based off complaints and from the Program's directed investigation annual workplan. Investigations may include interviews with the complainant and potential witnesses, site visits, and review of pertinent payroll documentation. If violations of the Earned Sick Leave and Minimum Wage Ordinance (Ordinance) are found, the Program may issue a Notice of Violation or may conduct an informal settlement conference if requested. If a settlement is not reached, the Program issues a formal determination in the form of a Notice and Order which the employer may appeal to an independent administrative hearing officer.

Complaints

Program staff investigate all alleged violations of the Ordinance, including violations of minimum wage, earned sick leave, retaliation, and notice and posting requirements. Table 1 below summarizes the Program's enforcement activities since the implementation of the Ordinance on July 11, 2016:

Table 1 Minimum Wage Enforcement Activities

Table with 3 columns: Activity, Fiscal Year 2022 (through 4/22/22), Total Since July 2016. Rows include Complaints/Tips Received, Number of Employers, Total Remedies Recovered for Employees, Total Number of Employees Receiving Remedies, and Total Penalties Received by City.

Directed Investigations

1 Complaint-based investigations take priority over directed investigations.

2 In addition to monetary remedies, employees also received reimbursement of earned sick leave hours in accordance with Ordinance requirements.

Directed investigations are intended to assist vulnerable, low income employees working in industries where data shows violations are likely to occur and the workforce is unlikely to file complaints.

The Program selects industries for directed investigations by analyzing data and information collected from various sources, including:

- Data gathered from the Program’s past investigations;
- Data and information from the United States Department of Labor, California Labor Commissioner’s Office, and other agencies and jurisdictions that have incorporated directed investigations into their practices;
- Trends and statistics on industries that employ many vulnerable, low-income workers, including workers of color, women, immigrants, refugees, people with disabilities and other groups; and,
- Information from the public, community organizations, employees, and employers.

Due to the COVID-19 pandemic, the Enforcement Office did not initiate directed investigations in fiscal year 2022. For fiscal year 2023, the Enforcement Office will use trends observed from directed investigations completed in previous fiscal years when formulating the directed investigation workplan.

Additionally, the Directed Investigation Workplan for fiscal year 2023 will consider the impact the COVID-19 pandemic has had on specific industries. For example, employers will be given the opportunity to stagger the submission of their responsive documents.

The percentage of businesses selected for directed investigations in fiscal year 2023 will be consistent with the percentage of Business Tax Certificates for the selected industries by Council District.

Chart 1: Percentage of Businesses by Council District (CD)

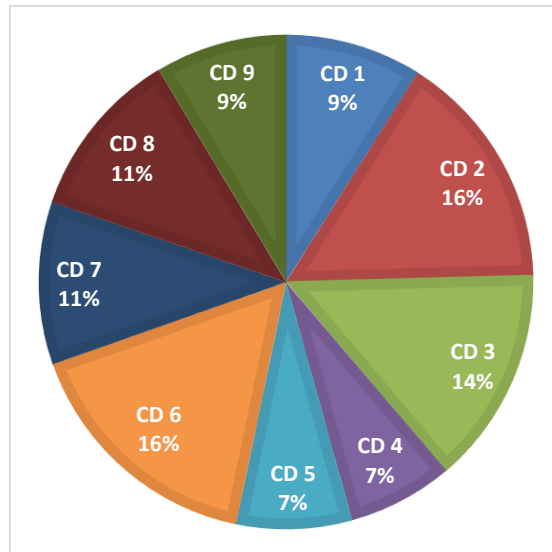


Chart 1 provides a breakdown of the percentage of active Business Tax Certificates by Council District as of April 22, 2022.

Outreach

The primary goal of the Program is to ensure employees who work in San Diego are receiving no less than the City's required minimum wage and are guaranteed the right to take paid sick leave. As a result, the Program continues to take a proactive approach to educate both employers and employees about Ordinance requirements and the process to submit complaints.

While outreach and education efforts have been limited during the COVID-19 pandemic, the Program continues to educate employers and employees on the Ordinance requirements via email inquiry, phone inquiry, and continuous webpage updates.

Since the beginning of this fiscal year through April 22, 2022, the Program conducted the following outreach:

- Outreach to employer organization groups including San Diego County Lodging Association, San Diego Hispanic Chamber of Commerce, San Diego Regional Chamber of Commerce, and North Park Main Street Association
- Outreach to employee organization groups including South Bay Community Services, Think Dignity, and Alliance San Diego
- 2,300 employee brochures provided to various groups including Employee Rights Center, San Diego Unified School District, Neighborhood House Association, and Somali Family Services
- 1,800 brochures provided to City of San Diego Library locations
- Display of "Have you Heard" Posters at various locations including City payment locations, City Passport office, and the Employee Rights Center
- Zoom presentation to San Diego Housing Commission
- Inclusion of informational inserts with Business Tax Certificate mailings
- Direct assistance to citizens via dedicated phone and email

Additionally, before the end of the fiscal year, the Program is planning on additional outreach and education efforts which includes MTS trolley advertisements and radio broadcasting.

Collaboration with other City Departments and Agencies

The Program continues to work collaboratively with other City departments in educational and outreach efforts. The Program will continue to partner with Economic Development for outreach and Communications Department for media releases.

This fiscal year, the Program worked closely with the City Attorney's Office on various issues including the referral process to the legal unit. The Program also worked directly with the Delinquent Accounts Collections Program to pursue any outstanding civil penalties.

The consolidation of all wage enforcement efforts, which includes Living, Prevailing, and Minimum Wage, into the Office of Labor Standards and Enforcement within the Compliance Department has provided enforcement synergy across each wage compliance program.

Minimum Wage Increase

On October 1, 2021, Program staff announced the January 1, 2022 minimum wage rate of \$15.00 per hour. The Program worked closely with the Communications Department and issued a media release and social media posts regarding the increase. Required notices and other

outreach and education materials reflecting the new minimum wage were made available on the Program’s webpage.

Table 2 details the City’s anticipated minimum wage increases relative to the State’s for the next three calendar years. Beginning January 1, 2023, it is expected that the City’s minimum wage will outpace the State’s. The difference is due to different methodology used to calculate the minimum wage rates. The City’s minimum wage increase is based on the increase to the Consumer Price Index (CPI) from August to August of each year and then rounded to the nearest multiple of five cents. The State’s minimum wage increase is based on the increase to the CPI from July to June of each year and rounded to the nearest multiple of ten cents.

Table 2³ City and State Wage Rates (Actual Rates for Years 2021 and 2022, Projected Rates for All Other Years)

Calendar Year	City of San Diego Minimum Wage	California State Minimum Wage (Employers with 26+ Employees)	California State Minimum Wage (Employers with 25 or less Employees)	\$ Amount City Minimum Wage higher than California State
2021	\$14	\$14	\$13	NA
2022	\$15	\$15	\$14	NA
2023	\$15.25	\$15	\$15	\$.25
2024	\$15.50	\$15.30	\$15.30	\$.20
2025	\$15.75	\$15.60	\$15.60	\$.15
2026	\$16.00	\$15.90	\$15.90	\$.10

Conclusion

The Program continues to fully enforce the Earned Sick Leave and Minimum Wage Ordinance while supporting the purpose and intent of the Ordinance as stated in SDMC §39.0101 which in part reads: This Division ensures that employees who work in the City receive a livable minimum wage and the right to take earned, paid sick leave to ensure a decent and healthy life for themselves and their families.

As of April 22, 2022, over the life of the Program enforcement efforts have resulted in 2,672 employees receiving total monetary remedies of over \$1,104,116.⁴ The Minimum Wage Program will continue to actively engage the community, conduct both employee and employer focused outreach, and evaluate the enforcement process to find efficiencies through the upcoming Fiscal Year.

³ The following assumptions were made in creating Table 3: 1) the increase in Consumer Price Index (CPI) will not result in a City minimum wage that is greater than the State of California through 2022, thereby resulting in a City minimum wage equal to the State 2) CPI increases in 2023 is based on the average percentage of increase in the CPI (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) as of August from 2010 through 2019 and rounded to the nearest multiple of five cents for the City of San Diego and as of July from 2010 through 2019 and rounded to the nearest multiple of ten cents for the State of California, and 3) State minimum wage increases have not been suspended by the Governor. https://data.bls.gov/timeseries/CWUR0000SA0&output_view=pct_12mths

⁴ Since Ordinance implementation in July 2016, complaint driven investigations (Table 1) and directed investigations (Table 2) have resulted in a total of 2,672 employees receiving total monetary remedies of \$1,104,116

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If you have questions or would like more information, please contact Minimum Wage at (619) 615-1565 or minwage@sandiego.gov.

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Chief Compliance Officer

CMG/cl

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