



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 18, 2020

TO: Honorable Mayor and Members of the City Council

FROM: Elizabeth Correia, City Treasurer

SUBJECT: Fiscal Year 2020 Earned Sick Leave and Minimum Wage Enforcement

The purpose of this memorandum is to summarize enforcement activities conducted by the Earned Sick Leave and Minimum Wage Program (Program) within the Office of the City Treasurer, as required by San Diego Municipal Code (SDMC) §39.0113(q).

Enforcement

Investigations are initiated based off complaints, including formal complaints, tips or anonymous information received, and from the Program's directed investigation annual workplan¹. 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:

¹ Complaint based investigations take priority over directed investigations.

Table 1

	Fiscal Year 2020 (through 4/30/20)	Total Since July 2016
Complaints/tips Received	65	892
Number of Employers	65	456
Total Remedies ² Recovered for Employees	\$34,916	\$441,634
Total Number of Employees Receiving Remedies	116	1,460
Total Penalties Received by City	\$3,500	\$90,900

Directed Investigations

Beginning in FY19, Program staff implemented a directed investigation workplan. 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.

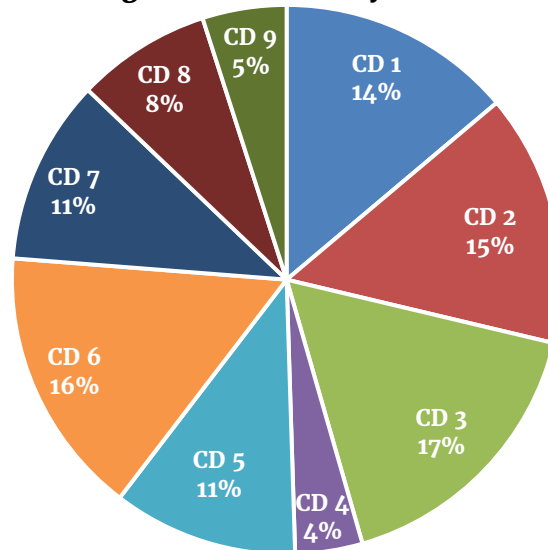
The Program selects industries for directed investigations by analyzing data and information collected from various sources, including:

- 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.

The percentage of businesses selected for directed investigations in FY 2020 was consistent with the percentage of Business Tax Certificates by Council District. Chart 1 provides a breakdown of the percentage of active Business Tax Certificates by Council District as of March 2019.

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

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



As of April 30, 2020, the Program has initiated 75 directed investigations (Table 2).

Table 2

	Fiscal Year 2020 (through 4/30/20)	Total Since July 2018
Investigations Initiated	75	177
Total Remedies Recovered for Employees	\$103,605	\$160,592
Total Number of Employees Receiving Remedies	255	473
Total Penalties Received by City	\$3,700	\$4,200

Administrative Regulation

Under the authority of SDMC §39.0113(a), Program staff promulgated an administrative regulation to establish a procedure to order relief due to employees in cases where employers have failed to comply with the earned sick leave requirements of the Ordinance. The regulation incorporates the Center for Disease Control (CDC) average pertaining to sick days taken by full-time working individuals and applies the average to situations where an employer does not provide earned sick leave or institutes a practice whereby employees are not allowed to earn sick leave in accordance with the Ordinance. Numerous municipalities with earned sick leave regulations, such as the City/County of San Francisco and Seattle have established similar procedures, which provides the ability to impose an “across the board” remedy without disclosing the complainant or who cooperated with the investigation. This regulation provides the Program another tool to ensure employees who have been denied the use of earned sick leave receive equitable relief.

As of March 31, 2020, the Program has utilized this regulation in three investigations where employers failed to provide employees with sick leave; as a result, 17 employees received \$10,386 in remedies.

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.

The Program has one full-time position dedicated to outreach, education and customer service. Fiscal Year 2020 outreach administrative expenses, including advertising, and printing brochures and posters, totaled approximately \$20,000.

Since the beginning of this fiscal year through March 31, 2020, the Program conducted the following outreach:

- 11 Presentations to various groups including UCSD HR Leadership, San Diego Regional Chamber of Commerce, Family Justice Center and monthly presentations in conjunction with California Employment Development Department
- 2 Business Walks giving staff the opportunity to talk directly with small business owners/managers and their employees in the Linda Vista and Point Loma communities
- Participation in Living Wage webinars with Equal Opportunity Contracting (EOC) in the Purchasing and Contracting Department
- Collaboration with the Family Justice Center to produce a joint informational flyer
- Informational booth with educational materials at monthly Naturalization Ceremonies
- Display of "Have you Heard" Posters at various locations including City payment locations, City Passport office, and the Employee Rights Center
- Advertising on trolleys using informational "Have you Heard" posters
- Email blasts, newsletter distributions by partner organizations and distribution of information brochures and fact sheets to various organizations including Neighborhood House Association, International Rescue Committee, San Diego Workforce Partnership and Child Development Associates
- One on one meetings with employees at local libraries and/or recreational centers during evening hours
- Inclusion of informational inserts with Business Tax Certificate mailings
- Direct assistance to citizens via dedicated phone and email
- Use of Facebook advertisements and community partner social media posts

Collaboration with other City Departments and Agencies

The Program continues to work collaboratively with other City departments in educational and outreach efforts. Specifically, the Program conducts joint trainings with Equal Opportunity Contracting to educate City contractors and vendors on the requirements of the Ordinance during their prevailing wage and living wage informational webinars. In addition, together with the Family Justice Center, the Program created an informational handout for victims of sexual assault, domestic violence, and stalking regarding the legally protected use of earned sick leave for *safe time* under the Ordinance. Lastly, the Program will continue to partner with Economic Development to assist in quarterly business walks and Communications Department for media releases.

This fiscal year, the Program worked closely with the City Attorney’s Office on novel issues for the Program, including issuing an administrative subpoena and enforcing a breach of a settlement agreement in superior court. The Program also worked directly with the Delinquent Accounts Collections Program to pursue outstanding civil penalties.

Additionally, during this fiscal year, the Program met with representatives of the Wage and Hour Division of the Department of Labor (DOL) to discuss various collaboration efforts. The discussion included establishing a referral process for labor laws that cannot be enforced by the City, creation of joint outreach posters and establishment of an educational/training program to ensure that DOL employees are familiar with the City’s Ordinance requirements for enforcement during their investigations.

Minimum Wage Increase

On October 1, 2019, Program staff announced the January 1, 2020 minimum wage rate of \$13.00 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 3 details the City’s anticipated minimum wage increases relative to the State’s for the next three (3) calendar years. While Program staff anticipate the minimum wage to be in line with the State’s minimum wage through calendar year 2022, 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 3³

Calendar Year	City of San Diego Anticipated 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
2020	\$13	\$13	\$12	NA
2021	\$14	\$14	\$13	NA
2022	\$15	\$15	\$14	NA
2023	\$15.25	\$15	\$15	\$.25

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/CWUR0000SAO&output_view=pct_12mths

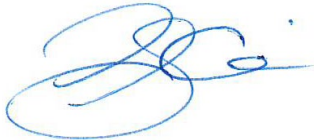
Page 6
Honorable Mayor and Members of the City Council
May 18, 2020

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 30, 2020, enforcement efforts have resulted in 1,933 employees receiving total monetary remedies of over \$600,000.⁴ 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.

If you have questions or would like more information, please contact Tricia Mendenhall, Minimum Wage Program Manager, at (619) 235-5833 or tmendenhall@sandiego.gov.



Elizabeth Correia
City Treasurer

EC/tm

cc: Honorable Mara Elliott, City Attorney
Aimee Faucett, Chief of Staff, Office of the Mayor
Kris Michell, Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst
Jeff Sturak, Assistant Chief Operating Officer
Rolando Charvel, Chief Financial Officer
Jessica Lawrence, Director of Finance Policy & Council Affairs, Office of the Mayor
Ricardo Ramos, Deputy Director, Office of the City Treasurer
Tricia Mendenhall, Program Manager, Office of the City Treasurer

⁴ Since Ordinance implementation in July 2016, complaint driven investigations (Table 1) and directed investigations (Table 2) have resulted in a total of 1,933 employees receiving total monetary remedies of \$602,224.