



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 6, 2024

TO: Honorable Mayor Todd Gloria and Members of the City Council

FROM: Christiana Gauger, Chief Compliance Officer, Compliance Department

SUBJECT: Fiscal Year 2024 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's Office of Labor Standards & Enforcement (OLSE), as required by the San Diego Municipal Code (SDMC) §39.0113(q). The Program enforces the Earned Sick Leave and Minimum Wage Ordinance (Ordinance) and provides outreach and education services.

Enforcement

Investigations are based on complaints received and the Program's annual directed investigation work plan.¹ Complaints include formal written complaints, tips, or anonymous information obtained by the Program and referrals from City departments, government agencies, or community advocates. Complaints may be filed directly on the Program's website, or submitted by email, mail, telephone, or in-person. Investigations include interviewing complainants and potential witnesses, conducting site visits, and auditing relevant payroll and business records. The Program routinely conducts employer-wide investigations in response to complaints, allowing investigators to maintain the confidentiality of complainants, reduce employee fear of retaliation, address non-compliant company practices, and recover wages on behalf of all impacted employees.

If violations of the Ordinance are established, the Program may issue a Notice of Violation, conduct an informal settlement conference, or assist the business in performing self-correction to achieve compliance. If a settlement or compliance 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 minimum wage, earned sick leave, retaliation, and notice/posting requirements. Complaints alleging wage and labor violations beyond the scope of the Ordinance and outside the Program's jurisdiction are referred to the appropriate enforcement agency, including the State of California Division of Labor Standards Enforcement (DLSE) or Bureau of Field Enforcement

¹ Complaint-based investigations take priority over directed investigations.

(BOFE), federal Department of Labor (DOL), or County of San Diego District Attorney Insurance Fraud and Workplace Justice Division.

For fiscal year 2024, as of April 30, 2024, the Program has received 31 formal complaints, initiated 50 directed investigations, and recovered \$90,451 in back wages on behalf of 480 San Diego workers. 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

	Fiscal Year 2024 (through 4/30/24)	Total Since July 11, 2016
Complaints/Tips Received	31	1068
Directed Investigations Initiated	50	367
Total Remedies Recovered for Employees	\$90,451	\$1,424,038
Total Employees Receiving Remedies	480	3,985
Total Penalties Received by City	\$500	\$99,200

The remedies listed in Table 1 reflect actual payments made by employers to current/former employees on closed investigations and do not include amounts assessed by the Program that still need to be paid. For example, the Program currently has five executed settlement agreements totaling over \$82,648 in minimum wage and earned sick leave back wages owed to 144 employees not included in Table 1. In addition to monetary remedies, some investigations result in workers receiving reimbursement of earned sick leave hours per Ordinance requirements. In fiscal year 2024, investigations have resulted in the recovery of 3,333 sick leave hours to employees, totaling an estimated monetary value of \$55,000 for workers.

Directed Investigations

Directed investigations are strategic, proactive investigations initiated by the Program without receiving a formal worker complaint. These 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: Program complaints and directed investigations, the DOL, the California Labor Commissioner's Office, information from the public and community organizations, and statistics on industries that employ high numbers of vulnerable, low-income workers, including workers of color, women, immigrants, refugees, and people with disabilities.

The directed investigation work plan this year focused on the following high-violation industries: food services/restaurants, retail, security/guard services, janitorial, amusement, construction (residential), dry cleaning/laundry services, personal services (nail and beauty), hotel/motel, and landscaping. Individual businesses within these target industries are randomly chosen for investigation from business tax certificate data provided by the Office of the City Treasurer, with investigations apportioned equitably among each Council District. Violations identified this year during directed investigations included: notice and posting, accrual of sick leave hours, and failure to provide earned sick leave to workers. In fiscal year 2024, the Program initiated 50 directed investigations. In one directed investigation, the Program assessed over \$30,000 in sick leave back wages owed to 87 security workers who

never received sick leave from their employer. The Program executed a settlement agreement and remedies will be reflected in fiscal year 2025 annual report.

Collaboration in Enforcement

In fiscal year 2022, the Program was moved from the Office of City Treasurer to the Compliance Department, along with the Living Wage and Prevailing Wage programs.² The consolidation of the City's wage enforcement units within OLSE has allowed staff to work collaboratively, review and refer complaints within the programs, cross-train staff on identifying different types of wage violations, effectively use OLSE resources, and serve as a central location for departments to refer wage compliance issues within the City.

This year, a complaint filed initially with the Living Wage Program by a worker at a covered City facility led to the recovery of \$8,891 in back wages to 83 employees under the Minimum Wage Ordinance. The business was exempt from Living Wage Ordinance (LWO) compliance through its collective bargaining agreement. However, while conducting the compliance review, Living Wage staff identified minimum wage violations and the complaint was referred to the Program for further investigation and case settlement. In another case, a janitorial worker at a City facility contacted the Program regarding her employer's failure to pay her wages. Staff identified the work as falling under the LWO and the Living Wage Program recovered \$1,300 in back wages for workers at that location. A Fraud Hotline report received by the Office of the City Auditor alleging labor violations by a local restaurant was referred to OLSE; the subsequent investigation found minimum wage and earned sick leave violations and the Program executed a settlement agreement for \$21,974 in back wages on behalf of 28 employees based on that referral.

In November, the Compliance Department and City Attorney's Office (CAO) executed a Memorandum of Understanding (MOU), defining the processes and procedures for OLSE to refer identified and actionable violations of the Ordinance to the CAO. The purpose of the MOU is to facilitate the referral process between the Program and CAO when an investigation has exhausted the administrative enforcement process prescribed in the Ordinance.

Staffing

Due to the internal promotion of 1.00 Program Coordinator to OLSE Program Manager, the Program's staff of 3.00 FTE positions operated with 1.00 vacant position for six months in 2023. A new Program Coordinator was hired and onboarded in October and the Program is currently fully staffed and operational with 3.00 FTE positions.

Outreach & Education

The primary goal of the Program is to ensure employers are complying with the Ordinance, specifically that employees who work in San Diego receive no less than the City's minimum wage, are guaranteed the right to take paid sick leave, and are free from retaliation when asserting their rights. The Program continues to take a proactive, multimedia approach to conducting community outreach and education, including providing resources and information online, contracting MTS advertisements, distributing printed posters and brochures directly to organizations and businesses, attending in-person educational events, and presenting at webinars and trainings. The Program's public engagement activities focus

² [SDMC §22.5701\(c\)\(1\)](#)

on ensuring that workers are aware of their rights and that employers understand their obligations under the Ordinance.

Outreach and education activities for fiscal year 2024 included:

- Two Citywide media releases for the 2024 minimum wage increase.³
- Direct outreach and engagement to 88 employer and employee organizations. (Attachment 1)
- Reminder email regarding the 2024 minimum wage increase sent to over 1,100 businesses, organizations, and workers via the Program's email distribution list.
- Direct assistance to citizens and businesses via dedicated phonenumber and email.
- Inclusion of informational inserts with Business Tax Certificate mailings to over 100,000 registered San Diego businesses in English, Spanish, Chinese, Tagalog, and Vietnamese.
- Conducting live informational trainings with the Center for Policy Initiatives, Employee Rights Center, San Diego Black Workers Center, Maintenance Cooperation Trust Fund, and San Diego Housing Commission.
- Hosting second annual Wage and Labor live webinar with the County of San Diego OLSE.
- Providing updated Program FAQs to address commonly asked compliance questions.
- Supplying over 9,400 brochures and 500 posters in multiple languages, including Arabic, Dari, Somali, Swahili, Pashto, Haitian Creole, French, Vietnamese, and Spanish to worker focused organizations; translation services were provided with the assistance of the Communications Department.
- Advertising the City's minimum wage daily on CityTv.
- Collaborating with the Office of Immigrant Affairs to include minimum wage information in their monthly newsletter.
- Working with the Office of the City Treasurer, Parks & Recreation, and Library departments to ensure that updated minimum wage posters and brochures are available in publicly accessible City locations, including all recreation centers and libraries, and the Treasury lobby.

Minimum Wage Increase

The Program announced the City's 2024 minimum wage rate of \$16.85 per hour on September 29, 2023, with a citywide media release and updates to the Compliance Department's webpage.⁴ Per the Ordinance requirements,⁵ the City's minimum wage increases annually at a rate consistent with the increase in the cost of living, measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers, and must be announced by October 1. Currently, the City's minimum wage surpasses the State of California minimum wage rate of \$16.00⁶ and federal minimum wage rate of \$7.25. Based on current statutory language and U.S. Bureau of Labor Statistics data, the Program anticipates the City's minimum wage will continue to be higher than both State and federal minimum wage rates in 2025, except for fast food and health care workers, as detailed below.

³ <https://www.sandiego.gov/communications/newsroom>

⁴ <https://www.sandiego.gov/compliance/minimum-wage>

⁵ SDMC §39.0107(b)(3)

⁶ [Minimum Wage Increase, Director of Finance Determination and Certification, July 31, 2023](#)

Legislative Changes Related to Program Enforcement

On September 28, 2023, Governor Newsom signed Assembly Bill 1228 into law which increased the state minimum wage for fast food restaurant employees to \$20.00 per hour, effective April 1, 2024. The following month, California adopted Senate Bill 525, which will increase the State minimum wage for health care workers to \$21 per hour on June 1, 2024. The Program does not have the authority to enforce these higher minimum wages for fast food or healthcare workers within the City. Local agencies, including charter cities, are prohibited from setting higher minimum wages specifically for fast food employees⁷ and healthcare workers.⁸

On October 4, 2023, the California legislature passed Senate Bill 616 (SB 616), an amendment to the 2014 Healthy Workplaces, Healthy Families Act (HWHFA), increasing the statewide paid sick leave minimum for full-time employees from 24 hours/3 days to 40 hours/5 days. Per the updated Labor Code, local sick leave ordinances cannot contradict State paid sick leave law requirements regarding the lending of paid sick leave, sick leave requirements on itemized wage statements, calculation of paid sick leave, providing notice of the use of sick leave, timing of the payment of sick leave, and payout of accrued sick leave hours upon an employee's termination of employment.⁹ Additionally, certain definitions contained within the HWHFA are more expansive than those contained within the Ordinance. Prior to the effective date of SB 616, and with the assistance of the CAO, the Program issued guidance for employers within the geographic boundaries of the City and subject to both regulations. (Attachment 2). As location legislation is void to the extent it conflicts with general State law, and to assist with any confusion among employers subject to both laws, OLSE recommends updating specific definitions and sick leave requirements within the Ordinance to align with the requirements of the HWHFA.

On October 18, 2023, the City of San Diego [Traffic Control Worker Prevailing Wage Ordinance](#) became effective and the Program was identified as the enforcement office. This fiscal year, OLSE worked with the CAO to recommend clarifying amendments to assist with ordinance enforcement and Development Services Department (DSD) regarding internal City processes related to implementation.

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 §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 May 3, 2024, over the life of the Program, enforcement efforts have resulted in 3,985 San Diego workers receiving over \$1,424,038 in restitution for violations under the Ordinance. The 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.

⁷ [Labor Code § 1475\(l\)\(1\)](#)

⁸ [Labor Code § 1182.14\(j\)\(1\)](#)

⁹ [Labor Code §246\(r\)](#)

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If you have questions or would like more information, please contact OLSE Program Manager Erin Lea-Endrelunas at eleaendrelun@sandiego.gov.

Christiana Gauger
Chief Compliance Officer

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Attachments: 1. FY 2024 Organization Outreach List
2. Important Notice Regarding Senate Bill 616

cc: Honorable City Attorney, Mara W. Elliott
Paola Avila, Chief of Staff, Office of the Mayor
Eric Dargan, Chief Operating Officer
Charles Modica, Independent Budget Analyst
Matthew Vespi, Chief Financial Officer
David Nisleit, Chief, Police Department
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