



**OFFICE OF COUNCILMEMBER TODD GLORIA  
COUNCIL DISTRICT THREE**

**M E M O R A N D U M**

DATE: June 16, 2016

TO: Honorable Members of the Budget & Government Efficiency Committee

FROM: Councilmember Todd Gloria, Third Council District 

SUBJECT: Earned Sick Leave and Minimum Wage Implementing Ordinance

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On June 7, 2016, San Diego voters affirmed the City Council's decision to provide five earned sick days and increased wages for hard working San Diegans. The next step to responsibly comply with this voter mandate is to expeditiously develop a strong implementing ordinance to enforce and administer this policy. As such, my office has been working closely with the City Attorney's Office to review best practices for enforcing earned sick and minimum wage laws in California, which have informed the recommendations set forth in this memorandum.

The implementing ordinance should build upon Section 39.0112 of the San Diego Earned Sick and Minimum Wage Ordinance - Implementation, Enforcement and Remedies, and include the following provisions:

- Establish and designate the Enforcement Office in the appropriate City department or office (options include the Office of the City Treasurer, the Purchasing and Contracting Department, or the creation of a new office);
- Require the Enforcement Office to report annually to the City Council to summarize activity, report on quantitative performance metrics, and recommend areas for improvement in the administration and enforcement of this policy;
- Provide clear noticing policies in multiple languages so that workers will be made well aware of their rights and will be more likely to report non-compliant employers;
- Establish a system to receive complaints in writing, online and by telephone in multiple languages, as well as a system to adjudicate complaints and order relief in cases of violations;
- Ensure complainant's confidentiality is maintained unless disclosure of such complainant's identity is necessary or required for resolution of the investigation;
- Establish a public hearing process for appeals and mandate non-discretionary fines to ensure a transparent and fair public process;
- Establish the authority for the Enforcement Office to collaborate and/or contract with community-based organizations and other government agencies on community outreach and enforcement strategies;
- Establish the authority for the Enforcement Office to refer cases to other agencies when state or federal laws appear to be violated;

- Establish the authority for the Enforcement Office to conduct proactive investigations and compliance reviews, particularly for businesses or industries with high rates of wage theft;
- Include higher fines for employers who repeatedly violate the sick leave and minimum wage requirements;
- Establish strong anti-retaliation measures, including:
  - A fine of \$1,000 payable to the employee per retaliation violation and a civil penalty \$1,000 per retaliation violation;
  - a fine of \$3,000 payable to the employee and a civil penalty of \$3,000 for an employer who retaliates via unlawful discharge from employment; and
  - Higher additional civil penalties for repeat offenders;
- Establish the authority for the Enforcement Office to issue subpoenas, examine and review employment records and workplaces, and interview current and former employees; and
- Establish the authority for the City to revoke or suspend business licenses, permits, registration certificates or other appropriate forms of leverage until a wage violation is remedied to increase compliance and encourage prompt repayment. Licenses or permits should be revoked permanently for employers with three or more separate violations.
- Consideration should also be given to:
  - Include wage theft as a reason to rescind contracts with the City, debar contractors, and prohibit contractors from renting City-owned space; and
  - Establish the authority to file a lien on an employer's property who refuses to pay a citation for unpaid wages.

I request the Budget & Government Efficiency Committee direct the City Attorney's Office to work with my office to draft an implementing ordinance inclusive of this policy direction, and bring it directly to Council for consideration on the date the Council approves the Earned Sick Leave and Minimum Wage Ordinance certification resolution in July.

Additionally, I request the Budget & Government Efficiency Committee direct the Mayor's Office to take the steps necessary to enter into a partnership agreement with the California Labor Commissioner's Office (Attachment 3) in order to establish a collaborative relationship to promote compliance with the law. This agreement will facilitate the provision of clear, accurate and easy-to-access outreach to employers, employees, and other stakeholders, and allow for sharing resources and enhancing enforcement by conducting joint investigations.

I appreciate the consideration of my Council colleagues, and look forward to working with the City Attorney to develop a responsible implementing ordinance.

TG/jl

**Attachments:**

1. San Diego Earned Sick Leave and Minimum Wage Ordinance (O-2016-56)
2. Enforcing City Minimum Wage Laws in California: Best Practices and City-State Partnerships, October 2015
3. Partnership Agreement between [Local Agency] and the California Labor Commissioner's Office
4. San Francisco Minimum Wage Ordinance and Sick Leave Ordinance
5. Los Angeles County Wage Enforcement Ordinance

cc: Honorable Mayor Kevin Faulconer  
Honorable City Attorney Jan Goldsmith  
Council President Sherri Lightner  
Andrea Tevlin, Independent Budget Analyst  
Liz Maland, City Clerk  
Scott Chadwick, Chief Operating Officer  
Stacey LoMedico, Assistant Chief Operating Officer  
Marshall Anderson, Director of Council Affairs