

Earned Sick Leave and Minimum Wage Ordinance Employer Guide to Investigations

1. Information Request and Response

- An *Employer* should review all requests for documentation and information from the *Enforcement Office* and respond to each item.¹
- An *Employer* must provide requested documents and information to the *Enforcement Office* by the due date indicated on the request. The *Employer* may submit its response by email to SDMinWage@sandiego.gov, fax (619) 533-3320, or U.S. mail.² If the *Employer* needs more time to respond, the *Employer* should contact the assigned *Enforcement Official*.
- An *Employer* should immediately remedy any violation of *Minimum Wage*, *Earned Sick Leave*, or notice or posting requirements that the *Employer* discovers at this time, including the payment of back wages to *Employee(s)*.³ This could potentially reduce or eliminate the assessment of penalties. If the *Employer* would like to discuss self-correction of a violation, or has any other question, the *Employer* should contact the assigned *Enforcement Official*.

2. Business Inspection

- The *Enforcement Office* may visit an *Employer's* business as part of its investigation. ([San Diego Municipal Code §39.0113\(a\)](#)) The visit may occur before or after a request for information and documentation.
- During a visit, the *Enforcement Office* may request to review payroll and other records, interview *Employee(s)* in a confidential setting, and confirm postings.

3. Supplemental Information

- An *Employer* should review and respond to any supplemental request for documentation or information from the *Enforcement Office*.
- An *Employer* should provide the *Enforcement Office* with any additional information that the *Employer* believes is important for the *Enforcement Office* to consider.

4. Notice of Violation

- If an *Employer* receives a Notice of Violation, it means that the *Enforcement Office* has determined that a violation of the Ordinance has occurred based on the documents or information provided by the *Employer* or *Employee(s)*.

¹ The *Enforcement Office* has full authority under the Ordinance to examine and audit business records and issue subpoenas. ([San Diego Municipal Code §39.0113\(a\)](#))

² Failure to provide documents and information to the *Enforcement Office* creates a rebuttable presumption of a violation and allows the *Enforcement Office* to rely on an *Employee's* reasonable estimate regarding hours worked, wages that should have been earned, *Earned Sick Leave* that should have accrued, and *Earned Sick Leave* used. ([San Diego Municipal Code §39.0109](#)) Submitting falsified documentation may constitute a misdemeanor. (San Diego Municipal Code § 12.0201.)

³ In cases of *Employer* self-correction, the *Enforcement Office* requires proof of correction in order to close an investigation.

- In response to a Notice of Violation, an *Employer* may provide the *Enforcement Office* with a written declaration within fourteen (14) calendar days. ([San Diego Municipal Code §39.0113\(d\)\(2\)](#)). The declaration must set forth facts and evidence to demonstrate that:
 - No violation occurred;
 - *Employer* is not responsible for the violation; or
 - *Employer* has corrected or remedied the violation.
- If the *Employer* needs more time to respond, would like to discuss self-correction of a violation, or has any other questions, the *Employer* may contact the assigned Enforcement Official. No more than seven (7) additional calendar days may be granted for an *Employer's* submission of a written declaration. ([San Diego Municipal Code § 39.0113\(d\)\(2\)](#)).

5. Settlement

- Informal settlement is optional and the *Enforcement Office* has the discretion to deny a request for settlement. ([San Diego Municipal Code §39.0113\(e\)](#))
- An *Employer* interested in settlement may speak with the *Enforcement Office* at any time prior to the issuance of a Notice and Order. Settlements must fully compensate *Employee(s)* and ensure compliance with the Ordinance going forward.

6. Notice and Order / Assessment of Damages and Penalties

- If, after issuing a Notice of Violation and considering the *Employer's* response, if any, the *Enforcement Office* determines that the *Employer* has violated the Ordinance, the *Enforcement Office* may issue a Notice and Order. ([San Diego Municipal Code § 39.0113\(f\)](#)) The Notice and Order will include an assessment of unpaid wages and other damages owed to *Employee(s)* and civil penalties payable to the City.
- In respond to the Notice and Order, the *Employer* may either (1) satisfy the Notice and Order as specified in the Notice and Order, or (2) appeal the Notice and Order within fifteen (15) calendar days.⁴ ([San Diego Municipal Code §39.0113\(g\)& \(l\)](#))

7. Appeal

- If an *Employer* timely provides written notice to the *Enforcement Office*, requesting a hearing to contest the Notice and Order, the *Enforcement Office* will schedule an administrative enforcement hearing with an independent Enforcement Hearing Officer. ([San Diego Municipal Code §39.0113\(g\) & \(h\)](#))
- On appeal, the *Enforcement Office* will seek reimbursement of administrative costs, including those incurred during the investigation, in addition to civil penalties.

The City of San Diego Minimum Wage Program provides this information as general guidance only in regard to the City's Earned Sick Leave and Minimum Wage Ordinance. The information is provided purely as a public service and should not be construed or relied upon in any way as legal advice or legal opinion. Employers are responsible for their knowledge of and compliance with all laws.

The full text of the Ordinance: <http://docs.sandiego.gov/municode/MuniCodeChapter03/Cho3Arto9Division01.pdf>.

⁴ Failure to respond to the Notice and Order will constitute failure to exhaust administrative remedies. ([San Diego Municipal Code §39.0113\(m\)](#))