

Why we can't wait to end discrimination: Guest commentary

By Cecil Murray and Kelvin Sauls

DailyNews.com

Leray Williams, a 24-year-old ironworker apprentice, landed a job on a large project. He arrived to work early, organized his tools, and always finished his assignments in time to offer a helping hand. After two years of unemployment, he wasn't going to let anything let him miss this latest job opportunity. Nothing, until a noose was hung at the job site. Williams endured seven months of racist slurs and "jokes" from those with whom he worked and had to trust with his life.

"Betty," a black administrative assistant at a high-profile entertainment company, filed a formal complaint after she learned that a less-experienced white woman she had trained was classified higher and paid more, for doing significantly less work. After bringing it to management, there was no follow-up. The company fired Betty after they learned she reported employment discrimination. Such termination, for enforcing your workplace rights, is in violation of Title VII.

Andre, a black father of twin boys, searched more than two years for work. Armed with multiple pre-apprenticeship certificates, he woke up at 4 o'clock every morning to search for work at multiple construction sites across Los Angeles. He rarely saw people who looked like him on the job sites and was met with blank stares. One site foreman refused to take his resume and some even called the police on him as he waited outside their work sites, hoping for opportunity.

Discrimination like these workers experienced remains an unfortunate yet prevalent reality for too many in our city, especially black workers. Fifty percent of Los Angeles' black community is unemployed or underemployed (making less than \$12 an hour). In high-growth sectors such as the public construction industry, black workers represent 10 percent of trained apprentices but less than 3 percent of the workforce. Once black workers do enter the union job pipeline, they still aren't being hired. And when they make it onto the job, black workers experienced wage theft violations at twice the rate of white workers. Laws are on the books, but they lack enforcement. The Los Angeles City Council recently took a monumental step to raise the minimum wage to \$15 an hour by 2020. In the 14-1 vote, the council also included establishment of an Office of Labor Standards and Enforcement (OLSE) to enforce the wage increase.

However, we watched in disbelief as the anti-discrimination enforcement amendment failed to move to a full vote. Instead, the provision went back to the city's Economic Development Committee, and it is now in the hands of the full City Council.

To Councilman Curren Price, who drafted the amendment, and to its supporters including Bob Blumenfield, Mike Bonin, Gil Cedillo, Jose Huizar, Paul Koretz, Nury Martinez, and Herb Wesson, we say thank you for your courage to stand up to discrimination.

To Los Angeles we ask, why do workers have to wait to be protected?

Date: 5/29/15
Submitted in Econ. Dev. Committee
City Council File No: 14-1371-54
Item No.: 3
Communication 1/2
from the Public

When black people are not hired, are underpaid, have their wages stolen, and are mistreated on the job, the repercussions go far beyond the individual. It destabilizes families and the resulting poverty is at the root of mass incarceration, homelessness, health disparities and the educational divide.

We have an opportunity to demonstrate that black lives matter in Los Angeles. By creating a fully funded OLSE, Los Angeles would join more than 10 cities across the country that protect local workers' civil rights. The agency would collaborate with state and federal agencies to investigate problematic industries, adjudicate claims and impose penalties.

Advertisement

We must protect workers from unscrupulous employers who deny work opportunities based on skin color, gender or sexual identity. We urge Los Angeles to establish an Office of Labor Standards Enforcement that can effectively enforce all of the city's basic labor laws — including anti-discrimination laws.

Workers in our community cannot wait. As Dr. Martin Luther King Jr. said: "'Wait' has almost always meant 'never' ... 'justice too long delayed is justice denied.'"

The Rev. Cecil Murray is a civil rights leader and a University of Southern California fellow; USC named its Cecil Murray Center for Community Engagement after him. The Rev. Kelvin Sauls is senior pastor at Holman United Methodist Church and a member of the L.A. Black Worker Center Coordinating Committee.

Why We Can't Wait

Published on Thursday, 28 May 2015 18:28

Written by Dr. Cecil Murray & By Rev. Kelvin Sauls



After two years of being an unemployed apprentice in the Iron Workers Union, 24-year-old Leray Williams landed a job on a large project. He got to work at 4:30 a.m. every morning, organized his tools, and always finished his assignments in time to offer a helping hand to others on the site. As a second-generation ironworker, he knew how difficult it is for Black construction workers to secure employment and he wasn't going to let anything cause him to miss this latest job opportunity. Nothing, that is, until a noose was hung at the jobsite. Williams endured seven months of hearing racist slurs and "jokes" from those with whom he worked and had to trust with his life.

"Betty," a Black woman who worked as an administrative assistant to top entertainment executives, filed a formal complaint after she learned that a lesser-experienced white woman she had trained was classified higher and paid more, for doing significantly less work. After bringing it to management, there was no follow-up. "Betty" was terminated after reporting employment discrimination. Being terminated for pursuing enforcement of your workplace rights is patently in violation of Title VII.

Andre, an African American father of twin boys, searched nearly 2.5 years for work. Armed with extensive pre-apprenticeship certificates he would wake up at 4:00 am every morning to search for work at multiple construction sites across Los Angeles. He rarely saw people who looked like him on the job sites and was met with blank stares. Foreman never took his resume and some even called the police on him as he waited outside their worksites, hoping for opportunity.

Employment discrimination like that experienced by these three workers remains an unfortunate yet prevalent reality for too many workers in our city, especially Black workers.

50% of Los Angeles's Black community is unemployed or underemployed (making less than \$12.00 an hour). In growth sectors such as the public construction industry, Black workers represent 10 percent of trained apprentices but make up less than 3 percent of the workforce. In the private construction industry specifically, Black workers make up only three percent of the workforce. When we have done the hard work of getting black people into the pipeline for jobs they still aren't being hired. And when Black workers do make it onto the job they experience violations of wage theft at twice the rate of white workers. The laws are on the books, but enforcement of them is sorely lacking.

Tuesday, the Los Angeles City Council took a monumental step toward improving workplace conditions for LA workers by directing the city attorney to draft a minimum wage ordinance with comprehensive wage theft enforcement. This means the city minimum wage would rise to \$15 by 2020. In the 14-1 vote, the Council also advanced comprehensive wage enforcement, critical companion legislation that establishes an Office of Labor Standards and Enforcement (OLSE) at the city level to protect workers against wage theft and unlawful employer practices that prevent them from collecting their wages. We have been part of an effort, spearheaded by The LA Black Worker Center, to ensure the ugly and pervasive practice of employment discrimination is a key part of comprehensive wage enforcement.

However, we watched in disbelief, as the anti-discrimination enforcement failed to get the votes needed to be included in framework of the policy, which will be approved by council next month. Instead, the provisions were referred back to City's Economic Development Committee for review.

To LA City Councilman Curren Price, who drafted the anti-discrimination amendment and supporters, Council members Gil Cedillo; Herb Wesson; Paul Koretz; Nury Martinez; Mike Bonin; and Jose Huizar, we say thank you for your courage to stand for anti-discrimination and protect workers from unscrupulous employers who would deny work opportunity based on the skin color, gender, or sexual identity.

To Los Angeles, we ask: why do workers have to wait for anti-discrimination enforcement at the city-level? When Black people are not hired, are underpaid, have their wages stolen, and are mistreated on the job the repercussions go far beyond that individual who has been discriminated against. Our families are destabilized and the resulting poverty is at the root of mass incarceration, homelessness, health disparities and the educational divide.

By creating and fully funding an OLSE, Los Angeles would join at least 10 other cities across the country that have created city level offices to protect workers. These offices take on a range of responsibilities that go far beyond referrals to address the very challenges faced by so many black workers in our city. A Los Angeles OLSE could play multiple roles in the enforcement of anti-discrimination protections for workers:

- 1) Regularly collect data on workforce demographics, conduct audit studies of problematic industries, and impose penalties on employers that break the law
- 2) Enforce anti-discrimination protections for current employees and applicants through co-enforcement partnerships with community-based worker organizations and organized labor
- 3) Investigate and adjudicate claims of discrimination over which the City Attorney has jurisdiction, while assisting state and federal agencies in outreach, investigation, and mediation of claims of discrimination that violate state and federal statutes
- 4) Promote community and employer education in partnership with community-based worker organizations and organized labor.

The city will have strong partners in community based organizations like the LA Black Worker Center who are already doing some of this work, but need to muscle and resources a strong OLSE will provide.

Current proposals floating in City Hall include a call for \$400,000 to fund an enforcement effort here in Los Angeles. San Francisco, a city with a third of our workforce, spends \$1.8 million to run its Labor Standards office that employs 5.5 investigators, and contracts with community organizations to do targeted outreach and education. The paltry proposal for \$400,000 to fund enforcement in our city is totally insufficient. Considering our size and the magnitude of our problem, a LA OLSE needs 15-25 investigators and a budget of \$5.5 million to run an effective office. These costs would be offset through the collection of fines and penalties of violators and through partnerships with the state and federal government who have reimbursed other local jurisdictions for doing such work. This will come on top of recouped tax dollars from justly employed workers.

Some will say this is too expensive but few dispute the connection between joblessness and rising crime rates. Our city spends \$1.189 Billion on policing, and the current climate reveals how this cost and the criminalization of our community that too often comes from it is already too much to bear. The employers who deny Black people access and exploit and harass them on the job are criminals and we need to invest in policing them.

Some will say this work is duplicative of work done at the state and federal level, but a strong intergovernmental partnership is needed to address this issue. The magnitude of the Black jobs crisis requires it.

We have a unique opportunity to demonstrate that Black Lives Matter in the city of Los Angeles. We urge members of the Los Angeles City Council to establish and fund an effective OLSE that aggressively enforcement employment discrimination.

Now, the fate of anti-discrimination enforcement lies in the hands of the Economic Development Committee. We urge the committee to put this issue at the top of its agenda and ensure these protections are part of LA's landmark minimum wage/comprehensive wage enforcement ordinance. Workers in our community cannot wait. As Dr. Martin Luther King Jr. said: "Wait, means never."



Civil Rights and Comprehensive Wage Enforcement Brief

(1) Los Angeles has authority to include Civil Rights protections in the wage theft ordinance without preemption of FEHA

Discrimination in employment is an issue concerning business establishment violations of civil rights.

Rather than using the language of “employment discrimination” in the ordinance, which would be preempted by Department of Fair Employment and Housing guidelines and the Fair Employment and Housing Act (FEHA), the provision should be termed as a “civil rights” protection, in accordance with the section 51.5 of the California Civil Code.

This section expressly declines preemption and encourages localities to apply and even expand the act to address local civil rights issues.

a) Unruh Civil Rights Act expansion

Although the Unruh Act was originally passed as a public accommodation provision for customers and patrons, it was amended and expanded in 1976 to include all business activities, and again in 1999 to protect anyone who “contracts with” a business establishment in California.

(2) Civil rights protection can generate a local revenue stream

This protection would generate funds for the wage enforcement division/OLSE, in addition to those generated for non-discriminatory labor violations. The Section 51.5 of the California Civil Code was amended to increase the cap on administrative fines per violation from \$50k to \$150k. Civil Rights violations could be termed an enhancement, possibly doubling penalties, similar to the additional retaliation penalties in the current language of the ordinance.

(3) Los Angeles should evaluate the success of the wage enforcement division using demographic data from employers

The creation of a city Office of Labor Standards Enforcement, or wage enforcement division, will be a significant step towards comprehensive labor protections in Los Angeles. It is important for the city to monitor the impact of this new agency. Additionally, gathering demographic employment data from city businesses and contractors can help to ensure that underrepresented groups are not further marginalized in the economy.

a. Los Angeles can afford to gather data



Civil Rights and Comprehensive Wage Enforcement

Los Angeles should leverage the momentum created by the Mayor's proposal for an increased minimum wage, and the work of the LA Coalition to End Wage Theft, to create a world-class Office of Labor Standards Enforcement (OLSE), or Wage Enforcement Division, that will enforce local civil rights laws and provide justice and economic opportunity for all Angelinos. By creating an OLSE/Wage Enforcement Division, Los Angeles would join at least 10 other cities across the country that have created local agencies to enforce labor standards. These offices vary in scope of responsibilities, however several themes are consistent: enforcement of proactive requirements on local employers (e.g. education of workers and employers); outreach and investigation of worker claims; partnerships with federal & state agencies (e.g. Equal Employment Opportunity Commission, Department of Fair Housing and Employment) and community based organizations (e.g. workers centers); and enforcement of penalties against employers who break the law.

A Los Angeles OLSE/Wage Enforcement Division could play multiple roles in the enforcement of anti-discrimination protections for workers in Los Angeles:

- 1) Collect data on workforce demographics; conduct regular audit studies of problematic industries; and impose local penalties against employers that break the law.
- 2) Enforce civil rights protections for current employees and applicants through a co-enforcement model with community-based worker organizations and organized labor.
- 3) Investigate and adjudicate claims of discrimination over which the City Attorney has jurisdiction; while assisting state and federal agencies in outreach, investigation, and mediation of claims of discrimination that violate local, state and federal statutes.

The wage theft ordinance should empower the OLSE/Wage Enforcement Division to act on discriminatory hiring practices and acquire demographic hiring reports. The City of Los Angeles can monitor and enforce anti-discrimination provisions without being preempted by the Fair Employment and Housing Act (FEHA), and afford to gather enough data to identify and disrupt discriminatory wage practices.

I. LOCAL ENFORCEMENT OF CIVIL RIGHTS PROTECTION IS NOT PREEMPTED BY STATE LAW

Anti-discrimination protections should be included in any successful wage enforcement ordinance. Requiring employers to pay a fair wage should not result in employment exclusion towards commonly exploited groups, such as African Americans, undocumented workers, and the disabled. By including anti-discrimination protections, the City Council is declaring that discrimination on the basis of a protected class is not a tolerable business response to this new wage enforcement ordinance.

This critical anti-discrimination language could take a number of forms with different strengths and challenges. The first would be to mirror the language used by San Francisco, Oakland, San Jose, Seattle, New York City, Baltimore and others in their respective ordinances. These municipalities provide a certain solidarity of thought as to the application of local ordinance to local issues. The San Francisco Office of Labor Standards Enforcement has released data that it has recovered over \$300k in civil penalties for the city since 2008. This is in addition to over \$5 million in restored wages to its citizens. The challenge of mirroring the Human Rights Commission approach adopted by these other cities is that the anti-discrimination provisions would be preempted by state law and a concerned citizen with enough money and time (5+ years and \$300k+) could nullify an anti-discrimination provision written to overlap the Fair Employment and Housing Act. It should be noted that San Francisco's anti-discrimination provision was enacted in 2001 and has not yet been challenged.

An alternate form would be to alter the language to serve as an extension of Section 51.5 of the California Civil Code:

No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of [their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, or sexual orientation], or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

This would avoid preemption as the legislative notes of this section (included below) indicate:

Stats 1976 ch 366 provides:

SEC. 3. It is the intent of the Legislature that the State of California by the provisions of this act not preempt this area of concern so that other jurisdictions in the state may take actions appropriate to their concerns.

Cal Civ Code § 51.5

This section of the civil code has conflicting interpretations of where it may be applied. State courts have leaned toward including employment relationships under the section. Federal courts have claimed that employment relationships were excluded from section 51 and have extended this reasoning to section 51.5. A 2004 California Appellate decision addresses this misinterpretation:

Before leaving this subject, one anomaly must be noted. The parties confine their discussion to the Act, but the complaints specifically allege violations of Civil Code section 51.5, which the writers identify as the Act. In fact, the Act consists only of Civil Code section 51, which is quoted at the beginning of this discussion. Civil Code section 51.5 was added to the Code in 1976, and, like the Act, applies to "business establishment[s] of any kind whatsoever..." (Civ.Code, § 51.5, subd. (a).) Section 51.5 specifies that business establishments may not "discriminate

against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state” on the same bases listed in the Act.⁵⁷ Few cases have construed section 51.5. The legislative intent to exclude employment discrimination from the Act, which *Alcorn* drew from the concurrent enactment of the Act and FEHA's predecessor, would not necessarily apply to section 51.5, which was enacted more than 16 years later.

Alch v. Superior Court, 122 Cal. App. 4th 339, 395 (Ct. App. 2004)

Despite the confusion in federal case law, this would prevent FEHA preemption claims sometime in the future in state court.

Several municipalities in the state of California have enacted anti-discrimination policies in housing and employment. When municipal codes are written in ways that enforce or overlap FEHA, courts have indicated that state law preempts local ordinance;¹ however, when codes are written as supporting the provisions of the section 51.5 of the California Civil Code, courts have noted the legislative intent of the act was to deny claims of preemption.² Courts have found discriminatory at-will employment practices to be violations of section 51.5 of the California Civil Code.³ Discriminatory business practices that violate section 51.5 are summarily accepted by California state courts.⁴

The anti-discrimination provision should be written as “No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, refuse to buy from, contract with, sell to, or trade with any person in this state because of the race, creed, religion, color, national origin, sex, or disability of the person.” In spite of legislatively superseded case law⁵, this mirrors the most recent change to section 51.5, where the state assembly “amends Civil Code Section 51.5 to include the “refusal to contract with” as part of the statute's discrimination protections.” California Bill Analysis, A.B. 1670, 6/01/1999.

¹ E.g. Delaney v. Superior Fast Freight, 14 Cal. App. 4th 590, 596–598 (Ct. App. 1993)

² E.g. San Jose Country Club Apartments v. Cnty. of Santa Clara, 137 Cal. App. 3d 948, 952 (Ct. App. 1982) (County ordinance designed to prohibit discrimination in rental housing on basis of age or parenthood was not void as preempted by combined effect of Fair Employment and Housing Act and Unruh Civil Rights Act, because discrimination prohibited by ordinance was of sort prohibited by statutes, and because legislature had stated its intent not to preempt the area)

³ See Ambrosino v. Metro. Life Ins. Co., 899 F. Supp. 438, 446 (N.D. Cal. 1995) (Defendant Metropolitan Life applied the at-will termination provision of its participating physician agreement with Plaintiff in a discriminatory manner, thereby breaching California Civil Code § 51.5); Payne v. Anaheim Memorial Medical Center, Inc., 130 Cal. App. 4th 729, 744 (Ct. App. 2005) (Finding an independent contractor relationship, between a hospital and a physician, was deserving of the protections of the Unruh Civil Rights Act). But see Strother v. Southern California Permanente Medical Group, 79 F.3d 859, 862 (9th Cir. 1996) (Court misconstrues section 51.5 to exclude employer-employee relationship, claiming ignorance to California Appellate court decisions)

⁴ See Jackson v. Superior Court, 30 Cal. App. 4th 936, 941 (Ct. App. 1994) (Examining the language of section 51.5, noting it provides: “No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, refuse to buy from, sell to, or trade with any person in this state because of the race, creed....” Court decides it is clear from the cases under section 51 that the Legislature did not intend in enacting section 51.5 to limit the broad language of section 51 to include only selling, buying or trading. Both sections 51 and 51.5 have been liberally applied to all types of business activities. Furthermore, section 51.5 forbids a business to “discriminate against” “any person” and does not just forbid a business to “boycott or blacklist, refuse to buy from, sell to, or trade with any person.”)

⁵ Alcorn v. Anbro Eng'g, Inc., 2 Cal. 3d 493 (1970)

II. CIVIL RIGHTS PROTECTION PAYS FOR ITSELF

Revenue Stream

The OLSE/Wage Enforcement Division should fund itself by generating revenue through several processes. The following are some examples:

- Work-share agreements with the EEOC and DFEH to enforce existing state and federal law. These agencies are currently experiencing enormous volumes of charges and assistance by effective local enforcement will be and has been welcomed in other major U.S. cities.⁶
- Levying civil penalties similar to those in San Francisco and Seattle.⁷ Because Unruh authorizes an increase in administrative fines to \$150k per business, a Civil Rights enhancement to penalties is clearly legal under current law. These civil penalties have not been challenged in a court, but the addition of a severability clause will protect other portions of the ordinance should the selected fee schedule be struck down.

Gathering data from employers

- a) EEO-1 reports are a cost-effective method for the OLSE/Wage Enforcement Division to gather demographic hiring data to identify and prove the existence of civil rights violations.
 - EEO-1 reports are required by law to be filed each year between August 1st and September 30th. Because businesses are already required to generate this information, there is no additional cost burden for them to share it with the OLSE/Wage Enforcement Division.
 - The city should create incentives for businesses to self-report their EEO-1. The city should award businesses a “transparent” rating for participation, certify cooperating businesses as “fair-wage compliant”, and provide exemptions to random monitoring, allowing for a reduction (\$25k to \$10k) in administrative penalties.
 - The city should also admonish businesses for not reporting.
- b) Reducing audits to a small random sample and complaint driven audits drastically reduces the budget requirement. A recommended statistically significant sample would be 384 randomly selected registered businesses.⁸ This would amount to less than 1% of businesses, but would present an achievable metric large enough to deter

⁶ New York City Commission on Human Rights (FEPA) and City of Baltimore Community Relations Commission (FEPA)

⁷ See Appendix Table; see also <http://murray.seattle.gov/wp-content/uploads/2014/03/UC-Berkeley-IIAC-Report-3-20-2014.pdf> (\$310,000 in civil penalties collected vs. \$5.8 million in recovered wages in past 7 years)

⁸ For a population over 10,000 to develop a 95% confidence level with a +/-5% confidence interval, a statistically significant sample size approaches 384 as the population goes to infinity

outright ignoring the ordinance. Depending on the success of self-reporting, there may be little need for anything other than complaint driven auditing. A threshold provision could eliminate the cost of random audits by indicating the following: “If at least 50% of businesses that operate in the city of Los Angeles with over 25 aggregate employees self-report, then random auditing is not required to be conducted.” This proactive approach is similar to that taken by Portland housing authority to identify discriminatory business practices, although only 50 audits were conducted.

Appendix:

California Civil Code section 51.5(a): No business establishment of any kind whatsoever shall discriminate against, boycott or blacklist, or refuse to buy from, contract with, sell to, or trade with any person in this state on account of any characteristic listed or defined in subdivision (b) or (e) of Section 51, or of the person's partners, members, stockholders, directors, officers, managers, superintendents, agents, employees, business associates, suppliers, or customers, because the person is perceived to have one or more of those characteristics, or because the person is associated with a person who has, or is perceived to have, any of those characteristics.

California Civil Code section 52(e) expressly provides: “Actions under this section shall be independent of any other remedies or procedures that may be available to an aggrieved party.” (such as FEHA) Moreover, the statute which amended the Unruh Civil Rights Act in 1976 to add this provision makes clear the understanding of the Legislature: “It is the intent of the Legislature that the State of California by the provisions of this act not preempt this area of concern so that other jurisdictions in the state may take actions appropriate to their concerns.” (Stats., 1976, ch. 366, § 3, p. 1013.)

Examples of other local codes:

San Jose:

The [Human Rights] commission shall have the following functions, powers, and duties:

- A. Implement the City of San José human rights policy and recommend programs which promote the fulfillment of human rights in the city.
- B. Study, review and evaluate and make recommendations to the city council relative to matters affecting human rights, including but not limited to discrimination based on race, color, ethnicity, national origin, disability, age, sex, marital status, sexual orientation, gender identity or religion, and relative to equal employment opportunity policies and practices within the city government and throughout the city.
- C. Advise and make recommendations regarding specific elements of the City of San José equal employment opportunity plan and programs affecting city employment.

San Francisco:

Administrative Code, Chapter 14A.01

The City, and every commission, department, officer and employee, shall fully and vigorously enforce all laws prohibiting discrimination and requiring equal opportunity in City contracting. All City contracts require contractors to comply with all such applicable local, state and federal laws. These include but are not limited to the Unruh Civil Rights Act and Section 3303(a)(4) of the San Francisco Police Code, which prohibit contractors from discriminating against subcontractors on any basis prohibited by law. The City shall fully enforce its contractual rights, and shall consider discrimination by a prime contractor against subcontractors on any basis prohibited by law to be a material breach of contract. The City shall vigorously pursue appropriate remedies for any breach by any contractor of such obligations under law or contract to the maximum extent allowed by law.

Also see Police Code Article 33 for exhaustive list of protected classes and prohibited employment practices: http://sf-hrc.org/sites/sf-hrc.org/files/migrated/FileCenter/Documents/Governing_Laws/Police_Code_Article_33_9_24_12.pdf

Santa Clara County

Chapter VII: Commission on Equal Access and Employment Opportunity

The purpose of the Commission is to advise the Board of Supervisors, the County Executive, employee groups, community groups, and the public at large on ways to: promote equal access and opportunity; create and maintain accessible programs, services and work environments able to meet the needs of a diverse and multicultural population; and prevent discrimination and harassment in all areas of County employment and County service on account of race, religious belief, color, national origin, culture, ancestry, age, gender, sexual orientation, gender identity, pregnancy, marital status, mental disability, physical disability, medical condition, political belief, organizational affiliation or association with any individual in any of these groups, and contracting opportunities in accordance with applicable federal, state and County regulations.

Portland

Chapter 23 of the City Code: Civil Rights:

<http://www.portlandonline.com/Auditor/index.cfm?c=28598>

Tables:

City	Enforcement Agency	Revoke Licenses, Permits, Contracts	Liens	Posting & Payroll Access	Fines & Penalties	Private Right of Action	Retaliation Protection	Outreach & Education
Berkeley	Y	Y		Y	Y	Y	Y	Y
Oakland	Y	Y		Y	Y	Y	Y	Y
Mountain View	Y	Y		Y	Y	Y	Y	
Richmond	Y	Y		Y	Y	Y	Y	
San Diego ⁺	Y				Y	Y	Y	Y
San Francisco	Y	Y	Y	Y	Y	Y	Y	Y
San Jose	Y	Y		Y	Y	Y	Y	
Santa Clara*	Y	Y			Y			
Sunnyvale	Y	Y		Y	Y	Y	Y	

Location	Administrative Penalty Schedule
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San Francisco	Failure to maintain payroll records or to retain payroll records for four years – Administrative Code Section 12R.5(c)	\$500
	Failure to allow the Office of Labor Standards Enforcement to inspect payroll records – Administrative Code Section 12R.5(c)	\$500
	Retaliation for exercising rights under Minimum Wage Ordinance – Administrative Code Section 12R.6 The Penalty for retaliation is \$1,000.00 per employee.	\$1,000
	Failure to Post notice of Minimum Wage rate – Administrative Code Section 12R.5(b) Failure to provide notice of investigation to employees – Administrative Code Section 12R.7(b) Failure to post notice of violation to public – Administrative Code Section 12R.7(e) Failure to provide employer’s name, address, and telephone number in writing – Administrative Code Section 12R.5(b)	\$500
Additionally, \$50 per day per worker for each day that a business is in violation. Maximum administrative penalty of \$5,000 per business, per year unless retaliation is found, raising cap to \$10,000.		
Seattle	<p>Will penalties be imposed for the first year of implementation? OLS will not impose penalties during the first year of implementing the minimum wage ordinance unless there are repeated or egregious violations.</p> <p>What are the penalties?</p> <ul style="list-style-type: none"> ○ (Willful) Notice and Posting Violation: An employer who willfully violates the ordinance’s notice and posting requirements may be fined up to \$125 for the first violation and \$250 for subsequent violations. ○ (Willful) Interference: A person who willfully resists or interferes with the work of the Office of Labor Standards may be fined from \$1,000 to \$5,000. ○ Improper payment of wages – first violation: The Office of Labor Standards will issue a warning and may assess a civil penalty of up to \$500 per instance of improper payment of minimum wage (i.e. per employee). ○ Improper payment of wages – second violation: The civil penalty for a second time violation is up to \$1,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. ○ Improper payment of wages – third violation: A civil penalty for a third violation is up to \$5,000 per employee or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. The maximum civil penalty is \$20,000 per employee. 	



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Why We Can't Wait

Published on Thursday, 28 May 2015 18:28

Written by By Dr. Cecil Murray & By Rev. Kelvin Sauls





Dr. Cecil Murray, Cecil Murray Center for Community Engagement, Center for Religion and Civic Culture, USC

After two years of being an unemployed apprentice in the Iron Workers Union, 24-year-old Leray Williams landed a job on a large project. He got to work at 4:30 a.m. every morning, organized his tools, and always finished his assignments in time to offer a helping hand to others on the site. As a second-generation ironworker, he knew how difficult it is for Black construction workers to secure employment and he wasn't going to let anything cause him to miss this latest job opportunity. Nothing, that is, until a noose was hung at the jobsite. Williams endured seven months of hearing racist slurs and "jokes" from those with whom he worked and had to trust with his life.

"Betty," a Black woman who worked as an administrative assistant to top entertainment executives, filed a formal complaint after she learned that a lesser-experienced white woman she had trained was classified higher and paid more, for doing significantly less work. After bringing it to management, there was no follow-up. "Betty" was terminated after reporting employment discrimination. Being terminated for pursuing enforcement of your workplace rights is patently in violation of Title VII.



Rev. Kelvin Sauls, senior pastor Holman United Methodist Church and member of the LA Black Worker Center Coordinating Committee

Andre, an African American father of twin boys, searched nearly 2.5 years for work. Armed with extensive pre-apprenticeship certificates he would wake up at 4:00 am every morning to search for work at multiple construction sites across Los Angeles. He rarely saw people who looked like him on the job sites and was met with blank stares. Foreman never took his resume and some even called the police on him as he waited outside their worksites, hoping for opportunity.

Employment discrimination like that experienced by these three workers remains an unfortunate yet prevalent reality for too many workers in our city, especially Black workers.

50% of Los Angeles's Black community is unemployed or underemployed (making less than \$12.00 an hour). In growth sectors such as the public construction industry, Black workers represent 10 percent of trained apprentices but make up less than 3 percent of the workforce. In the private construction industry specifically, Black workers make up only three percent of the workforce. When we have done the hard work of getting black people into the pipeline for jobs they still aren't being hired. And when Black workers do

make it onto the job they experience violations of wage theft at twice the rate of white workers. The laws are on the books, but enforcement of them is sorely lacking.

Tuesday, the Los Angeles City Council took a monumental step toward improving workplace conditions for LA workers by directing the city attorney to draft a minimum wage ordinance with comprehensive wage theft enforcement. This means the city minimum wage would rise to \$15 by 2020. In the 14-1 vote, the Council also advanced comprehensive wage enforcement, critical companion legislation that establishes an Office of Labor Standards and Enforcement (OLSE) at the city level to protect workers against wage theft and unlawful employer practices that prevent them from collecting their wages. We have been part of an effort, spearheaded by The LA Black Worker Center, to ensure the ugly and pervasive practice of employment discrimination is a key part of comprehensive wage enforcement.

However, we watched in disbelief, as the anti-discrimination enforcement failed to get the votes needed to be included in framework of the policy, which will be approved by council next month. Instead, the provisions were referred back to City's Economic Development Committee for review.

To LA City Councilman Curren Price, who drafted the anti-discrimination amendment and supporters, Council members Gil Cedillo; Herb Wesson; Paul Koretz; Nury Martinez; Mike Bonin; and Jose Huizar, we say thank you for your courage to stand for anti-discrimination and protect workers from unscrupulous employers who would deny work opportunity based on the skin color, gender, or sexual identity.

To Los Angeles, we ask: why do workers have to wait for anti-discrimination enforcement at the city-level?

When Black people are not hired, are underpaid, have their wages stolen, and are mistreated on the job the repercussions go far beyond that individual who has been discriminated against. Our families are destabilized and the resulting poverty is at the root of mass incarceration, homelessness, health disparities and the educational divide.

By creating and fully funding an OLSE, Los Angeles would join at least 10 other cities across the country that have created city level offices to protect workers. These offices take on a range of responsibilities that go far beyond referrals to address the very challenges faced by so many black workers in our city. A Los Angeles OLSE could play multiple roles in the enforcement of anti-discrimination protections for workers:

- Regularly collect data on workforce demographics, conduct audit studies of problematic industries, and impose penalties on employers that break the law

2) Enforce anti-discrimination protections for current employees and applicants through co-enforcement partnerships with community-based worker organizations and organized labor

3) Investigate and adjudicate claims of discrimination over which the City Attorney has jurisdiction, while assisting state and federal agencies in outreach, investigation, and mediation of claims of discrimination that violate state and federal statutes

4) Promote community and employer education in partnership with community-based worker organizations and organized labor.

The city will have strong partners in community based organizations like the LA Black Worker Center who are already doing some of this work, but need to muscle and resources a strong OLSE will provide.

Current proposals floating in City Hall include a call for \$400,000 to fund an enforcement effort here in Los Angeles. San Francisco, a city with a third of our workforce, spends \$1.8 million to run its Labor Standards office that employs 5.5 investigators, and contracts with community organizations to do targeted outreach and education. The paltry proposal for \$400,000 to fund enforcement in our city is totally insufficient. Considering our size and the magnitude of our problem, a LA OLSE needs 15-25 investigators and a budget of \$5.5 million to run an effective office. These costs would be offset through the collection of fines and penalties of violators and through partnerships with the state and federal government who have reimbursed other local jurisdictions for doing such work. This will come on top of recouped tax dollars from justly employed workers.

Some will say this is too expensive but few dispute the connection between joblessness and rising crime rates. Our city spends \$1.189 Billion on policing, and the current climate reveals how this cost and the criminalization of our community that too often comes from it is already too much to bear. The employers who deny Black people access and exploit and harass them on the job are criminals and we need to invest in policing them.

Some will say this work is duplicative of work done at the state and federal level, but a strong intergovernmental partnership is needed to address this issue. The magnitude of the Black jobs crisis requires it.

We have a unique opportunity to demonstrate that Black Lives Matter in the city of Los Angeles. We urge members of the Los Angeles City Council to establish and fund an effective OLSE that aggressively enforcement employment discrimination.

Now, the fate of anti-discrimination enforcement lies in the hands of the Economic Development Committee. We urge the committee to put this issue at the top of its agenda and ensure these protections are part of LA's landmark minimum wage/comprehensive wage enforcement ordinance. Workers in our community cannot wait. As Dr. Martin Luther King Jr. said: "Wait, means never."

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