

REPORT OF THE CHIEF LEGISLATIVE ANALYST

DATE: April 30, 2015

TO The Honorable Members of the Los Angeles City Council

FROM: Sharon M. Tso *SMTSO*
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Assignment #15-04-0333

Office of Labor Standards for Wage Theft Enforcement

SUMMARY

In response to the April 2, 2015 instructions from the Economic Development Committee relative to Motion (Cedillo-Koretz-Bonin)(CF 14-1371-S1) regarding the feasibility of establishing an Office of Labor Standards (OLS) for the City of Los Angeles, we reviewed various options from other cities and explored options for in-house staff and outside assistance, including partnerships. This report analyzes options for placing this function within either of two host departments within the City, discusses options for enforcement authorities for inclusion in any future minimum wage ordinance, and estimates the cost of this new office.

RECOMMENDATIONS

That the City Council;

1. Request the City Attorney prepare and present an ordinance to create an Office of Labor Standards (OLS), incorporating the enforcement of a minimum wage ordinance if such a policy is adopted, including the ability to:
 - administer and enforce wage laws and local minimum wage regulations, if adopted;
 - fine noncompliant employers;
 - provide for collection of all monetary judgments, including any fines and penalties;
 - place a lien on real property for collection enforcement, when necessary;
 - pursue all options for legal enforcement actions;
 - allow private right to action;
 - prevent retaliation;
 - pursue the revocation of permits, where appropriate;
 - cooperate with State and Federal agencies; and
 - coordinate with public interest organizations and law schools.
2. To establish an OLS to enforce wage laws to prevent wage theft and to enforce a City minimum wage, if adopted, authorize Resolution Authority effective July 1, 2015 for:
 - a. Five Management Analyst II positions in the Public Works - Bureau of Contract Administration, **or**;
 - b. Five City Attorney Investigator II positions in the Office of the City Attorney.

3. Instruct the City Administrative Officer (CAO), with the assistance of the Chief Legislative Analyst (CLA), to identify \$500,000 in funding for deposit into a new line item in General City Purposes to fund the approved staffing of the OLS, and the cost of initial equipment, expenses, and public outreach related to wage theft enforcement, with the specific Controller instructions to be included in the 2014-15 Year-End Report.
4. Request the City Attorney, with the assistance of the Office of Finance, Public Works - Bureau of Contract Administration, CAO, CLA, and other departments, as appropriate, to review current wage laws and regulations and report to the City Council with recommended changes that would strengthen local enforcement of labor law.
5. Instruct the OLS to report to Council within 180 days of formation with recommendations related to additional resources necessary to implement the OLS program, including any resources needed for public outreach and development of partnerships with local public interest groups and law schools.

BACKGROUND

On October 7, 2014, Motion (Cedillo-Koretz-Bonin) was introduced and referred to the Economic Development and Budget & Finance Committees. That Motion discussed the ongoing deliberations regarding an increase in the minimum wage, and focused on the need to protect against wage theft to ensure that employees receive appropriate payment, including overtime wages, for all hours worked. The Motion includes the following instructions to staff:

- Request that the City Attorney include language that addresses wage theft in any citywide minimum wage ordinance they may bring forward to the City Council; the language should consider the revocation of city permits, increased administrative penalties and fines for employers that commit wage theft; and any other enforcement tools the City Attorney deems appropriate and locally permitted.
- Instruct the CLA, with the assistance of the CAO, to report on the feasibility of establishing in the City an Office of Labor Standards for the sake of enforcing local wage ordinances; the report should include personnel and budgetary costs.

At this time, the City Attorney has not been requested to draft an ordinance on the minimum wage, therefore this report is prepared in anticipation of an ordinance being drafted. The State of California's Division of Labor Standards Enforcement (DLSE) currently has the authority and responsibility to enforce labor laws in the California State Labor Code (Sections 79-107, and related sections) that "criminalize willful violations for non-payment of wages after a court judgment or final administrative order" and that require "restitution to the employee in addition to a civil penalty for failure to pay minimum wages." The DLSE also has the authority to enforce penalties established under the Labor Code for employers' failure to comply with wage-related statutes. The DLSE's website gives various examples of wage violations that they enforce, including "wage paid by check issued with insufficient funds, final paychecks not received, unused vacation hours that were not paid upon termination of the employment relationship (e.g., a quit, discharge, or layoff)"

and “unauthorized deductions from paychecks.” This report, however, focuses on the proposal in Motion (Cedillo-Koretz-Bonin), which is to study the creation of a local office to enforce labor laws and prevent wage theft. A local office could complement the efforts of the State DLSE, as discussed below.

It is feasible to create an Office of Labor Standards in the City if the City Council chooses to do so. To provide a suggested structure for the OLS, we reviewed various models of local wage enforcement and focused on two cities (Seattle and the City and County of San Francisco). Both cities established their local wage enforcement mechanism to complement their respective local minimum wage ordinances, in addition to other local labor requirements (e.g., enforcement of sick leave benefits for Seattle workers). Both cities use in-house staff to process intake of any complaints from the public alleging wage theft, investigate those complaints, and take appropriate action either locally or in cooperation with other authorities at the federal and/or state level. San Francisco has also established cooperative relationships with local public interest groups to facilitate public outreach and to process initial intake of complaints.

Enforcement Mechanisms

It is clear from various analyses prepared for the City of Los Angeles and for other cities that were considering enactment of local minimum wages (e.g., San Diego) that an effective enforcement mechanism is a key component of the effort to improve workers’ livelihoods. It is also clear that a locally adopted enforcement mechanism would give the City of Los Angeles the greatest latitude in enforcing laws against wage theft. Motion (Cedillo-Koretz-Bonin) lists enforcement options for the City Attorney to consider in the draft minimum wage ordinance. The following is a brief discussion and issues to consider for each enforcement option:

- **Administrative fines:** The City Council may wish to include in any local minimum wage ordinance the potential for financial penalties, on top of payment of back wages. This mechanism would likely improve enforcement and help the City to recoup enforcement costs. San Francisco enforcement agents are given the authority to levy an “administrative fine” of \$50 per employee for each day the employee suffered wage theft. San Francisco also levies administrative penalties ranging from \$500 to \$1,000 per employee against businesses that fail to provide access to certain information during a wage theft investigation or that retaliate against employees who exercise their right to a minimum wage.
- **Liens:** Use of liens to enforce wage-theft findings is another viable option for enforcement of wage theft rulings, in cases where the business owner has financial interest in the real property of the business. The City has successfully used liens attached to a business property in cases where business owners are delinquent with payment of business taxes. The Office of Finance noted improved compliance with business tax obligations following implementation of this option.
- **Legal enforcement actions:** The City Attorney currently has the authority to file a civil case against any business that violates labor laws, including wage theft civil enforcement, pursuant to Section 17200 of the Business and Professions Code. The City Attorney also has the authority to pursue criminal prosecution, when merited.

- **Private right to action:** Under current law, individuals alleging wage theft by their employer have the right to hire a private lawyer to sue in court for recoupment of those wages. Enactment of a local minimum wage enforcement mechanism could assist the efforts of those aggrieved by helping with the investigation of allegations, and aiding with the enforcement of any subsequent court decisions.

- **Permit revocation:** It has been suggested that the City of Los Angeles consider revoking operating permits for businesses practicing wage theft. While this may be an option in other cities, the City's Business Tax Registration Certificate is not an appropriate enforcement tool in that it is not an operating license, but rather a permit to administer payment of business taxes due. Some businesses, such as car washes and parking lots, have other permit requirements subject to review, and possible revocation, by the respective governing bodies (e.g., Police Commission for parking lot operation). Failure to pay appropriate wages by these types of businesses should be coordinated with the respective permit governing body and considered within the context of the established administrative processes. The City Council may wish to supplement the enforcement authority of those respective governing bodies to clarify that conviction of wage theft is an offense that could subject the business to permit revocation. The City Council may also wish to instruct staff to review current law and report with changes that would strengthen local enforcement of labor law.

- **Preventing Retaliation:** While not included in the Motion, the City Council may wish to request that the City Attorney include in any local wage ordinance a prohibition on retaliation against any person exercising their right under the City's wage law. San Francisco's Administrative Code Section 12R.6 provides this type of protection for individuals filing a complaint under that City's minimum wage law. As stated in a report by the Economic Roundtable regarding the City's proposed minimum wage, any wage theft prevention law should include protections against retaliation because "(f)ear of retaliation stops wage theft enforcement by preventing workers from filing complaints or cooperating with investigators."

- **Coordination with State and Federal agencies:** As described above, the State DLSE has statutory authority to enforce labor law, and a variety of enforcement authorities to investigate and enforce against wage theft. Establishment of an enforcement effort at the local level should be coordinated with the appropriate State and Federal agencies, who have existing enforcement authorities that could assist with the local effort to collect wages due. In addition, the City could seek to sponsor legislation to ask the State Legislature to further enhance enforcement options, such as the 2005 proposal by then-Assemblymember Koretz. Under AB 875 of 2005, which was vetoed, a state tax audit and investigation could be triggered whenever an employer was found to have committed wage theft or other specified wage violations.

City Office of Labor Standards (OLS)

There are a variety of options for the establishment of an OLS for the City. The new OLS could be created as a stand-alone City department or division, or this function could be added as an office or division within an existing City department or bureau. Alternatively, the City could hire an outside contractor to handle wage theft intake and investigation, either independent of the City or to supplement any in-house City investigators. Given the nature of the work to be conducted by the OLS, the cost of this wage theft and enforcement mechanism will be likely paid from the General Fund.

If the City Council chooses to proceed with creation of an OLS for the City, we note that both the City Attorney and the Bureau of Contract Administration's Office of Contract Compliance have expertise in investigating and pursuing cases of alleged wage theft, as well as the necessary administrative support for the new OLS. Placing the new OLS within one of these two options could expedite the creation of a City wage theft prevention function in a more cost efficient manner. New investigators would have the administrative support needed, and would have the opportunity to interact with current City staff with knowledge of the issues. Placing this function into its own separate City department or office would not have these benefits.

The City Attorney's Office has established a Wage Theft Unit within the office with multiple attorneys assigned to this function. Recently, in November 2014, the City Attorney designated four attorneys to work with the Public Works - Bureau of Contract Administration in a wage theft incident. The City Attorney sued a major building contractor and five subcontractors for alleged wage theft involving \$250,000 in wages and overtime pay for 50 employees who worked for the contractors on the City's South Los Angeles Animal Shelter project. That case is pending in the court system. The City Attorney has also established a wage theft hot line for intake of wage theft complaints (213-978-7141).

The Public Works - Bureau of Contract Administration Office of Contract Compliance has extensive expertise in the investigation and enforcement of labor laws. The Office of Contract Compliance is currently responsible for enforcing the following labor laws as they relate to companies that have construction contracts with the City:

- Prevailing Wage - Federal Davis Bacon and Related Acts
- Project Labor Agreement
- Business Inclusion Program
- Disadvantaged Business Enterprise Program
- Local Business Preference Program
- Equal Employment Opportunity/Affirmative Action
- Equal Benefits Ordinance
- Service Contract Worker Retention Ordinance
- Living Wage Ordinance
- Slavery Disclosure Ordinance
- First Source Hiring Ordinance
- Hotel Worker Minimum Wage Ordinance

The Bureau of Contract Administration also functions as the centralized certification administrator for various programs, including the Small Business/Emerging Business/Disabled Veteran-Enterprise certifications, and Local Business Enterprise certification.

The Bureau's Office of Contract Compliance currently has a total of 44 Regular and Resolution Position Authorities assigned to perform these functions on contracts held by all City departments, including the propriety departments.

Both the City Attorney's Office and the Bureau of Contract Administration have the expertise and existing administrative support needed to successfully launch a new Office of Labor Standards if the City Council chooses to pursue the establishment of this function. However, administrative support resources may need to be increased at a later date depending upon the actual workload from wage theft cases once the OLS is operational.

Sizing the OLS

In discussions with both the City Attorney's Office and the Bureau of Contract Administration, both entities noted the need for a cadre of fully-funded investigators for any local enforcement office. These in-house positions would assist with the research into wage theft allegations, and preparation of materials necessary for any enforcement actions. The City Attorney also notes that investigation services can be supplemented through contracted services.

In a study commissioned by the City, the UC Berkeley Institute for Research on Labor and Employment studied the City's proposed minimum wage. Included in its report was an assessment of the need for a robust wage enforcement mechanism at the local level. That study estimates that the City of Los Angeles would need a staff of 25 investigators to enforce the minimum wage policy. The City also received reports from Beacon Economics and the Economic Roundtable, the latter of which also includes a discussion of enforcement matters.

For comparison, the City of Seattle recently established an OLS and housed it within its existing Office for Civil Rights. Prior to 2015, Seattle's OLS was staffed with 1.5 staff positions who were responsible for investigating, enforcing, and performing community outreach related to the City's "Paid Safe and Sick Time and Job Assistance Ordinances." Beginning in 2015, Seattle's OLS will be responsible for enforcing all of the City's labor standards ordinances, including their recently enacted Minimum Wage Ordinance (which took effect April 1, 2015), as well as investigation and enforcement regarding any reports of wage theft. Staffing in the OLS is authorized to increase to 5.5 positions by 2016 with a budget of \$660,460. This staffing includes a labor standards director, two business- and community-outreach liaisons, and three investigators.

San Francisco Minimum Wage Ordinance became effective in February 2004. In a 2014 study conducted by the City of San Diego during its consideration of its own minimum wage law, San Diego City staff noted that San Francisco's Office of Labor Standards Enforcement (OLSE) has a total staff of 19 positions and a total budget of approximately \$3.7 million to administer San Francisco's local labor laws "including their Prevailing Wage Ordinance, Living Wage Ordinance, Health Care Security Ordinance, Family Friendly Workplace Ordinance and Fair Chance Ordinance." Of the total OLSE staff, 5.5 positions are dedicated to the enforcement of that city's minimum wage and paid sick leave ordinances, at an annual estimated cost of \$1.4M.

For the City of Los Angeles' OLS, both the City Attorney and the Bureau of Contract Administration recommend that, while the number of wage theft claims in the City of Los Angeles will be significant, a phased approach would be prudent for staffing the City's new OLS since policies, procedures, and operations would need to be established to efficiently and effectively address all complaints. The initial operation of the new OLS would involve a learning period during which time OLS staff will be working with constituents and organizations outside of the City structure to enforce wage laws against employers who, in most cases, have no contractual relationship with the City.

It is also clear that investigative and intake services related to wage theft allegations are time and labor intensive, and require a special expertise to work with individuals who are often hesitant to report allegations out of concern for their continued livelihood. As such, use of well-trained in-house staff supervised by the City would be the appropriate enforcement mechanism, at least initially. However, this does not preclude the City from supplementing any in-house investigative staff with outside resources to expand the City's effort to identify and address wage theft in the City. For example, the Bureau of Contract Administration currently hires third parties to fulfill some of its certification functions, and would be open to using outside services for intake and monitoring of the public's wage theft complaints.

Partnerships

We note that a variety of public interest groups have established relationships with the community and their assistance with wage-theft case intake and investigation would be invaluable. These organizations currently provide assistance to low-income residents with wage issues. This assistance may be provided at free legal clinics or by referring the case to private attorneys who take it on a pro bono basis. However, since many of these public interest organizations receive grant funding, the City would need to have a discussion to determine the extent to which these organizations may be able to support the City's initiative to prevent wage theft using their existing resources.

The City may also wish to explore assistance from law schools in Southern California that offer externships in a wide variety of labor-related areas, where law students could prove helpful with intake and case preparation. Most law schools provide law students with direct legal experience through various on-campus legal clinics and others have clinics that focus on employment rights and wage issues. For example, Loyola's Law School operates an Employment Rights Clinic to provide assistance with the investigation of retaliation claims filed with the Labor Commissioner, and to prepare a determination for the Labor Commissioner to review and possibly use in the claim. The City's new OLS may wish to establish relationships with law schools to allow law students, working under the supervision of an attorney, to perform the initial intake with the client regarding their wage claim; conduct a thorough investigation about whether the claim violates the City's wage ordinance; and make a determination based on their findings. The law student would subsequently forward their findings to the OLS.

By engaging public interest organizations and law schools in this effort, the City would develop partnerships that could expand the City's efforts to identify wage theft incidents in a manner that complements the work of in-house staff.