



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 17, 2019
TO: Honorable Mayor and Members of the City Council
FROM: Elizabeth Correia, Interim City Treasurer
SUBJECT: Fiscal Year 2019 Earned Sick Leave and Minimum Wage Enforcement

The purpose of this memorandum is to summarize enforcement activities conducted by the Earned Sick Leave and Minimum Wage Program (Program) within the Office of the City Treasurer, as required in San Diego Municipal Code (SDMC) §39.0113(q).

Enforcement
Complaints

Program staff investigate all alleged violations of the Ordinance, including violations of minimum wage, earned sick leave, retaliation, and notice and posting requirements. Table 1 below summarizes the Program's enforcement activities since the implementation of the Ordinance on July 11, 2016:

Table 1

Table with 3 columns: Category, Fiscal Year 2019 (through 4/30/19), and Total Since July 11, 2106. Rows include: Complaints/tips Received (131, 808), Number of Employers (131, 372), Total Remedies Recovered for Employees (\$49,685, \$399,495), Total Number of Employees Receiving Remedies (214, 1,330), and Total Penalties Received by City (\$18,400, \$87,400).

Investigations are initiated based on formal complaints, Program staff research, and more than one (1) informal complaint for the same employer. Investigations typically include interviews with the complainant, if applicable, and potential witnesses, site visits, and review of pertinent payroll documentation. If violations of the Ordinance are found, the Program may issue a Notice of Violation or may conduct an informal settlement conference if requested. If

1 In addition to monetary remedies, employees also received reimbursement of earned sick leave hours in accordance with Ordinance requirements.

2 Note that over half of the remedies recovered for employees in prior fiscal years were the result of investigations of two (2) employers.

3 Program staff proactively review job postings to confirm compliance.

a settlement 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.

#### Directed Investigations

Beginning in fiscal year 2019, Program staff implemented a directed investigation workplan. Directed 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:

- Data gathered from the Program's past complaints;
- Data and information from the United States Department of Labor, California Labor Commissioner's Office, and other agencies and jurisdictions that have incorporated directed investigations into their practices;
- Information from the public, community organizations, employees, and employers; and
- Trends and statistics on industries that employ many vulnerable, low-income workers, including workers of color, women, immigrants, refugees, people with disabilities and other groups.

As of April 30, 2019, the Program has initiated 84 directed investigations (Table 2) with plans to initiate an additional sixteen (16) by the end of the fiscal year.

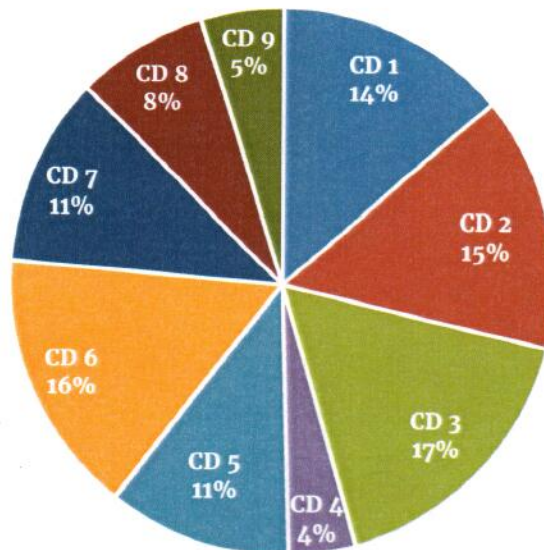
**Table 2**

	<b>Fiscal Year 2019 (through 4/30/19)</b>
Investigations Initiated	84
Total Remedies Recovered for Employees <sup>4</sup>	\$52,955
Total Number of Employees Receiving Remedies	210
Total Penalties Received by City	\$500
Percentage of Completed Directed Investigations with Violations	21%

Trends observed from directed investigations completed in fiscal year 2019 will be considered when formulating the fiscal year 2020 directed investigation workplan. In addition, the percentage of businesses selected for directed investigations in fiscal year 2020 will be consistent with the percentage of current Business Tax Certificates by Council District. Chart 1 provides a breakdown of the percentage of current businesses by Council District based on active Business Tax Certificates as of March 2019.

<sup>4</sup> In addition to monetary remedies, when applicable, employees also received reimbursement of earned sick leave hours in accordance with Ordinance requirements.

**Chart 1: Percentage of Businesses by Council District (CD)**



#### Administrative Regulations

Under the authority of SDMC §39.0113(a), the Program promulgated an administrative regulation to establish a procedure to order relief due to employees in cases where employers have failed to comply with the earned sick leave requirements of the Ordinance. This regulation incorporates the Center for Disease Control (CDC) averages pertaining to sick days taken by full-time working individuals. Other local municipalities with earned sick leave regulations have established similar procedures, which provides the ability to impose an “across the board” remedy without disclosing the complainant or who cooperated with the investigation. This regulation provides the Program another tool to ensure employees who have been denied the use of earned sick leave receive equitable relief.

#### **Outreach**

The primary goal of the Program is to ensure employers are complying with the Ordinance and employees are receiving no less than the required minimum wage and are guaranteed the right to take paid sick leave. As a result, the Program continues to take a proactive approach to educate both employers and employees about the Ordinance requirements and the process to submit complaints. Methods of outreach include presentations to business and community groups, business walks, posters displayed on MTS busses and trolleys, extensive mailer communications, and collaboration with outside agencies and other City Departments. The Program has one full-time position dedicated to outreach, education and customer service. Fiscal year 2019 outreach administrative expenses, including printing brochures and posters and advertising, totaled approximately \$20,000.

As of April 30, 2019, outreach for this fiscal year included:

- **11 Presentations** to various groups including Alliance San Diego, North San Diego Business Chamber and monthly presentations in conjunction with California Employment Development Department
- **3 Business Walks** giving staff the opportunity to talk directly with small business owners/managers and their employees in the Rancho Bernardo, Del Cerro and Downtown communities

- **Informational booth** with educational materials at monthly Naturalization Ceremonies
- **Display of “Have you Heard” Posters** at various locations including City payment locations, City Passport office, and the Employee Rights Center
- **Advertising on trolleys** using informational “Have you Heard” posters
- **Email blasts, newsletter distributions by partner organizations and distribution of information brochures and fact sheets** to various organizations including San Diego Unified School District, Think Dignity, Casa Familiar, and South Metro Career Center
- **One on one meetings with employees** at local libraries and/or recreational centers during evening hours
- **On camera and phone media interviews** with KSDY 50, 600 KOGO and Televisa 12
- **Online survey** available in English and Spanish to allow both employers and employees to provide feedback and suggestions regarding various outreach methods

As of May 1, 2019, individuals logging onto the free Wi-Fi network at the United States & Mexico Border will see information in Spanish regarding the City’s Earned Sick Leave and Minimum Ordinance requirements and how to file a complaint or contact the Program for more information.

**Minimum Wage Increase**

Beginning January 1, 2019, the Ordinance requires the annual minimum wage to increase to an amount corresponding to the prior year’s cost of living measured by the Consumer Price Index (CPI). However, if the federal or State of California minimum wage is higher, the higher wage shall prevail.

The resulting minimum wage increase using CPI was greater than the State’s minimum wage for employers with less than 26 employees, but less than the minimum wage for employers with 26 employees or more. The Program requested the City Attorney determine whether the CPI increase would result in the City having a tiered minimum wage similar to the State of California. On September 21, 2018, the City Attorney issued a Memorandum of Law confirming that the City would not have a tiered structure; the City’s minimum wage would increase to the State’s higher minimum wage of \$12 per hour as of January 1, 2019 regardless of the number of employees.

Table 3 details the City’s anticipated minimum wage increases relative to the State’s through calendar year 2023.

Table 3<sup>5</sup>

Calendar Year	City of San Diego Anticipated Minimum Wage	California State Minimum Wage (Employers with 26+ Employees)	California State Minimum Wage (Employers with 25 or less Employees)
2019	\$12	\$12	\$11
2020	\$13	\$13	\$12
2021	\$14	\$14	\$13
2022	\$15	\$15	\$14
2023	\$15	\$15	\$15

<sup>5</sup> Table 3 assumes the increase in CPI will not result in a City minimum wage that is greater than the State of California.

On September 28, 2018, Program staff announced the January 1, 2019 minimum wage of \$12 per hour. Required notices and other outreach and education materials reflecting the new minimum wage were made available on the Program's webpage. The Program also worked closely with the Communications Department and issued a Media Release on December 19, 2018.

### 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 April 30, 2019, enforcement efforts have resulted in 1,540 employees receiving monetary remedies of over \$450,000.<sup>6</sup> The Minimum Wage 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.

If you have questions or would like more information, please contact Minimum Wage Program Manager, Tricia Mendenhall at (619) 235-5833 or [tmendenhall@san Diego.gov](mailto:tmendenhall@san Diego.gov).



Elizabeth Correia  
Interim City Treasurer

EC/tm

Attachment: City Attorney September 21, 2018 Memorandum of Law

cc: Honorable Mara Elliott, City Attorney  
Aimee Faucett, Chief of Staff, Office of the Mayor  
Kris Michell, Chief Operating Officer  
Andrea Tevlin, Independent Budget Analyst  
Stacey LoMedico, Assistant Chief Operating Officer  
Ronald Villa, Assistant Chief Operating Officer  
Rolando Charvel, Chief Financial Officer  
Jessica Lawrence, Director of Finance Policy & Council Affairs  
Ricardo Ramos, Deputy Director, Office of the City Treasurer  
Tricia Mendenhall, Program Manager, Office of the City Treasurer

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<sup>6</sup> Since Ordinance implementation in July 2016, complaint driven investigations (Table 1) and directed investigations (Table 2) have resulted in a total of 1,540 employees receiving monetary remedies of over \$450,000.