



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: May 14, 2021

TO: Honorable Mayor and Members of the City Council

FROM: Elizabeth Correia, City Treasurer

SUBJECT: Fiscal Year 2021 Earned Sick Leave and Minimum Wage Enforcement

As required by San Diego Municipal Code (SDMC) §39.0113(q), our Department is providing a summary of activities conducted by the Earned Sick Leave and Minimum Wage Program (Program) which includes enforcement, outreach, and cross organizational collaboration.

Enforcement

Investigations are initiated based off complaints as well as the Program's directed investigation annual work plan¹. Complaints include formal complaints, tips or anonymous information received by the Program. Investigations may include interviews with the complainant 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 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. Since the program's inception, enforcement efforts have resulted in 2,518 workers receiving over \$1,018,000 in monetary damages from their employers for violations under the Ordinance. Table 1 below summarizes enforcement activities since the implementation of the Ordinance on July 11, 2016:

Table 1

	Fiscal Year 2021 (through 4/30/21)	Total Since July 11, 2016
Employers Investigated	92	734
Total Remedies Recovered for Employees	\$349,320*	\$1,018,887
Total Number of Employees Receiving Remedies	485	2,518
Total Penalties Received	\$1,600	\$96,700

* \$4,141.59 of this amount is attributable to monthly payments resulting from a settlement agreement with an employer; \$16,566 remains to be paid to employees as part of the settlement agreement.

¹ Complaint based investigations take priority over directed investigations.

In addition, the Program conducted its first administrative enforcement hearing during the current fiscal year. The hearing was requested by an employer who failed to provide employees with sick leave. The Program calculated remedies to employees using the average sick days taken by full-time working individuals per the Center for Disease Control (CDC). This methodology is outlined in the Program's promulgated administrative regulation titled Methodology to Provide Equitable Relief to Employees.

On December 22, 2020, an independent hearing officer upheld the Program's use of the administrative regulation in an Administrative Enforcement Decision and Order resulting in \$31,192.53 in remedies due to 49 employees and \$14,892 in penalties and reimbursement of administrative expenses due to the City.²

Complaints

Program staff investigate all complaints that allege a violation of the Ordinance, including violations of minimum wage, earned sick leave, retaliation, and notice and posting requirements. Of the total remedies recovered for employees since the Program's inception (Table 1), \$790,792 is attributable to investigations resulting from complaints.

Directed Investigations

Beginning in FY19, 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:

- High-violating industries based on data gathered from the Program's past complaints and directed investigations;
- 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;
- 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; and
- Information from the public, community organizations, employees, and employers.

The FY21 directed investigation workplan considered the impact the COVID-19 pandemic had on businesses. Employers were given the opportunity to stagger submission of responsive documents and additional extensions were granted. The Program delayed initiating any directed investigations in the last quarter of FY20 and investigations of those industries that were severely impacted by the pandemic were not initiated during the first half of FY21. Of the total remedies recovered for employees since the Program's

² To date, the employer has yet to satisfy the Administrative Enforcement Decision and Order; Program staff is working with the City Attorney's office and Delinquent Accounts.

inception (Table 1), \$228,095 is attributable to investigations resulting from directed investigations.

Outreach

The primary goal of the Program is to ensure employers are complying with the Ordinance, specifically that employees who work in San Diego are receiving no less than the City's required minimum wage and are guaranteed the right to take paid sick leave. As a result, the Program continues to take a very proactive approach to educate both employers and employees about the Ordinance requirements and the process to submit complaints.

While outreach and education efforts have been limited during the COVID-19 pandemic, the Program continues to educate employers and employees on the Ordinance requirements via email inquiry, phone inquiry and continuous webpage updates. The Program has one full-time position dedicated to outreach, education, and customer service.

Additionally, on September 28, 2020, the Program announced the City's minimum wage increase, effective January 1, 2021, via the Program's webpage and notices and other outreach and educational material were updated and made available in compliance with the Ordinance.

As of April 30, 2021, outreach for this fiscal year included:

- Media Release issued for 2021 minimum wage increase
- Outreach regarding the 2021 minimum wage increase to 24 employer organization and 29 employee organization groups including California Restaurant Association, Hotel/Motel Association, San Diego Regional Chamber of Commerce and Workforce Partnership, San Diego Unified School District, Employee Rights Cents and Karen Organization of San Diego
- Reminder email regarding minimum wage increase sent to over 1,000 employers and employees via the email distribution list
- Direct assistance to citizens via dedicated phone and email
- Inclusion of informational inserts with Business Tax Certificate mailings
- Updated website to include information about using earned sick leave during COVID-19 pandemic

Collaborations with other City Departments

The Enforcement Office continues to work collaboratively with other City departments. Staff worked closely with the City Attorney's Office, including enforcing a breach of a settlement agreement order in Superior Court. The Enforcement Office also worked directly with the Delinquent Accounts Program to pursue civil penalty payments. In preparing and scheduling the Program's initial administrative enforcement hearing, the Enforcement Office worked closely with Purchasing and Contracting's Administrative Hearing Program. In addition, the Program continues to partner with the Communications Department for media releases.

As part of the FY22 proposed budget process, the City has recommended consolidating all wage enforcement efforts, which includes living, prevailing and minimum wage, into the Office of Labor Standards and Enforcement within the Compliance Department. The consolidation is expected to elevate this effort through continued collaboration with partnering departments.

Minimum Wage Increase

On October 1, 2020, Program staff announced the January 1, 2021 minimum wage rate of \$14.00 per hour. The Program worked closely with the Communications Department and issued a media release and social media posts regarding the increase. Required notices and other outreach and education materials reflecting the new minimum wage were made available on the Program’s webpage.

Table 2 details the City’s anticipated minimum wage increases relative to the State’s for the next five (5) calendar years. While Program staff anticipate the minimum wage to be in line with the State’s minimum wage through calendar year 2022, beginning January 1, 2023, it is expected that the City’s minimum wage will outpace the State’s. This is contributed in part to the different methodology required by the State versus the City when calculating minimum wage rates. For example, the City’s increase to the minimum wage is based on the increase to the Consumer Price Index (CPI) from August to August of each year and then rounded to the nearest multiple of five cents while the State’s increase to minimum wage is based on the increase to the CPI from July to June of each year and rounded to the nearest multiple of ten cents.

Table 2³

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)	\$ Amount City Minimum Wage higher than California State
2022	\$15	\$15	\$14	NA
2023	\$15.25	\$15	\$15	\$.25
2024	\$15.50	\$15.30	\$15.30	\$.20
2025	\$15.75	\$15.60	\$15.60	\$.15
2026	\$16.00	\$15.90	\$15.90	\$.10

³ The following assumptions were made in creating Table 2: 1) the increase in Consumer Price Index (CPI) will not result in a City minimum wage that is greater than the State of California through 2022, thereby resulting in a City minimum wage equal to the State 2) CPI increases in 2023 through 2026 are based on the average percentage of increase in the CPI (Urban Wage Earners and Clerical Workers, U.S. City Average for All Items) as of August from 2010 through 2019 and rounded to the nearest multiple of five cents for the City of San Diego and as of July from 2010 through 2019 and rounded to the nearest multiple of ten cents for the State of California, and 3) State minimum wage increases have not been suspended by the Governor.
https://data.bls.gov/timeseries/CWUR0000SA0&output_view=pct_12mths

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.*

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 Tricia Mendenhall, Financial Operations Manager, at (619) 235-5833 or tmendenhall@sandiego.gov.



Elizabeth Correia
City Treasurer

EC/tm

cc: Honorable Mara Elliott, City Attorney
Paola Avila, Chief of Staff, Office of the Mayor
Jay Goldstone, Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst
Matt Vespi, Chief Financial Officer
Jessica Lawrence, Director of Policy
Matthew Helm, Chief Compliance Officer
Ricardo Ramos, Deputy Director, Office of the City Treasurer
Tricia Mendenhall, Financial Operations Manager, Office of the City Treasurer