

PLEASE CLICK ON THE COUNTY OF LOS ANGELES SEAL
TO RETURN TO THIS PAGE

[CLICK HERE FOR THE CHIEF EXECUTIVE OFFICER'S REPORT DATED NOVEMBER 10, 2015](#)

THIS ITEM RELATES TO ITEM #S-1 ON JULY 21, 2015
<http://file.lacounty.gov/bos/supdocs/96408.pdf>



County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

SACHI A. HAMAI
Chief Executive Officer

November 10, 2015

To: Supervisor Michael D. Antonovich, Mayor
Supervisor Hilda Solis
Supervisor Mark Ridley-Thomas
Supervisor Sheila Kuehl
Supervisor Don Knabe

From: Sachi A. Hamai
Chief Executive Officer

Board of Supervisors

HILDA SOLIS
First District

MARK RIDLEY-THOMAS
Second District

SHEILA KUEHL
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

REPORT ON A WAGE THEFT ENFORCEMENT PROGRAM (ITEM NO. 2, AGENDA OF JULY 21, 2015)

On July 21, 2015, a motion by Supervisors Solis and Ridley-Thomas directed the Chief Executive Officer (CEO), in consultation with Superior Court leadership, the Department of Consumer and Business Affairs (DCBA), the District Attorney, the Sheriff, County Counsel, Treasurer and Tax Collector, and other relevant County departments, to report back to the Board within 90 days with a recommendation for the most effective and efficient model by which the County can enforce wage theft regulations.

The motion also called for: 1) an inventory and analysis of the County's existing wage enforcement efforts; 2) recommendations for coordinating or relocating existing efforts into the enforcement agency; 3) State and Federal wage enforcement efforts and consideration of potential collaborations, especially on a cost-recovery basis, with other government and wage enforcement and criminal justice agencies, and local Community Based Organizations (CBO); 4) an estimate of resources, including staff and funding, necessary to establish and operate such an enforcement agency; and 5) the CEO was instructed to direct legislative advocates to proactively advocate for increased State and Federal funding for wage theft enforcement and to support initiatives that contemplate the same.

Summary

Wage theft is generally any failure by an employer to pay wages or provide benefits owed to an employee that he or she is legally entitled to receive. Although enforcement of wage theft has historically been the responsibility of State and Federal agencies, they have insufficient resources to address the problem. Based on our review, the County does not have a formal mechanism in place to ensure compliance with its new minimum wage ordinance (MWO) nor the ability to enforce it. As a result, we recommended that a County Wage Enforcement Program (WEP) be created prior to the July 1, 2016 minimum wage increase date and placed within DCBA. DCBA has the infrastructure, regulatory experience, and established network of partners to enforce the County's MWO. The proposed WEP is detailed in Attachment I.

"To Enrich Lives Through Effective And Caring Service"

***Please Conserve Paper – This Document and Copies are Two-Sided
Intra-County Correspondence Sent Electronically Only***

Our analysis also included a review of existing County wage theft enforcement efforts (Attachment II). We found that these functions are spread throughout various County departments and specifically tied to Living Wage (LW) and Prevailing Wage (PW) contracts. Since these programs are associated with County contracts and contain defined compliance and enforcement protocols which are comingled with other contract compliance duties, we do not recommend bifurcating or relocating staff into the proposed WEP.

Financing Requirements

The estimated FY 2015-16 cost of the WEP is approximately \$408,000 and includes six-months of funding for 5.0 budgeted positions (1.0 Chief, Consumer Affairs Representative; 1.0 Public Information Officer; and 3.0 Consumer Affairs Representative III) for DCBA wage theft investigators and counselling staff, miscellaneous services and supplies, and \$100,000 for CBO participation. In the first six-months, DCBA will conduct education and outreach by expanding existing programs, utilizing CBOs, business associations, and other County departments, and increasing collaborations with State and Federal wage theft enforcement agencies. DCBA staff will also undergo comprehensive training on wage complaint investigations, and develop internal policies, procedures, and operations manuals.

Based on initial workload projections, DCBA estimates that in FY 2016-17 they will need an additional 6.0 positions, comprised of 4.0 investigators (Consumer Affairs Representative III) and 2.0 compliance staff (Management Analyst). We will closely monitor actual workload data and work with DCBA to ensure appropriate staffing levels are allocated for an effective WEP. This Office has authority to add ordinance positions to meet emergent workload needs whenever required. We will return to the Board for additional funding as appropriate.

Legislative Advocacy

The CEO's Legislative Affairs and Intergovernmental Relations (CEO-IGR) section is working closely with the Countywide Wage Enforcement Workgroup to better understand: 1) what roles State and Federal agencies will have in the County's wage enforcement initiatives; 2) what regulatory authority the County may, and will, potentially assume; and 3) to what extent those proposed additional responsibilities represent an overlap of State and Federal duties. This information will allow CEO-IGR, in collaboration with the Workgroup and as directed by the Board, to develop specific proposals to advocate for during the upcoming State and Federal budget development cycles. A detailed analysis of State and Federal wage theft enforcement efforts is included in Attachment III.

If you have any questions or need additional information, please contact me, or your staff may contact Jim Jones at (213) 974-8355, or via e-mail at jjones@ceo.lacounty.gov or Brian Stiger, Director, DCBA at (213) 974-9750 or via e-mail at bstiger@dcba.lacounty.gov.

SAH:JJ:SK
BM:ef

Attachments

c: District Attorney
Sheriff
Executive Office, Board of Supervisors
Consumer and Business Affairs
County Counsel
Treasurer and Tax Collector

Proposed County Wage Enforcement Program

Program Development and Overview

An effective County WEP model should be based on prevention, complaint investigation, and recovery of unpaid wages. It is recommended that the WEP be housed within the DCBA, which has the infrastructure, regulatory experience, and established network of partners to enforce the County's MWO.

There are approximately 15,000 businesses with thousands of workers in the unincorporated areas. Having an adequate staff to respond to public inquiries will ensure that employers can access the information they need to comply with the MWO requirements.

DCBA will use its nearly 40 years of experience with local, state, and Federal consumer protection laws to enforce the MWO. DCBA will enforce the MWO through educating employers and workers on their responsibilities and rights under the MWO; providing a confidential system to receive complaints through a variety of sources, conducting timely investigations; and working to recover unpaid wages as appropriate. Additionally, DCBA's structure has the capacity to provide MWO enforcement contract services to incorporated cities should the need arise.

In the months proceeding July 1, 2016, when the new minimum wage must be paid, the WEP will focus on educating and providing information to employers on their responsibilities under the MWO. The goal is to achieve voluntary compliance with minimal intervention.

Currently, DCBA conducts outreach in the specific area of wage and hour law violations related to misclassification in accordance with the parameters outlined in its July 31, 2015 report to the Board. DCBA conducts targeted outreach to employers and workers to educate them about classification of employees and how to avoid misclassification. A second education and outreach effort will be required prior to the July 1, 2017 implementation of the MWO for small businesses to ensure that these businesses are aware of the new wage requirements.

Outreach Strategy

We recognize the importance of a heightened outreach effort to the public, and specifically the business community in the months leading up to the effective date of the new minimum wage. The DCBA will use a comprehensive strategy to educate workers and employers about their rights and responsibilities to prevent violations of the MWO from occurring.

I. Educating Public About MWO

DCBA is a trusted community partner and is considered a valued source of information on consumer and small business issues. It will use its existing framework and network of community and government partners to connect and engage the public, CBOs, and affinity groups.

1. MWO Information Center

The proposed WEP includes staffing an information center to receive telephone calls and respond to correspondence from both workers and employers to answer general questions about the MWO and the enforcement process. Knowledgeable staff will be available to answer

questions from workers and employers in a variety of languages, in printed material, postings, and at outreach events.

2. Online Assistance

A multilingual landing page will be developed on DCBA's website to answer questions and receive complaints from the public. In addition to providing for the instant submission of wage complaints, this landing page will provide information on the MWO, as well as answers to frequently asked questions. This website will interface with DCBA's case management system and track inquiries and complaints.

3. Promotional Materials

Tip-sheets, posters, and flyers will be developed to disseminate to the public and for employers for display in the workplace, educating their employees on the MWO and how to file a complaint. Businesses licensed in the unincorporated areas of the County will also be mailed the MWO requirements in the months leading up to July 1, 2016.

4. Community Presentations to Employers and Workers

Presentations and educational seminars will be conducted in unincorporated areas of the County targeting industries where violations of the MWO are most prominent. Workers will have the opportunity to meet individually with DCBA staff and file complaints on-site.

DCBA currently connects to the business community through its work with small business development. The WEP will educate businesses on MWO requirements, the schedule of increases, common MWO violations, and the consequences of non-compliance.

5. Posting Wage Theft Information

DCBA's website will include information about the types of violations that occur at the State and at the local level to empower the public to be aware of violations and the signs of wage theft.

Engagement with CBOs

An effective WEP includes utilization of CBO staff to provide education and outreach to low wage and immigrant communities. CBOs play an important role as established organizations that are trusted by workers. In fact, some workers prefer working with CBOs rather than directly with government agencies to file complaints. The CBOs will outreach to workers to inform them of their rights and where they can file a complaint. DCBA will also establish referral partnerships with CBOs when appropriate.

DCBA staff will also provide training to CBO staff to improve their recognition of MWO violations. DCBA will work with CBOs to develop a process for the submitting complaints on behalf of workers and provide WEP alerts or tips on possible violations of the MWO. CBOs can also identify industries and locations where violations are particularly prevalent so that WEP can more effectively target its enforcement actions and educational campaigns.

II. Post Case Closure

WEP staff will educate employers on how to avoid MWO violations in the future and follow up at specified dates to ensure they are complying with the MWO. This includes educating workers on their rights in order to avoid being a victim of wage and hour law violations in the future.

Additionally, a variety of supplemental services and information will be offered to workers including basic financial literacy and how to avoid becoming a victim of consumer scams.

Enforcement Process

The WEP will need the appropriate level of authority to investigate complaints, interview witnesses, and compel the submission of documents to complete a full investigation and to be an effective program. A locally adopted enforcement ordinance with a strong enforcement program provides the County the necessary tools and resources to effectively enforce the MWO.

DCBA has an established complaint intake process to analyze and evaluate incoming complaints, anonymous tips, and potential violations alleged in the media. After a wage complaint is reviewed, evaluated, and assigned, enforcement staff will then investigate the complaint, prepare a written report with findings and submit the report to the manager for review and approval.

The case will then transfer to the compliance unit to determine the appropriate level of intervention, which may include the serving of an administrative citation if sufficient evidence supports a violation of the MWO. The compliance unit will follow up on the administrative citation to ensure that back wages are paid either by procuring payment for back wages and penalties or through settlement negotiations. If a negotiated settlement cannot be reached and the employer still refutes a notice of determination, the case will proceed to an appeal and then a hearing. The hearing will be conducted by an independent hearing officer.

Case Cycle

DCBA has an existing confidential, secure, and accessible case management system that allows employees, employers, and members of the public to submit complaints or concerns in a variety of languages and methods. The process is outlined as follows:

Step 1: Initial Contact

DCBA will have dedicated staff to answer questions from both workers and employers. Counselors will be able to provide information related to the complaint process and answer general questions. Counselors will also be available for any walk in inquiries at any of DCBA's public counters. Counselors will be available to accept complaints over the phone but will not give legal advice.

Step 2: Complaint Intake

Complaints alleging violations of the MWO will be accepted through a variety of sources including: telephone, online or email, including anonymous tips.

The intake process will consist of an initial review to determine jurisdiction. If the County does not have jurisdiction, intake will refer the complainant to the appropriate regulatory body. If the tip or complaint does not rise to the level of a violation of the MWO, the intake unit will refer the complainant to DCBA's mediation division to resolve the issue informally. If the County has jurisdiction over a complaint of a violation of the County's MWO, the complaint will be assigned to an investigator.

Step 3: Investigation

The investigator will conduct a site visit, which may include interviews, observations, and an audit of relevant documentation including payrolls, time cards and employer policies. Additional investigative work will be performed as necessary. Subpoena authority is essential to obtain the necessary documents to conduct a full, fair, and balanced investigation.

At the conclusion of each investigation, the investigator will prepare an investigative report and make a determination based on the evidence as to whether the complainant's claims were substantiated, unsubstantiated, or whether there was insufficient evidence.

If an investigator finds sufficient evidence to support a violation of the MWO, the case will be referred to management for review and approval.

Step 4: Citation Issued

If management approves the investigator's finding, the case will proceed to the compliance unit for processing including serving an administrative citation. The administrative citation will contain the violation(s), the required corrective action and monies owed, if applicable. Employers will have a specified period of time to appeal or remedy the violation.

The citation will be accompanied by a cover letter informing the employer of the reason for the finding and options for payment. Additionally the letter will state that the employer must pay any outstanding amount owed to both the employee and the County within a specified time period. The letter will state ways to avoid a citation in the future, and to call DCBA should there be any questions about options for payment.

Step 5: Settlement Negotiations – conducted by Compliance Unit

The compliance unit may conduct settlement negotiations as appropriate. After receiving a citation, an employer may contact the compliance unit to engage in settlement negotiations conducted by management analysts who have specific training in negotiation and mediation. The compliance unit will evaluate the investigative findings and propose settlement terms to the employer for payment back wages and penalties.

Step 6: Appeal and Hearing Process

DCBA will work closely with County Counsel to develop a comprehensive appeal and hearing procedure to ensue process.

Step 7: Collection and Disbursement of Back Wages

If the employer does not contest the citation or reach a settlement, the compliance unit will work with the employer to ensure all outstanding amounts are paid. DCBA and County Counsel will explore the feasibility of a variety of post-settlement enforcement tools, including the use of post-settlement liens.

Existing County Wage Enforcement Efforts

Prevailing Wage (PW) Compliance

State and Federal laws require contractors working on public works contracts to pay the PW to their employees. The PW is a predetermined hourly rate for each craft that is set by both the State and the United States Department of Labor (DOL). In addition, the Davis-Bacon Act of 1931 established the requirement for paying of the local PW on public works projects for laborers and mechanics. These laws also provide the basis for contract administration protocols and the statutory authority to enforce labor compliance contract provisions.

In the County, labor compliance and enforcement associated with these construction contracts lies within departments, primarily the Department of Public Works (DPW) and Internal Services Department (ISD). DPW and ISD staff monitors PW compliance as part of the other contract compliance functions.

Living Wage (LW) Compliance

In 1999, the Board adopted the County LW Ordinance and enacted the LW Program to establish a living wage rate for all contract employees working on County Proposition A and cafeteria services contracts. The LW Program includes a process for compliance and enforcement of violations. These responsibilities are within multiple departments and are combined with other contract compliance duties.

Both the PW and LW programs include remedies for non-compliance and are specifically tied to County contracts. Departments generally use certified payroll records and may conduct site visits to ensure contractors are paying the required PW and LW. If a violation is identified, there are various compliance tools available, including withholding contract payments until a contractor is in full compliance.

Since these compliance processes are specifically tied to County contracts and comingled with other departmental contract compliance duties, we do not recommend relocating these functions into the proposed County Wage Theft Enforcement Agency.

Misclassification of Employees as Independent Contractors

Another form of wage theft is the misclassification of employees as independent contractors. This trend is reported to occur in many industries, among them, trucking companies and truck drivers servicing the ports of Los Angeles and Long Beach. Specifically, truck drivers assert that they are employees but that their employers have misclassified them as independent contractors, depriving them of certain benefits to which employees are entitled.

There does not appear to be a law which gives the County authority to investigate countywide allegations of misclassification violations. However, the County may receive complaints of alleged wage theft or misclassification of employees within the unincorporated areas and forward those complaints to the appropriate investigative agency.

In the fiscal year (FY) 2015-16 Supplemental Budget, the Board approved one-time funding for 1.0 position within DCBA to address this form of wage theft. With the assistance of DCBA partners, including CBOs, licensing boards, trade associations, and organized labor, the Department commenced an extensive outreach program to educate and inform drivers and their employers as to their rights and responsibilities under the law. Although enforcement of this type of wage theft is under the authority of the State, DCBA is working in partnership with State Labor Commissioner and other stakeholders to address this issue. We believe these types of collaborations are essential to combating all forms of wage theft in the County.

State and Federal Wage Theft Enforcement Efforts

The State Labor Commissioner's Office, also known as the Division of Labor Standards Enforcement (DLSE), administers and enforces laws governing wages, hours and breaks, overtime, retaliation, workplace safety and health, and other benefits for California's wage earners. The DLSE also investigates complaints and takes enforcement actions to ensure employees are not being required or permitted to work under unlawful conditions.

DLSE investigators target wage theft on a business-wide basis, and cannot investigate every individual complaint of wage theft. However, DLSE partners with sister State and other governmental agencies, local law enforcement, CBOs, and industry associations to combat wage theft.

The DLSE reports over 30,000 new wage claims are filed each year, 5,000 of which occur in the County of Los Angeles. With only 60 field investigators to cover the whole State (nine investigators assigned to the County), local jurisdictions have chosen to promulgate their own wage theft ordinances and enforcement agencies.

At the Federal level, various agencies are responsible for the administration and enforcement of Federal labor laws. They include the Department of Labor (DOL), Department of the Treasury, Labor Relations Board, and the Equal Employment Opportunity Commission (EEOC). The DOL is comprised of a nationwide staff of investigators in field offices all over the country responsible for enforcing specific labor laws relating to minimum wage, overtime pay, recordkeeping, child labor, family and medical leave, and migrant and seasonal worker protections to name a few.

The DOL conducts employer investigations pertaining to the enforcement of labor laws and assuring an employer's compliance with applicable laws. While the majority of these investigations are complaint based, the DOL also selects certain types of businesses or industries, and geographic regions for investigation.

Although State and Federal investigations cover all areas of wage theft, these agencies currently do not investigate wage theft violations enacted by local jurisdictions. Generally, local ordinances exceed the thresholds established by State and Federal statutes. Similarly, the County does not have authority to investigate or enforce State or Federal labor laws. However, whenever a State or Federal wage theft violation is alleged or reported, the County will refer the alleged violation to the appropriate agency for investigation.

It should be noted that at the State level, the Governor recently signed legislation that gives the State Labor Commissioner the authority to enforce local wage laws. **AB 970 (Chapter 783, Statutes of 2015)**, beginning January 1, 2016, allows the State Labor Commissioner, upon requests from local entities, to: 1) enforce local laws regarding minimum wage and overtime hours; and 2) issue citations and penalties for violations, except when the local entity has already issued a citation or has initiated an investigation against an employer for the same violation. However, while this new statute provides the State Labor Commissioner the authority to enforce local wage laws, it does not appropriate State funding to cover the proposed additional responsibilities. Any request for additional resources required by the State Labor Commissioner would have to be evaluated during the annual State Budget process.

The Governor also signed **SB 588**, which authorizes the State Labor Commissioner, when enforcing nonpayment of wages, to: 1) file a lien or levy on an employer's property in order to collect unpaid wages for the employee; 2) prohibit employers who do not comply with conducting business in California unless the employer has obtained a surety bond of \$150,000; and 3) would make entities contracting with the employer for property services (e.g., janitorial, security guard, parking, landscaping) and long-term care facility industries, where those employers have been named as a defendant, jointly and severally liable for the unpaid judgment.