LOS ANGELES COUNTY
CONSUMER & BUSINESS AFFAIRS

May 2, 2023

To: Supervisor Janice Hahn, Chair
Supervisor Hilda L. Solis
Supervisor Holly J. Mitchell
Supervisor Lindsey P. Horvath
Supervisor Kathryn Barger

From: Rafael Carbajal
Director

FINAL REPORT ON THE PROGRESS OF EXPANDING AND CENTRALIZING WORKER PROTECTIONS IN LOS ANGELES COUNTY (ITEM NO. 18, AGENDA OF NOVEMBER 30, 2021)

On November 30, 2021, your Board adopted a motion,[1] *Expanding and Centralizing Worker Protections in Los Angeles County*, and directed the Department of Consumer and Business Affairs (DCBA) to implement a phased-in plan for the establishment of the Office of Labor Equity (OLE). As authorized by this motion, DCBA engaged a consultant to analyze existing staffing and enforcement practices of the County and review best practices from other jurisdictions with the intention of presenting recommendations for expanding the operations of OLE to fully support a strategic model capable of enforcing an impactful inventory of worker protections.

The attached final consultant report (Attachment A) synthesizes months of interviews and research conducted with labor enforcement agencies with comparable populations and includes over 70 recommendations covering the following topics:

- Overview of OLE's current legal responsibilities, operations, and procedures;
- Best practices for implementation of an OLE strategic enforcement model;
- Resources for protecting immigrant workers;

[1] http://file.lacounty.gov/SDSInter/bos/supdocs/163946.pdf

- Organizational, staffing, and budget recommendations for the expansion of OLE;
- Strategic partnerships with community and employer groups; and
- Recommendations for new Los Angeles County labor laws.

KEY CONSULTANT RECOMMENDATIONS

The attached final report provides a blueprint that OLE can utilize to improve and expand its worker protection capacity by deploying a strategic enforcement model that can more efficiently leverage available resources to provide meaningful and impactful outreach and enforcement activities. The following key consultant recommendations highlighted in the report are instrumental to the expansion of OLE and require additional Board consideration and/or action for implementation:

Budget & Staffing

1. The County should ensure that OLE has adequate funding and adds new positions critical to the enforcement of current and future ordinances.

2. DCBA should add permanent positions such that OLE be composed of at least 27 dedicated, full-time, permanent staff members with considerations of additional staff assessed as new ordinances and policies are enacted.

3. DCBA should budget $1.75 million over two years for contracts with community groups to provide outreach, education, and other services to low-wage workers.

4. DCBA should budget $400,000 over two years for contracts with organizations to provide outreach and education to small businesses, especially to small businesses owned by members of low-income and historically disenfranchised communities.

Jurisdictional and Procedural Changes

5. The County should grant authority to OLE to enforce state law pursuant to the State Legislature's 2020 removal of preemption and its delegation of authority to local jurisdictions to specifically enforce state labor laws. OLE should exercise its discretion and promulgate rules regarding which state laws to enforce, and under what circumstances, but at a minimum, OLE should enforce fundamental wage protections like overtime, double overtime, meal breaks, and paid sick leave, when discovered in the course of a County-law investigation. Although, the County has not yet promulgated rules to enforce some of the State issues OLE encounters during County workplace investigations, OLE has been actively seeking compliance of State issues that exist in the workplace. Namely, OLE seeks voluntary compliance of overtime, paid sick leave, paid time off issues, amongst

others. Additionally, the formal partnerships between DCBA and State and Federal labor agencies have been integral in ensuring referral of issues under State or Federal purview.

6. The County should grant or delegate subpoena authority to the Director of DCBA so that OLE may issue subpoenas without first seeking Board approval. This authority is essential to changing OLE's investigative processes from conducting resource-intensive on-site inspections to the less resource-intensive practice of requesting records by letter and compelling records through the issuance of subpoenas absent voluntary compliance. DCBA's Director is granted authority through the enactment of the County Minimum Wage Ordinance to issue subpoenas with Board approval. Such approval is a lengthy process and often poses a danger to the investigative process through the loss of evidence. Delegated authority to issue subpoenas is not unprecedented; currently, the Director of DCBA has Board delegated authority to issue administrative subpoenas to businesses where there have been credible complaints of price gouging. DCBA is working to amend the Minimum Wage Ordinance to allow for this authority and similar action should be taken for all County worker protection ordinances to ensure timely evidence collection and speedy case resolution.

New County Ordinances Expanding Worker Rights

7. The County should enact a hotel living wage consistent with the ordinances already in effect in the Cities of Los Angeles and Santa Monica (and, as with Santa Monica, enforced by OLE).

8. The County should enact a paid sick and safe leave law, providing employees in the unincorporated parts of the County amounts of sick leave commensurate with the law in effect in Santa Monica (currently enforced by OLE).

9. The County should enact a fair scheduling law covering the retail industry, as contemplated by the December 20, 2022 Board motion *Establishing County Fair Workweek Employment Standards for retail Workers*,[2] and consider expanding such rights to workers in the food service industry in the future. The County should also ensure that OLE has the resources necessary to effectively enforce a fair scheduling law.

10. The County should enact a just-cause termination law covering, at the outset, workers in the retail and restaurant industries, modeled on the current New York City just-cause law. Just-cause protections would shield workers from unfair terminations, provide added protections against punishment and retaliation for workers that speak up about critical workplace problems, and promote economic

[2] https://file.lacounty.gov/SDSInter/bos/supdocs/175807.pdf

security and stability for workers and their families. Additionally, a County just-cause termination law would establish protections for vulnerable workers that are currently enjoyed by most government employees and private sector workers under collective-bargained agreements. The County should also ensure that OLE would have the resources necessary to effectively enforce a just-cause law. Further analysis would need to be conducted into the feasibility of implementing such protections for the unincorporated areas of the County should your Board seek to enact just-cause worker protections.

11. The County should enact a Fair Chance law, as contemplated by the February 28, 2023 Board motion *Establishing a Fair Chance Ordinance in Los Angeles County*.[3]

DCBA RECOMMENDATIONS & NEXT STEPS

DCBA formally endorses the adoption of the aforementioned consultant recommendations on *Budget & Staffing*, *Jurisdictional and Procedural Changes* by your Board in the short to mid-term and endorses for future consideration the adoption of the recommendations on *New County Ordinances Expanding Worker Rights*. Additionally, as part of DCBA's Fiscal Year (FY) 2023-24 staffing and budget request to the Chief Executive Office (CEO), and as augmented in the Final Changes Budget Phase on April 24, 2023, DCBA requested 13 permanent positions for OLE (with appropriate job classifications) and submitted a new proposed organizational chart to align with the consultant's recommendations.

In order for DCBA to fully realize the recommendations, including those that are currently underway, and the strategic enforcement framework highlighted in this report, and to successfully implement the County's pending Fair Workweek and Fair Chance Ordinances, appropriate staffing and funding need to be approved and allocated for FY 2023-24. As such, DCBA formally requests that your Board:

- Approve DCBA's implementation of all other consultant recommendations listed in Attachment A, but not highlighted in the previous section of this report.
- Direct CEO to work with DCBA to fully staff OLE as recommended by the consultant report and as requested in DCBA's FY 2023-24 OLE Final Budget Phase Request.

[3] https://file.lacounty.gov/SDSInter/bos/supdocs/178249.pdf

Should you have any questions concerning this report, please contact me or Maggie Becerra, Deputy Director, at (213) 712-5493 or MBecerra@dcba.lacounty.gov.

RC:JA:CO
MR:RB:EV:ph

Attachment

c: Executive Office, Board of Supervisors
Chief Executive Officer
County Counsel

ATTACHMENT A

THE LAW OFFICES OF
JULIE R. ULMET

A Strategic Enforcement Plan for the L.A. County Office of Labor Equity

Report submitted to the County of Los Angeles,
Department of Consumer and Business Affairs

by Julie R. Ulmet, Esq.

Consultant

April 13, 2023

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I. EXECUTIVE SUMMARY

This Report contains recommendations for specific strategies and best practices to be implemented in order for the Office of Labor Equity ("OLE"), housed in the L.A. County Department of Consumer and Business Affairs ("DCBA" or the "Department") to conduct strategic enforcement of the County's labor laws. Following an overview of the principles and goals of strategic enforcement, the Report sets forth the following recommendations:

A. OLE Should Develop Strategic Partnerships with Community Groups[1]

1. OLE should establish funded and unfunded partnerships to leverage community groups' trust with workers in their communities, knowledge of industry practices, and ability to be valuable partners in enforcement work.
2. The County should issue an RFP to contract with community groups to conduct outreach, develop cases, and assist the OLE in investigating and resolving cases.
3. OLE should schedule industry-specific meetings with community partners on a quarterly basis, modeled on successful practices in sister agencies.
4. OLE should hold regularly-scheduled meetings (once or twice annually) with a larger group that allows academics, experts, and leaders and advocates from community groups that may not contracted/formal partners to integrate into OLE's efforts to address challenges facing workers in the County.
5. The County should ensure that OLE is led by a manager who has the requisite skills and background to successfully oversee the development of long-term, productive relationships with community partners.
6. OLE leadership should invest time into developing personal relationships with the leaders of community partners.
7. OLE leadership should take steps to ensure that communications with community partners are as transparent and honest as possible.
8. The County's contracts should support the aligned long-term goals of OLE and community partners, including deliverables focused on the development of cases in a way that allows the community group to exercise judgment about how to generate and build those cases. The contracts should also compensate for the community group's assistance over the course of the case, for assistance with publicity about successful outcomes, and for regular reports and meetings.
9. The County should award contract(s) in a way that reaches as many low-wage worker communities as possible, which might include multiple contracts or contracting to a prime contractor who sub-contracts to smaller community groups.

B. OLE Should Develop Partnerships with Other Labor Enforcement Agencies

1. OLE should also establish partnerships with other law enforcement and labor agencies at the federal, state, and local levels to pursue opportunities for joint enforcement and to streamline referrals.

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[1] Community groups includes organizations variously referred to as community-based organizations, worker centers, worker advocacy organizations, and labor unions. I will refer to these organizations collectively as "community groups," OLE's collaborations with them as "community partnerships," and the community groups with whom OLE engages in such partnerships as "community partners."

C. OLE Should Develop Partnerships with Consulates

1. Consulates for the countries of origin of the immigrant workers within the County can prove valuable partners through their trust with communities. They can support OLE's efforts to provide education and outreach to their respective communities and can help connect immigrant workers involved in OLE's cases with social and legal services.

D. OLE Should Develop Partnerships with Business Groups

1. OLE should also establish partnerships with "high-road," law-abiding business groups to leverage their industry expertise and interest in ensuring a level playing field in their industries to partner with OLE for education and outreach, and in some cases, case referrals.

E. Strategic Enforcement Priorities

1. OLE should prioritize and triage cases based on a combination of factors including the industries involved, demographics and other characteristics of affected workers, and, most importantly, the potential impact of a case.
2. OLE should use a flexible approach to select initial priority industries from a longer list, based on the cases that develop from OLE's community partnerships.
3. OLE should prioritize cases with the potential for community partner involvement and the potential to cause ripple effects across an industry.
4. OLE should deprioritize certain cases based on criteria such as income thresholds, violations that are isolated or minimal, and matters that can be resolved in lower-resource ways, such as by referral to a community partner for a demand letter.
5. OLE should publicly communicate its enforcement priorities in order to manage expectations for potential complainants and to help community groups understand what kinds of cases OLE will prioritize.

F. Communications, Outreach and Publicity

1. OLE should conduct outreach and education in connection with partner organizations who will use the outreach and education process to assist workers with filing complaints and assist OLE with developing cases.
2. OLE should conduct outreach to employers, especially small businesses owned and operated by members of immigrant communities and communities of color, in collaboration with partner business groups.
3. OLE should employ one or more staff people who will strategically publicize the work of the OLE, through both traditional press and social media, and should also work with partner organizations to amplify the public messaging about OLE's work.

G. Operations

1. OLE should update its Manual with any new operational procedures adopted from the recommendations contained in this Report.
2. Generally, OLE should preserve resources by using certain tools only for high-priority cases and/or where strategically appropriate.

Intakes and Triage

3. The Department should move initial intake of workplace-complaints from the Department's Consumer Counseling Center to the OLE, which provide effective service to the public and strategically allocate Department resources to the highest priority cases.
4. OLE should rotate all investigators or all professional, non-managerial staff to handle intake and counseling responsibilities.

5. Based on OLE's selection of priority criteria, some complaints should be handled with minimal resources or not handled at all.

6. OLE should implement practices to protect immigrant workers, including having a policy not to ask about immigration status, informing witnesses that immigration status is not relevant, not tolerating immigration-related retaliation, and permitting anonymous or third-party complaints.

Investigative Process and Worker Interviews

7. OLE should change its current policy such that not all investigations include a resource-intensive site-visit. Investigators should use site visits only in high-priority cases where they are strategically appropriate, and off-site interviews should precede site visits whenever possible.

8. OLE should change its current policy such that not all investigations include on-site worker interviews, Instead, investigators should first attempt to schedule offsite interviews working in collaboration with a community partner, or, if that is not possible, by trying to call employees during off hours to request interviews.

9. Where onsite worker interviews are used, investigators should not permit the employer to select the worker interviewees and should use best practices to try to keep confidential from management the identity of worker-interviewees.

10. For all worker interviews, investigators should try to arrange interviews in collaboration with community partners, should assure workers that OLE will maintain the confidentiality of the interview to the extent legally permissible, should not discourage workers from speaking to each other about the investigation, and should not ask workers to provide IDs or documentation.

11. In recording witness statements, investigators should include only non-hearsay statements and draft the statement in a narrative, first-person style that reflects the voice of the worker but ensures clarity and chronology.

12. OLE should ensure that investigative reports are drafted to clearly track potential legal violations and analyze whether the investigation revealed evidence sufficient to prove each element of the alleged violation.

13. In cases where a site visit is not used (per Recommendation G.7., above), OLE should use letters and, where necessary, subpoenas, to request access to the employers' records.

14. OLE should change its current policy such that OLE staff personally serve correction orders in only very limited cases where it is a strategically appropriate use of resources.

15. OLE should change its current policy to not include a second site visit, except in those very few cases where it is a strategically-appropriate use of resources.

16. OLE can preserve resources by foregoing a full workforce or multi-location audit in low-priority cases that allege a practice that appears situation-specific, isolated, or a minor (low dollar-value) violation.

Case Resolutions and Penalties

17. OLE should assess fines based on the egregiousness of the violation, taking into account factors such as the length of time over which the violation persisted, the number of employees affected, the severity of the violation, and whether the employer tricked or deceived the worker.

18. OLE should assess fines in a straightforward manner that is directly tied to nature of the violation, such as fines equal to double or treble damages, while staying within the statutory upper-limit of $100 per day, rather than its current practice of assessing fines based on the time elapsed since the violation occurred.

19. OLE should be willing to reduce fines in a settlement in order to encourage settlement, preserve resources, and obtain monies quickly for workers. Permissible percent reductions should be standardized and should take into account the egregiousness of the violation and the litigation risk.

20. OLE should work closely with counsel to integrate litigation strategies into investigative strategy from the outset, including to develop legally-complex cases by ensuring that the investigation gathers the evidence necessary to prove each element of the violation and refute potential defenses.

21. OLE should make full use of its statutory authority to recommend penalties related to County contracting and licensing, including providing notice to County departments of employers that have violated County wage ordinances, recommending penalties related to current or future County contracts, and recommending that County licenses be revoked, suspended or denied.

H. Data Collection

1. OLE should collect data and develop meaningful metrics that will facilitate both case processing and after-the-fact assessment.

I. Collections and Distributions

1. In order to ensure that monies OLE wins back for workers actually go into workers' pockets, OLE should ensure that OLE or a contracted community partner remains in communication with potentially-affected workers over the course of an investigation.

2. OLE should consider contracting with a partner organization for judgment enforcement and collections work.

J. Protecting Immigrant Workers

1. OLE should ensure that it is using all available immigration law tools to protect immigrant workers involved in OLE investigations, in order to encourage immigrant workers to report violations and participate in OLE's investigations, by certifying U and T visas and supporting requests to DHS for labor-based deferred action.

2. OLE should create a process for workers and their advocates to make such requests, should designate staff to handle these requests, and should train all other staff in providing the public with information about these processes.

K. Staffing

1. The Department should add permanent positions such that OLE will be composed of at least twenty-seven dedicated, full-time, permanent staff members in the short-term, and consider adding additional staff to enforce ordinances enacted in the future.

OLE Leadership

2. OLE should be led by a Deputy Director, reporting to the Chief of Staff/Chief Deputy Director, who has deep experience in labor law enforcement and who will have dedicated responsibility for overseeing OLE. The Deputy Director should be an experienced leader with a law degree and expertise in labor and employment law. The ideal candidate will have a demonstrated commitment to workers' rights and experience working with vulnerable populations and community groups.

3. OLE leadership should also include two chiefs reporting to the Deputy Director, a Strategic and Program Operations Chief and a Field Operations Chief.

4. OLE's Strategic and Program Operations Chief should be responsible for community engagement, policy, outreach, communications, and supporting the overall operations of OLE. The Strategic and Program Operations Chief should directly supervise a community engagement director, communications director, program manager, and two researchers.

5. OLE's Field Operations Chief should be responsible for overseeing OLE's investigations. The Field Operations Chief should directly supervise two supervisory investigators, who will in turn directly supervise twelve investigators, three auditors, and two clerks.

Strategic and Program Operations Team

6. OLE should employ a community engagement director, who should be responsible for conducting strategic outreach and building relationships with community groups, law enforcement agencies, consulates, and business groups, and administering grants and contracts with community partners.
7. OLE should employ a communications director, who should be responsible for strategic communications including press releases, media engagement, and public education materials.
8. OLE should employ two researchers with strong data analytics skills to conduct research into businesses and industries and support the data analysis needed for effective case investigations, such as in minimum wage cases and the forthcoming fair scheduling ordinance.
9. OLE should employ a program manager position to support the work of the Strategic and Program Operations Team.

Field Operations Team

10. OLE should employ two full-time, permanent supervisors to oversee the day-to-day work of the investigative staff.
11. OLE should employ three auditors with expertise in accounting, auditing, and data analysis to analyze data collected and calculate backpay and fines in high-priority, large, and complex cases.
12. OLE should employ twelve full-time, permanent investigators, including eight general investigators and four investigators specialized in human trafficking, the domestic work industry, and/or the massage industry. Among the general investigators, OLE should assign some to specialize in priority industries to build their expertise. The specialist investigators should have some combination of experience working with vulnerable immigrant populations, collaborating with community groups, working on issues of human trafficking, or working on issues directly related to the domestic work or massage industries.
13. OLE should employ at least two support staff FTEs to provide administrative support to investigators on investigations and distributions in order to free up investigators' time to focus on the more substantive aspects of their work.

L. Additional Budget Recommendations

Partnerships with Community Groups

1. The Department should budget $1.75 million over two years for contracts with community groups to provide outreach, education, and other services to low-wage workers.
2. OLE should generally model such partnerships on the 2016 KIWA Contract, but budget more than it did at that time for formal partnerships with community groups and structure the contract to give the community groups more discretion to exercise their professional judgment about how best to develop new cases.

Partnerships with Employer Groups

3. The Department should budget $400,000 over two years for contracts with organizations to provide outreach and education to small businesses, especially to small businesses owned by members of low-income and historically-disenfranchised communities.

Payment System

4. OLE should be able to accept payment of fines through a county-wide payment processing program.

M. New Ordinances

1. The County should ensure that OLE has adequate funding, and can add new positions in many cases, to enforce any new ordinances that are enacted.

Jurisdictional and Procedural Changes

2. The County should grant authority to OLE to enforce state law pursuant to the State Legislature's 2020 removal of preemption and its delegation of authority to local jurisdictions to specifically enforce state labor laws. OLE should exercise its discretion and promulgate Rules regarding which state laws to enforce, and under what circumstances, but at a minimum, OLE should enforce fundamental wage protections like overtime, double overtime, meal breaks, and paid sick leave, when uncovered in the course of a County-law investigation.

3. The County should consider whether it has the legal authority to assert jurisdiction to protect all workers employed within the County, and particularly in incorporated areas that do not have their own labor ordinances or enforcement agencies.

4. The County should grant or delegate subpoena authority to the Department Director so that OLE may issue subpoenas without first seeking Board approval. This authority is essential to changing OLE's investigative processes from conducting resource-intensive on-site inspections to the less resource-intensive practice of requesting records by letter and issuing subpoenas absent voluntary compliance.

Substantive Rights

5. The County should enact a hotel living wage consistent with the ordinances already in effect in the Cities of Los Angeles and Santa Monica (and, as to Santa Monica, enforced by OLE).

6. The County should enact a paid sick and safe leave law, providing employees in the unincorporated parts of the county amounts of sick leave commensurate with the law in effect in Santa Monica (currently enforced by OLE).

7. The County should enact a fair scheduling law covering the retail industry, as contemplated by the December 20, 2022 Board motion, and consider expanding such rights to workers in the restaurant industry in the near future. The County should also ensure that OLE has the resources necessary to effectively enforce a fair scheduling law.

8. The County should enact a just-cause termination law covering, at the outset, workers in the retail and restaurant industries, modeled on the current New York City just-cause law. The County should also ensure that OLE has the resources necessary to effectively enforce a just cause law.

9. The County should enact a Fair Chance law, as contemplated by the February 28, 2023 Board motion.

II. METHODOLOGY

The recommendations in this report are based on my review of OLE's current practices, review of academic literature and policy reports on strategic enforcement, and interviews with experts and stakeholders. In assessing OLE's current practices, I interviewed Department leaders and OLE staff and reviewed materials provided to me. These materials included ordinances, Board reports, case files, contracts, policies and procedure manuals, organizational charts, and other materials. The literature and reports relied upon are cited herein.

I also interviewed the following academics, labor enforcement officials, workers' rights advocates, and other stakeholders, and this report reflects their assistance, input, and suggestions (though all recommendations are ultimately my own):

- CLEAN Carwash Worker Center – Andrea Gonzalez, Flor Rodriguez
- Garment Worker Center – Marissa Nuncio
- Harvard Law School Labor and Worklife Program, State and Local Enforcement Project – Terri Gerstein
- The James Irvine Foundation – Yungsuhn Park
- LAANE – Roxana Tynan
- LA Worker Center Network – Armando Gudino, Ernesto Hidalgo, Mari Juur
- KIWA – Alexandra Suh
- New York City Department of Consumer and Worker Protection – Elizabeth Wagoner
- Rothner, Segall & Greenstone – Eli Naduris-Weissman
- Rutgers School of Management and Labor Relations and Workplace Justice Lab@RU (formerly a program of the Center for Innovation in Worker Organization (CIWO)) – Janice Fine, Jenn Round, Jacob Barnes, Ellen Love
- Seattle Office of Labor Standards Enforcement – (former) Marin Garfinkel
- Service Employees International Union, Local 32BJ – Charles Du
- UC Berkeley Labor Center and UC Berkely School of Law – Seema N. Patel
- UCLA Labor Center – Victor Narro, Tia Koonse
- UFCW 770 – Kathy Finn
- U.S. Department of Labor, Office of the Solicitor, Region IX – Marc A. Pilotin
- Warehouse Worker Resource Center – Sheheryar Kaoosji

III. OLE'S CURRENT LEGAL RESPONSIBILITIES, OPERATIONS AND PROCEDURES

A. Jurisdiction

The Office of Labor Equity enforces laws regulating more than 35,000 business sites employing more than 350,000 workers in unincorporated L.A. County, and based on agreements, currently enforces laws governing approximately 10,000 additional businesses employing around 80,000 additional employees in incorporated cities.[2] Of course, many workers in L.A. County do not know whether their employer is covered by the County's laws before seeking assistance from OLE, so OLE handles inquiries, conducts initial jurisdictional assessments, and makes appropriate referrals based on complaints received from workers in all parts of the County.

While OLE currently understands its jurisdiction to extend only to the unincorporated areas of the County, I recommend that the County examine whether legislative and enforcement authority over worker protection matters can extend to all workers and businesses operating within the County. (*See* Section VIII.B.1.b., below.)

B. Current Laws, Rules, and Ordinances

As set forth in detail in the Department's August 30, 2021 Report (the "August 2021 Report"), the OLE currently has authority to enforce the following ordinances:

1. **L.A. County Minimum Wage Ordinance and Wage Enforcement Ordinance** (Los Angeles County Code ("LACC") Section 8.100 *et seq*., 8.101 *et seq*.)

   - Sets a county minimum wage
   - Creates a wage enforcement, education, and outreach program
   - Requires employee notifications
   - Prohibits retaliation
   - Creates administrative fines and penalties

2. **City of Santa Monica Minimum Wage Ordinance** (Santa Monica Municipal Code ("SMMC") Chapter 4.62 *et seq*.)

   - Sets minimum wages for employees working in Santa Monica
   - Sets a living wage for workers at hotels
   - Requires employers to provide 40 or 72 hours of paid sick leave, depending on size, accumulating at a rate of one hour per thirty hours worked
   - Protects workers from retaliation
   - Creates administrative, civil, and criminal penalties

3. L.**A. County Preventing Retaliation for Reporting Public Health Violations Ordinance** (LACC Section 11.01 *et seq*.)

   - Prohibits retaliation for reporting public health violations.

4. **L.A. County Temporary Hero Pay Ordinance** (LACC, Section 8.204) (effective February 26, 2021, through June 25, 2021)

   - Requires payment of an additional $5/hour on top of employee's base wage for employees in retail grocery and drug stores due to risks associated with COVID.

5. **City of Santa Monica Temporary Hero Pay Ordinance** (SMMC, Section 4.65.5) (effective March 11, 2021, through July 9, 2021)

[2] *See* City of Santa Monica Business Climate, https://www.santamonica.gov/business-climate.

- Requires payment of an additional $5/hour on top of employee's base wage for employees in retail grocery and drug stores due to risks associated with COVID.

6. **Employee Paid Leave for Expanded Vaccine Access Ordinance** (LACC, Section 8.205.080) (effective May 18, 2021, through August 31, 2021)

    - Requires employers to provide paid leave for workers to receive a COVID-19 vaccine.

7. **Prevention of Human Trafficking Ordinance** (LACC, Section 13.110 *et seq.*)

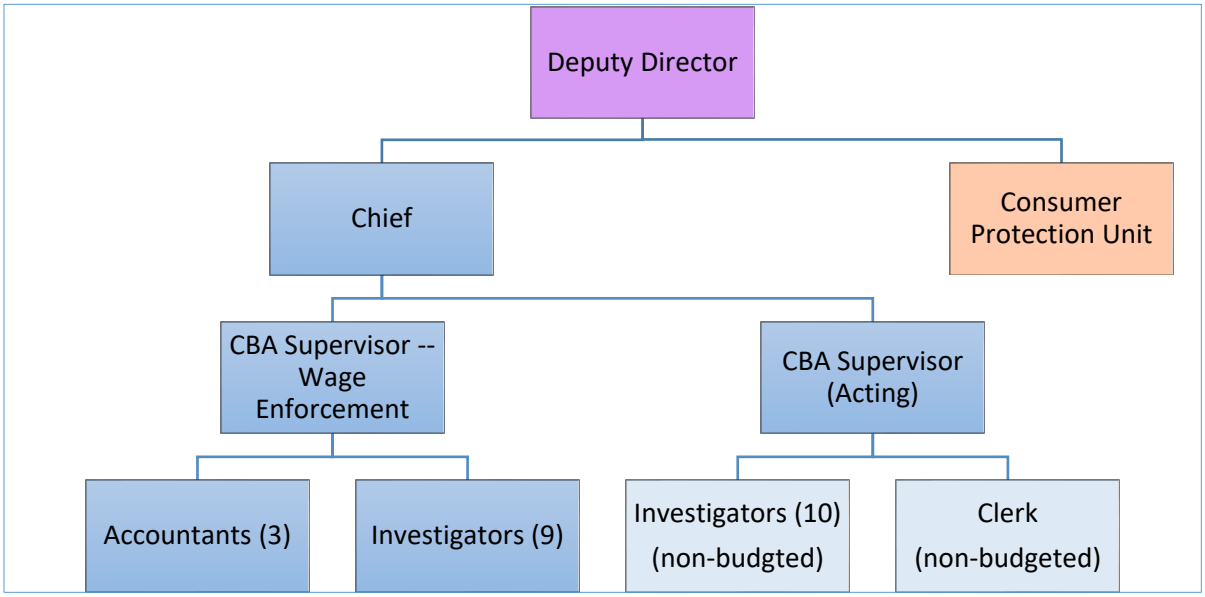
    - Requiring employers to post notices and train employers on recognizing signs of human trafficking.
    - Encouraging employees to report suspected cases of human trafficking to government agencies or non-profits.
    - Authorizing the County to declare the use of a building or place for human trafficking unlawful and a public nuisance.

Additionally, the Board of Supervisors recently adopted motions directing the Department to draft a fair scheduling ordinance and a fair chance ordinance. *Establishing County Fair Workweek Employment Standards for Retail Workers* (Dec. 20, 2022); *Establishing a Fair Chance Ordinance in Los Angeles County* (Feb. 28, 2023). The details of these motions, and my recommendations concerning the drafting of such ordinances, are set forth in further detail below. (*See* Section VIII.B.2., below).

C. Staffing

Currently, OLE is led by a Chief who reports to a Deputy Director who also oversees the Consumer and Worker Protection Division (the "CWPD"). The CWPD is comprised of both OLE and the Consumer Protection Unit, which handles the Department's investigations and enforcement involving price gouging, consumer frauds, real estate frauds, foster youth identity theft, and elder financial abuse. Thus, the Chief of OLE is the highest-ranking person in the Department who is exclusively dedicated to OLE. OLE is comprised of the Wage Enforcement Program and a Worker Protection Unit, which oversees enforcement of anti-retaliation, human trafficking and all other non-wage laws. The Chief of OLE is responsible for day-to-day supervision of all other OLE staff members, including a supervisor and an acting supervisor. In total, OLE has 26 positions, of which twelve are temporary, non-budgeted positions. *See* Figure 1 – Organizational Chart: Current OLE Structure.

Figure 1 – Current OLE Staffing and Organization



OLE has found it challenging to hire and retain properly-trained staff to fill the twelve temporary positions as candidates decline offers, and employees leave, for more stable, permanent positions with benefits elsewhere. The large number of temporary positions has also presented a challenge in carrying out OLE's work given the significant amount of time needed to train investigators in the complex legal and investigative aspects of labor enforcement work, an investment which is lost when there is a high turnover rate.

As this Report will further explain, the current permanent staffing levels are far lower than at comparable agencies around the country and are insufficient to sustain a successful labor enforcement program.

D. Policies and Procedures

The policies and procedures currently used by OLE staff are generally set forth in the 2015 Wage Enforcement Program Policies, Procedures, and Training Manual (the "2015 Manual"), which was last revised in May 2017 (the "2017 Manual"). The 2017 Manual contains the policies and procedures used in OLE wage compliance investigations. The 2015 Manual also contains a section on wage counseling, but over time, initial intakes and counseling phone calls have come to be handled primarily by DCBA's Consumer Counseling Center, rather than by OLE staff. I recommend that the Manual be updated with any new operational procedures adopted from the recommendations contained in this Report. (*See* Section IV.D., below).

IV. IMPLEMENTING A STRATEGIC ENFORCEMENT MODEL

As reflected in prior report-backs, the Department has developed a thorough understanding of the building blocks of a strategic enforcement model, and now needs to take certain significant steps to implement this approach in its operations.

Strategic enforcement is a model of government enforcement seeking to "to use the limited enforcement resources available to a regulatory agency to protect workers as proscribed by laws by changing employer behavior in a sustainable way."[3] As the Department understands, "[e]mploying a strategic approach to enforcement will allow the OLE to direct resources and services to the most

[3] David Weil, Creating a Strategic Enforcement Approach to Address Wage Theft: One Academic's Journey in Organizational Change, 60 J. of Indus. Rel. 437, 437-38 (2018).

vulnerable populations of workers in the County while attempting to create a strong culture of compliance for employers within industries where labor law violation rates are the highest."[4]

In a high-profile example of a labor agency's shift to a strategic enforcement model, during the Obama administration, the U.S. Department of Labor Wage and Hour Division ("WHD") Administrator David Weil shepherded that agency's transition to a strategic enforcement model. In practical terms, shifting to a strategic enforcement approach required WHD to "sometimes decide not to pursue complaints, thereby freeing investigator time to pursue proactive, directed investigations," to refine "methods of triaging complaints" in order to prioritize certain complaints over others based on criteria such as whether incoming complaints "related to broader investigation priorities" and indicated the presence of significant problems in a workplace.[5]

In order to shift to a strategic enforcement model, I recommend that the Department reorient in certain ways. My recommendations cover strategic partnerships, case priorities, strategic communications, intakes, investigations, case resolutions, data collection, and collections and distributions.

A. OLE Should Develop Both Funded and Unfunded Strategic Partnerships

The Board of Supervisors directed OLE to "begin building partnerships with state agencies, community-based organizations, worker advocacy organizations, worker unions, and employers in key industries to improve worker outreach/education and strengthen enforcement activities for vulnerable workers."[6] This undertaking should also include "strengthening partnerships with state labor enforcement agencies to create systems and best practices to enforce state worker protections in the County."[7] Experts in strategic enforcement have emphasized the importance of critical partnerships: "Agencies can achieve better, more impactful outcomes by forging relationships with other government agencies, non-governmental agencies, worker centers, unions, the business community, and private plaintiffs' attorneys."[8]

I will discuss my recommendations that OLE develop multiple kinds of partnerships: (1) formal, contractual relationships with community groups to support education, outreach, and case development; (2) collaborative, informal relationships with community groups, experts, and academics; (3) partnerships with other law enforcement agencies, including sister municipal agencies and the state department of labor; (4) partnerships with consulates; and (5) partnerships with employer groups to provide education and outreach to small businesses.

1. OLE Should Strategically Partner with Community Groups

Strategic partnerships with community groups are at the heart of a strategic enforcement model. The development of meaningful relationships with community may be the most important aspect of the strategic enforcement model. Formalizing relationships with community groups facilitates what some experts refer to as "co-enforcement"[9] by capitalizing on the unique strengths of such groups. As explained

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[4] L.A. Cty. DCBA, Report On Expanding Worker Protections In Los Angeles County, p. 14 (Aug. 30, 2021) (the "August 2021 Report").

[5] David Weil, "Preparing for the Future of Work Through Understanding the Present of Work: A Fissured Workplace Perspective," Testimony before the U.S. House of Representatives, 13 (Oct. 23, 2019).

[6] L.A. Cty. Bd. of Supervisors, *Expanding and Centralizing Worker Protections in Los Angeles County* (Nov. 30, 2021).

[7] *Id.*

[8] Rutgers University School of Management and Labor Relations, Center for Innovation in Worker Organization, Labor Standards Enforcement Toolbox (hereinafter, "CIWO Toolbox"), Tool 4: Introduction to Strategic Enforcement, p. 5.

[9] *See*, *e.g.*, Janice Fine, *New Approaches to Enforcing Labor Standards: How Co-Enforcement Partnerships Between Government and Civil Society Are Showing the Way Forward*, 2017 U. Chi. Legal F. 143, 145-46 (in a co-enforcement model, "unions, worker centers and other community-based non-profit organizations and high-road firms . . . help educate workers on their rights and patrol their labor markets to identify businesses engaged in unethical

by former California Labor Commissioner Julie Su, community groups "already have the trust of the workers, speak the language of workers, understand how violations occur and are often masked, and are willing to collaborate with [government enforcement agencies] by giving us leads and helping to bridge the trust between workers and law enforcement."[10]

As the Department explained in its June 2022 Report, "workers often remain fearful and refuse to cooperate with government officials," and thus collaborations and partnerships with community groups will "broaden the reach of services and help drive enforcement efforts."[11] Such relationships may be formalized, and indeed, the Department has the legal authority to engage in formal partnerships governed by contract.[12]

California is home to the most advanced models of co-enforcement in the country. Thus, in developing a strategic enforcement and co-enforcement model for the OLE, the County has access to community partners, potential advisors, and potential staff who have deep experience with co-enforcement.

In 2006, the San Francisco Office of Labor Standards Enforcement ("SF OLSE") developed a groundbreaking co-enforcement model. That year, San Francisco amended its minimum wage law to require its labor agency to create this program: "The Office of Labor Standards Enforcement shall establish a community-based outreach program to conduct education and outreach to employees."[13] In 2016, the State Division of Labor Standards Enforcement ("DLSE" or "State DLSE") formed the Strategic Enforcement Partnership (the "Partnership") "to bolster anti-wage theft enforcement efforts in California and create a culture of labor law compliance by partnering with worker organizations."[14] The Partnership, facilitated by the National Employment Law Project ("NELP") and funded by the James Irvine Foundation, partners with fourteen workers' rights and advocacy organizations to focus on six low-wage, high-violation industries: Agriculture, Carwash, Construction, Janitorial, Residential home care, and Restaurant.[15] Of those fourteen organizations, at least ten work with communities in Los Angeles.[16]

In addition, within the state, Santa Clara County's Office of Labor Standards Enforcement also provides funding to five organizations who form a "Fair Workplace Collaborative," which implement the county's "Labor Standards Outreach and Education Initiative."[17] Around the country, multiple municipal labor agencies have developed a funded co-enforcement model, including Seattle, Chicago, and Minneapolis.[18]

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and illegal practices;" "co-enforcement is intended to complement rather than replace government enforcement capacity").

[10] Janice Fine and Jenn Round, Federal, State, and Local Models of Strategic Enforcement and Co-Enforcement across the U.S., p. 22 (2021), avail. at https://workercenterlibrary.org/product/federal-state-and-local-models-of-strategic-enforcement-and-co-enforcement-across-the-u-s/?amp=1.

[11] L.A. Cty. DCBA, Interim Report On Progress Of Expanding And Centralizing Worker Protections In Los Angeles County, p.4 (June 10, 2022) ("June 2022 Report").

[12] Wage Enforcement Ordinance, 8.101.090(G).

[1313] S.F., Cal., Admin. Code ch. 12R25.

[14] NELP, "California Strategic Enforcement Partnership" (2018), avail. at https://s27147.pcdn.co/wp-content/uploads/CA-Enforcement-Document-Letter-11-27-18-1.pdf

[15] *Id.*

[16] These organizations are: National Employment Law Project, Asian Americans Advancing Justice, Los Angeles, Bet Tzedek Legal Services, Carpenters/Contractors Cooperation Committee, CLEAN Carwash Worker Campaign, Garment Worker Center, Koreatown Immigrant Workers Alliance, Maintenance Cooperation Trust Fund, Pilipino Workers Center, and Restaurant Opportunities Center, Los Angeles.

[17] Cty. of Santa Clara, Office of Labor Standards Enforcement, Cty. Resources, https://laborstandards.sccgov.org/workers/county-resources. *See also* Terri Gerstein and LiJia Gong, Econ. Policy Inst., The Role of Local Government in Protecting Workers' Rights, p. 40 (June 2022).

[18] Gerstein and Gong, p. 40.

a) OLE Should Fund Community Partnerships

I strongly recommend that OLE exercise its authority to award contracts for co-enforcement. Funding these activities ensures that grassroots organizations representing vulnerable workers will have the resources to work with the County. Without formalizing such partnerships, OLE will generally only be able to partner with organizations that are large enough to have staff and other resources available to conduct outreach and refer cases without compensation. This will be only the largest community groups and unions. In contrast, entering into formal arrangements with compensation will allow OLE to provide support to smaller community groups that may reach further into communities of vulnerable populations. For all community partners, funding will allow them to build capacity and better support the County's efforts to protect workers and ensure compliance with labor laws.

Experts have explained that another benefit of such formal arrangements is that they "create clear sets of rules and procedures to govern partnerships," and can "alleviate concern on the part of state officials that close collaboration with civil society organizations (without official structures) could lead to charges of cronyism or favoritism."[19] On this note, it is essential to understand and acknowledge that government is not "neutral" in every respect. Instead, as Julie Su has explained, government agencies "must be impartial in our adjudication and unbiased in our investigations but we are not neutral about what fundamental protections must exist in the workplace. We are on the side of the law. . . .we are on the side of employers who play by the rules; we are on the side of employees whose rights have been violated."[20] Thus, community groups' goals are aligned with the County's proper objectives: to protect workers and create a culture of compliance among employers.

b) Best Practices in Community Partnerships

Strategic partnerships are complicated and require long-term investments of time in building meaningful relationships and trust. The following are recommended practices for OLE's strategic partnerships. As a preliminary matter, to preview a recommendation included in the Staffing section below, I recommend that the County ensure that OLE is led by a manager who has the requisite skills and background to successfully oversee the development of long-term, productive relationships with community partners. (*See* Sec. VI.B.1).

First, I recommend that OLE schedule industry-specific meetings with partners on a quarterly basis, modeled on successful practices in sister agencies. In DLSE's Partnership, the Labor Commissioner's Office and community partners hold regular meetings in industry-based strategy teams, DLSE investigators assigned to the particular industry and the community groups working in that space. The meetings also incorporate training sessions on the laws that affect the industry. The regularly-scheduled check-ins help facilitate communication and the development of long-term relationships that provide a basis for successful co-enforcement.[21]

In San Francisco's quarterly meetings, the community partners give brief updates on their contract-related activities and the SF OLSE staff provide information and legal training on any new statutes or legal developments. The meetings provide a "dedicated space open for wide-ranging conversation" rather than delving into the specifics of particular cases.[22]

Second, I also recommend that OLE hold regularly-scheduled meetings (once or twice annually) with a larger group that allows academics, experts, and leaders and advocates from community groups that are not contracted/formal partners to integrate into OLE's efforts to address challenges facing workers in the County.

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[19] Janice Fine, *New Approaches* 2017 U. Chi. Legal F. at 145.

[20] Julie Su, *Enforcing Labor Laws: Wage Theft, the Myth of Neutrality, and Agency Transformation*, 37 Berkeley J. Emp. & Lab. L. 143 (2016).

[21] *See* NELP, "California Strategic Enforcement Partnership"; Seema N. Patel & Catherine L. Fisk, California Co-Enforcement Initiatives that Facilitate Worker Organizing, paper prepared for Harvard Law School Symposium "Could Experiments at the State and Local Levels Expand Collective Bargaining and Workers' Collective Action?" p. 10 (2017). This recommendation is also based on my interviews with advocates.

[22] Patel & Fisk, p. 11.

Third, I recommend that OLE leadership invest time into developing personal relationships with the leaders of partner organizations. Successful co-enforcement relationships must be both institutionalized and personal. At the same time as these structures are created to formally maintain co-enforcement, OLE leadership should take the time to get to know the leaders of community groups and invest the time to understand their organizations and their work, and build long term relationships. While investigators will handle day-to-day matters, when there are big-picture questions or problems to discuss, OLE leadership and community group leaders should be able to have productive conversations based on long-term relationships with underlying mutual respect.

Fourth, OLE leadership should take steps to ensure that communications are as transparent and honest as possible. Successful partnerships require a balancing between the government's need for confidentiality, especially for protecting government work product, with the "transparency and access that co-enforcement community partners rightly expect from a genuine partnership."[23] At the outset, OLE leadership should explain how the agency works, including its authority, investigative processes, and typical timelines. OLE leaders should be candid about their power and limitations both in an investigation and as relating to communications with partners. OLE staff should bear in mind that the community group is an important partner and they will often serve as a liaison to the workers, who are essential witnesses and partners in building the agency's case. Government investigators lack the capacity to maintain relationships with all of the worker-witnesses over the long lifetime of a case, so this is a tremendous benefit and expansion of the agency's capacity.

c) The County's Contracts Should Support the Aligned Long-Term Goals of OLE and Community Partners

While municipal contracting requires accountability and concrete goals, an agency engaged in strategic enforcement should understand that achieving the case development goals in the contract comes about as the result of "deep, time-consuming, sustained worker organizing."[24] Strategic enforcement experts have explained, "[o]rganizing is personal, emotional, time-intensive, and requires building individual relationships and collective trust."[25] As community leaders explained to me, organizers may have hours of conversations with a single worker about their concerns in the workplace or their fears of participating in a government investigation before that single worker agrees to file a complaint or participate in an interview. The community group's expertise at building such relationships is the very rationale for entering into these relationships in the first place, and the contract should account for the organization's investment of staff time into this trust-building work.

Based on these principles, I recommend that the contract's deliverables focus on complaints filed (meeting certain basic criteria) and work performed over the life of a case. The contract should have goals and targets related to outreach and education, but the deliverables should ideally focus on the development of cases and allow the community group to exercise judgment about how to generate and build those cases. As a general principle, the community group should be viewed as a team of professionals who exercise judgment in carrying out their contracted duties for the County. The community group can use their judgment as to whether flyering, know-your-rights trainings, intake clinics, street fairs, or some other outreach strategy leads to the highest number of quality cases.

Ultimately, the outcomes that will matter most to OLE are metrics like back wages recovered and penalties paid by employers, as well as future compliance, which are direct outcomes of quality cases with engaged worker-witnesses. Thus, even if a community group is contracted to perform education and outreach, the ultimate goals for both OLE and the community partner are to file complaints and develop strong and impactful cases.

The contracts should also compensate for the community group's assistance over the course of the case. Depending on the needs of a particular case, this may include, at the investigation stage, identifying witnesses, arranging worker interviews, helping workers compile relevant documentary evidence, and

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[23] *Id*. at 12.
[24] *Id*.
[25] *Id*. at 14.

providing language interpretation services. At the hearing stage, this may include similar support as the County prepares workers to testify. At the resolution stage, the community partner's work includes locating workers for distribution purposes and remaining in communication with workers to ensure ongoing compliance.

The contract should also compensate the partner for assistance with publicity about successful outcomes to encourage other workers to come forward and other employers to follow the law. The contract should also cover capacity building, so that the primary contractor will provide training and development for smaller community partners, direct service providers, and employees on specific labor laws.[26]

Finally, the contractors should provide regular reports to the OLE, summarizing progress towards the contract's deliverables, and participate in quarterly meetings and monthly check-in calls with OLE staff to review the contractor's activities and plans.

The RFP and contract can identify the communities and industries in which the community partners are expected to conduct outreach and develop cases. For example, SF OLSE's RFP describes the work as "providing education and outreach to low-income and immigrant workers, including those with limited English proficiency, with a focus on Latino, Chinese, and Filipino communities," and notes that the "successful proposer will incorporate education and outreach in as many communities of low-income employees in San Francisco as possible," such as "African American workers, workers who speak Vietnamese or Mayan languages."[27] The SF OLSE RFP also encouraged "submissions that incorporate innovative strategies for reaching workers in specific low-wage industries where wage theft may be underreported," listing as examples domestic work, retail, nail salons, delivery services, and massage parlors, among others.[28]

Depending on the proposals that are submitted, the County might choose to award the contract to a prime contractor who sub-contracts with smaller community groups. The County will likely need to work with multiple partners in order to reach as many low-wage worker communities as possible. However, the smaller, grassroots organizations may not have the administrative capacity to satisfy the County's reporting requirements. In this respect, San Francisco's experience offers useful lessons. SF OLSE used this prime contractor model, which enabled it to "maintain a single contractual point of contact while also partnering with myriad community groups to achieve a broad and wide reach of low-wage workers within diverse communities and in farflung neighborhoods."[29] In selecting a prime contractor, "OLSE sought a community partner with strong working relationships with other organizations," which had devoted resources to "building strong alliances with San Francisco and California labor unions and with other worker centers and community partners."[30] Similarly, in the Strategic Enforcement Partnership at the DLSE, NELP's role provides a useful model: to "facilitate relations between the community partners and [DLSE] [and] to help identify and solve problems that community partners may be having in generating cases and performing their contract obligations."[31]

2. OLE Should Partner with Other Law Enforcement Agencies

I also recommend that OLE develop strategic partnerships with other labor enforcement agencies, including the U.S. Department of Labor, the State Division of Labor Standards Enforcement, the L.A. City Office of Wage Standards, and local prosecutors. There are a few goals for partnerships with other law enforcement agencies.

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[26] See City and Cty. of San Francisco, Office of Labor Standards and Enforcement, *Request for Proposals Worker Rights Protection and Labor Law Outreach Services* (March 2022).
[27] *Id.*
[28] *Id.*
[29] Patel & Fisk, p. 10.
[30] *Id.* at 11.
[31] *Id.* at 19.

First, the County should discuss each agency's powers in order to get a sense of which kinds of cases are most effectively pursued in each agency. The County should also work with these partners to create a system for the best way to refer cases that streamlines the process for workers who have already contacted one of the agencies.

Second, the County should discuss opportunities to conduct joint enforcement. Such opportunities might be available where one jurisdiction has specific or stronger laws and another agency has stronger tools or more resources (such as County wage laws, federal litigation authority, or availability of state restitution funds). Opportunities are also available where there is complementary jurisdiction over a priority matter (such as a single employer who operates businesses in both L.A. City and the unincorporated areas).

Third, the County should discuss each agency's priority areas and resource limitations. This will allow the County to consider whether there are areas where sister agencies are not prioritizing resources and the County may be able to fill a gap in its jurisdiction.[32] Conversely, the County may be able to preserve resources by referring (or collaborating on) cases within the priority enforcement areas of other law enforcement agencies.

3. OLE Should Partner with Consulates

OLE should also partner with Consulates in various communities to ensure education and outreach, space for reporting and referral of workplace violations, and access to resources held by each of the consulates. Consulates for the countries of origin of the immigrant workers within the County can prove valuable partners through their trust with communities, support OLE's efforts to provide education and outreach to their respective communities, and help connect immigrant workers with social and legal services. Importantly, consulates can provide a safe space for foreign nationals who lack legal status and/or work authorization in the United States.

For example, the Mexican consulate includes a section devoted to assisting Mexican nationals protect their fundamental rights in the United States, including labor rights.[33]

4. OLE Should Partner with Business Groups

OLE's strategic enforcement model should also include partnerships with employers and business groups. As Julie Su has explained, employers can serve as important partners to law enforcement because they have observed who are the bad actors that create an uneven playing field in their respective industries: "[t]hey know who the unfair competitors are because they are the ones winning bids by underbidding every contract, making it impossible for those who play by the rules to get a fair shot." [34] The State DLSE worked to "build trusted avenues of communication and collaboration" with employers, who were able to help DLSE "identify the worst offenders and the most strategic targets to change industry practices and to incentivize good behavior."[35]

This approach is consistent with recommendations from labor experts based on their study of car wash owners in Los Angeles.[36] They suggest that "an innovative enforcement strategy, including working with law abiding and high road carwash owners, can make the playing field more evenly competitive."[37] In particular, a community partnership "should include responsible carwash employers who can provide local government officials with data and information about employers who intentionally engage in unlawful

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[32] While the State DOL is bigger, they still have significant resource limitations. *See* https://calmatters.org/california-divide/2022/10/agency-battling-wage-theft/?series=unpaid-wages-california-workers

[33] *See* https://consulmex.sre.gob.mx/losangeles/index.php/es/proteccion-menu2020 (describing the consulate's work to safeguard the rights of Mexican nationals in the United States under labor and other laws).

[34] Su, Enforcing Labor Laws, 37 Berkeley J. Emp. & Lab. L. at 153.

[35] *Id.*

[36] Emily Erickson, Victor Narro, Janna Shadduck Hernández, and Abel Valenzuela Jr., *Conveying Carwash Owners' Stories: Diversity, Competition and Growth in the Southern California Carwash Industry* (UCLA Center for Labor Research and Education, 2015).

[37] *Id.*

practices to create unfair business competition."[38] This framework applies equally to other industries and can guide OLE's partnerships with businesses.

I recommend that OLE partner with business groups to provide educational workshops, training, and distribution of educational materials. Such workshops can include voluntary meetings as well as training in connection with mandatory training elements of ordinances and settlements. (*See also* Secs. IV.C.2 and VII.B, below).

B. OLE Should Develop Enforcement Priorities Based on Industry, Demographics, and Potential Impact

A strategic enforcement model requires treating different complaints and cases differently rather than using a one-size-fits-all approach and prioritizing cases on a first-in-first-out schedule. In a strategic enforcement model, some complaints may not be pursued at all, some will be handled with less resource-intensive investigative tools, and the highest-priority cases will be handled with the strongest and most impactful tools available to OLE. The priorities will ensure that OLE's limited resources are used most effectively to seek meaningful change that changes employers' behaviors and builds cultures of compliance in industries with high rates of serious violations.

OLE should establish a set of criteria that are flexibly applied to complaints that are filed, cases referred by partners, and to self-initiated investigations. Under this approach, an OLE manager will give a priority level (such as I, II, III) to each case, which will establish internal deadlines and tools applied. The priority level will be based on an assessment of where a case fits within the multiple categories.

1. Priority by Industry

Experts at the Rutgers University Center for Innovation in Worker Organization ("CIWO") prepared a report for OLE analyzing industries in L.A. County in which rates of violations are typically high and identifying industries in which violations appeared to be underreported.[39] While OLE decided, as an initial matter, to focus on three industries that had high rates of violations and low rates of complaints, I recommend that OLE now take steps to prioritize a larger number of industries that have high rates of violations as well as additional sectors identified in my research.[40] As the CIWO Report notes, some of the industry classifications used in their report include both high-violation and low-violation job categories, so I apply here my own additional research to recommend specific sectors and job classifications for OLE to prioritize.

I recommend that OLE select a few industries on which to initially focus. Rather than choosing these industries in a vacuum, however, I recommend that OLE begin the community partnerships recommended in this Report (*see* Section IV.A.1) and then use a flexible and iterative approach to select initial industry areas of focus based on the strongest and most impactful sets of cases that emerge from those partnerships. In other words, selecting industry priorities should be a process undertaken with the principles set forth in Section IV.B.3, Priorities by Potential Impact, discussed below.

Taken together, the full list of industries and job classifications I recommend selecting from for the initial priorities are the following, in alphabetical order:

1. App-based ride-hail and delivery
2. Car wash[41]
3. Cannabis

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[38] *Id*.

[39] Jacob Barnes, Janice Fine, Daniel J. Galvin, Jenn Round, *A Road Map for Strategic Enforcement Targeting: Complaints and Compliance with Los Angeles County's Minimum Wage* (Feb. 2021) (hereinafter, the "Rutgers Report"), Appendix A to August 30, 2021 Report on Expanding Worker Protections in Los Angeles County. The CIWO Report analyzes industries based on NAICS code.

[40] This is consistent with the Board's November 2021 resolution, which directed OLE to pursue targeted enforcement in these three industries and "to lay the groundwork for targeting additional priority industries and/or refine existing ones in subsequent phases of OLE implementation."

[41] OLE can work with CLEAN Carwash Worker Center to identify violations in the carwash industry.

4. Construction (low-wage jobs; day laborers)
5. Domestic work
6. Garment manufacturing[42]
7. Janitorial and groundskeeping
8. Laundry
9. Massage parlors
10. Nail salons
11. Residential home care
12. Restaurants (including fast food)
13. Retail (including drugstores, grocery, apparel, and other retail)
14. Security guards
15. Warehousing[43]

2. Priorities by Demographics of Workers Involved

The priorities should ensure that OLE is taking steps to effectively protect workers who are vulnerable to exploitation based on their race, ethnicity, immigration status, criminal record history, or other factors. I agree with OLE's previous recommendation to ensure fair practices for workers from certain demographic groups, such as Black, Latinx, Native American, Asian-American and Pacific Islander, women, immigrants, individuals with disabilities, and justice-involved individuals.[44] While one way to target these priority communities is through laws directly prohibiting discrimination, such as the Fair Chance law, this framework should also be applied to assessing the priority level of complaints alleging violations of minimum wage and other laws.

3. Priorities by Potential Impact

In addition to examining industry and the demographics of involved workers, OLE should also prioritize cases based on the potential impact of the case. This general category can be viewed in a few ways, each of which seeks to ensure that OLE's resources are used for maximum leverage and impact in improving conditions for workers in the County and sending a deterrent message to other employers.

First, OLE should prioritize cases that have the potential for community partner involvement, including cases developed and referred through strategic enforcement partnerships.[45] These cases will be stronger and more impactful for all of the reasons discussed in the strategic partnerships section above, including the partner's support with gathering evidence and making workers available to testify, and amplifying the publicity around a resolution. Within this category, the cases likely to be most impactful are those where a community partner is investing significant resources into OLE's case as part of a larger campaign. The connection to a larger campaign—to improve conditions across a given industry, for example—will lead to a stronger case and larger amplification of the outcome.

Second, OLE should prioritize cases that can lead to changes in industry practices, or as the Seattle Office of Labor Standards and Enforcement ("Seattle OLSE") puts it, "cause beneficial ripple effect[s] in the industry."[46] Cases might fall into this category in various ways. For example, challenging one employer's use of a practice that is widespread across an industry can send a message that such

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[42] If the County begins to also enforce state laws, per Sec. VIII.B.1, below, OLE can enforce Senate Bill 62, also known as the Garment Worker Protection Act. *See* https://www.dir.ca.gov/DLSE/GarmentFAQs/. OLE can partner with the Garment Workers Center to identify violations in garment manufacturing in the unincorporated areas.
[43] If the County begins to also enforce state laws, OLE can enforce California Assembly Bill 701. See https://www.dir.ca.gov/dlse/FAQ_warehousequotas.htm. OLE can work with Warehouse Worker Resource Center to identify violations in the warehousing industry.
[44] August 2021 Report.
[45] The State DLSE prioritizes cases referred by its strategic enforcement partners. NELP, "California Strategic Enforcement Partnership".
The Seattle OLSE also includes the potential for community partners involvement as one of their priority categories. *See* https://www.seattle.gov/laborstandards/investigations/investigation-process.
[46] *See* https://www.seattle.gov/laborstandards/investigations/investigation-process.

practices will not be tolerated. Similarly, an investigation into an industry leader can send a powerful message to other employers in the same industry and help level the playing field for employers who are trying to compete while following the law.

Third, and most simply, OLE should prioritize cases where a large number of workers are involved. This means that OLE should prioritize complaints of violations that are likely to affect a large number of workers within one workplace or within multiple workplaces owned by the same employer. In such instances, the investigation is likely to provide remedies for a large number of workers who have been harmed, and this large investigation is likely to be more impactful in sending a message to other workers and other employers.

Fourth, OLE should prioritize cases that have serious violations and a severe impact on workers. The County has directed OLE to develop policies protecting workers who are particularly "vulnerable to substandard work environments." One way to accomplish this goal is to ensure that OLE prioritizes cases alleging the most serious violations.

Finally, OLE should prioritize cases where it collaborates with other law enforcement agencies. These partnerships with be impactful for many of the reasons already discussed. Joint investigations with city, state, or federal labor agencies may potentially affect more workers if they extend beyond OLE's jurisdiction, or cover more claims if they include violations of laws outside OLE's jurisdiction, or make use of tools beyond OLE's legal authority. Overall, such joint investigations will provide a bigger platform and more dramatic result that can be more impactful.

4. OLE Should Deprioritize Certain Kinds of Cases

As noted, a strategic enforcement model requires OLE to identify certain kinds of matters to deprioritize, and for which to use only limited resources or not handle at all. Criteria may include income limits,[47] or violations that appear to apply only to a single individual, on an isolated occasion, or for a low-dollar value. In considering whether to decline certain cases altogether, OLE should consider whether the law contains a private right of action and can be handled by private counsel through a referral to a bar association or to a contracted community partner, and whether any other government agencies have concurrent jurisdiction over the claim.

5. OLE Should Communicate Its Priorities to the Public

I recommend that OLE communicate to the public its enforcement priorities. Such transparency will help manage the expectations of members of the public about how their complaints might be handled. Communicating with community groups will help partners understand what kinds of cases OLE will prioritize.

The Seattle OLSE provides a useful illustration of this approach, clearly and publicly explaining, "Unfortunately, our office receives many more complaints than we can immediately resolve. To prioritize the most urgent and severe violations, and maximize the number of workers reached, we consider several factors when selecting which investigations to pursue."[48] "Seattle OLSE transparently explains that in general terms, these factors "aim to reach and serve workers with the least resources, who are experiencing egregious labor standards violations, and who most need our agency's support and investigative power."

C. OLE Should Develop a Strategic Communications Strategy

OLE's communications strategy involves two overlapping categories: (1) outreach and education, and (2) strategic publicity. These communications serve multiple purposes. First, coverage of the County's labor laws and OLE's enforcement will deter violations and promote compliance among

[47] For example, Seattle uses an income threshold of $51,030 per year or $24.53 per hour. *See* https://www.seattle.gov/laborstandards/investigations/investigation-process.

[48] *See* https://www.seattle.gov/laborstandards/investigations/investigation-process

employers.[49] Second, communications to workers educates them about their rights and informs them of the County's ability to remedy harms to workers. This encourages other workers to identify violations and assert their rights directly to employers or file complaints with OLE. Outreach and publicity overlap; while OLE and its partners will conduct outreach and education, publicizing case outcomes is one of the best avenues for spreading information about County labor protections and OLE's enforcement. I will discuss in turn outreach to workers, outreach to employers, and strategic publicity.

In addition to the details set forth below, I recommend that OLE strengthen its communications in these areas by adding staff positions for a Community Engagement Director and a Communications Director. (*See* Sec. VI.B.2., below).

1. Outreach to Workers

Based on the premise that low-wage, immigrant, and vulnerable workers are least likely to be aware of their rights in the workplace and least likely to complain about workplace violations,[50] The goal of outreach is to give workers "the substantive and procedural legal knowledge to identify violations of their rights and access the proper enforcement procedures," and provide an incentive for workers to file complaints by giving workers reason to believe that their complaint will have an effect.[51]

In order to conduct meaningful outreach to workers in the priority communities and industries to ensure knowledge of their rights and ensure that OLE receives complaints of workplace violations, I recommend that OLE award contracts to community partners to facilitate and support OLE's outreach efforts. (*See* Secs. IV.A.1, VII.A.).

Within that frame, I recommend the following best practices for outreach efforts:

- Printed materials and outreach presentations should be language-specific and culturally appropriate;
- Outreach meetings and presentations should be facilitated or conducted by a trusted community partner;
- Outreach should include individualized workers' rights consultations and referral services; and
- Outreach conducted by community partners should be based on those organizations' professional expertise in the most effective methods for reaching members of their communities.

2. Outreach to Employers

I recommend that OLE engage in outreach to businesses in the sorts of strategic partnerships discussed elsewhere in this Report (*see* Secs. IV.A.4, VII.B), in which high-road employers would become partners in OLE's enforcement of violations by their unfair competitors. OLE's outreach to employers should also include an educational component, especially to provide "know your obligations" training and information to small businesses owned by members of low-income and historically underrepresented communities, including immigrant communities and communities of color. OLE's outreach to employers should include a funded partnership with business groups for such outreach, consisting of outreach to employers via educational workshops, trainings, and distribution of educational materials. Outreach to

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[49] *See* Terri Gerstein & Tonya Goldman, *Protecting Workers Through Publicity: Promoting Workplace Law Compliance Through Strategic Communication*, Center for Law and Social Policy (CLASP) and Harvard Labor and Worklife Program (June 2020).

[50] *See* Charlotte S. Alexander & Arthi Prasad, Bottom-Up Workplace Law Enforcement: An Empirical Analysis, 89 Ind. L.J. 1069, 1071 (2014) ("Workplace law enforcement [] depends significantly on worker 'voice,' with workers themselves identifying violations of their rights and making claims to enforce them [but] the system fails [] particularly badly in the case of workers who are most vulnerable to workplace rights violations.")

[51] *Id*. at 1072

businesses includes training in connection with mandatory training elements of ordinances (as in the human trafficking ordinance) and settlements.

3. Strategic Publicity

Rigorous academic research has confirmed what labor enforcement experts have long known: media coverage and other communications play a powerful role in deterring violations and promoting compliance with labor laws.[52] Economist Matthew S. Johnson recently conducted a rigorous study of OSHA enforcement, publicity, and compliance, and found that publicizing OSHA enforcement and case outcomes had a tremendous impact. He found that "OSHA would need to conduct 210 additional inspections to achieve the same improvement in compliance as achieved with a single press release."[53] Professor Johnson found that publicity had the strongest deterrent effect on neighboring facilities in the same sector; in those facilities, compliance improved by "50 percent more than if OSHA inspected each of these facilities instead."[54] His research suggested that publicity is "a powerful complement to inspections" and thus an optimal use of limited government resources.[55]

Interestingly, Professor Johnson sought to determine the causal explanations for this powerful impact of publicity, and his research suggested that the chief cause of deterrence was not public shaming, beliefs about enforcement, or consumer behavior, but instead, the impact of demands by workers or employers' efforts to avoid such demands. The study found that "press releases led to a greater improvement in compliance when workers have more bargaining power, suggesting that one reason facilities comply more following press releases about a peer is that employers seek to avoid costly responses from workers."[56]

This conclusion underscores the importance of including community partners in OLE's publicity strategy. It is important that both employers *and workers* receive the news about OLE's enforcement activities, and that workers are prepared to act collectively to demand that similarly-situated employers respect their rights. OLE can include community partners in strategic publicity in multiple ways. For one, publicity-related responsibilities can be included in contracts with formal community partners. Second, community partners will publicize OLE's enforcement where it aligns with a larger campaign, such as a campaign to bring about change in a particular industry. Thus, prioritizing cases connected to a larger campaign can lead to a larger amplification of the outcome and ultimately greater impact of the case and a greater return on investment.

OLE's publicity strategy can include tools like press releases (disseminated to both press and public), press conferences and availabilities, television and radio appearances, social media, and YouTube videos. The Department should identify which staff member is responsible for implementing a media and communications strategy, and should determine a goal of a number or frequency of announcements about OLE's cases. At a minimum, I recommend that every priority case have a media strategy. As one enforcement official explained a commendable practice: "Any case that has been developed as a high-impact case under a strategic enforcement approach should have a media strategy as part of it."[57] In addition, other cases might have a significant result warranting "after-the-fact media work."[58]

Experts also recommend that agency communications staff build relationships with reporters, pitch stories to them, and work with community partners to make workers available to speak to reporters.[59] OLE leadership should ensure that Department leadership understands the value of a communications

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[52] Gerstein & Goldman (citing Matthew S. Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws*, Amer. Econ. R., 1866–1904 (2020)).
[53] Johnson, Regulation by Shaming, at 1866.
[54] *Id*. at 1868.
[55] *Id*. at 1902.
[56] *Id.* at 1898.
[57] Cited in Gerstein & Goldman, p. 8.
[58] *Id.*
[59] *Id.* at 10-12.

strategy, and should also communicate to OLE staff members the importance of publicity.[60] The media strategy should include ethnic and non-English-language media, which can be facilitated, if possible, by issuing press releases in a second language spoken by the affected workers in a given case.[61]

D. OLE Should Develop Policies and Procedures to Utilize Existing Authority and Best Preserve Resources

As the Department understands, a strategic enforcement approach requires agencies to assess their existing enforcement powers and ensure that they "maximize the enforcement tools" already at their disposal.[62] Likewise, maximizing the use of the most powerful tools goes hand-in-hand with selectively using resources where they will have the most impact and expending fewer resources on lower-priority matters. Based on this framework, I recommend certain changes to OLE's procedures at various stages of the investigative process. These recommendations are largely based on the policies and procedures set forth in OLE's 2017 Manual, and any new practices adopted based on this Report should be reflected in a revised manual.

1. Recommendations for Intakes and Triage

Move Initial Intake from Consumer Counseling Center to the OLE. The 2017 Manual sets forth detailed instructions and guidance for Wage Enforcement Program ("WEP") staff to conduct initial intake and counseling. However, over time much of the initial intake and counseling work has moved to the Department's Consumer Counseling Center.

Moving these functions to OLE will achieve many strategic enforcement goals. First, the counselors managing these initial contacts with the public should be specialists in labor laws so that they can use this intake process as an opportunity to "provide information and education to complainants about their worker rights."[63] Not only will this educational opportunity be a service to the public, but it will ultimately preserve OLE resources because an OLE counselor will have the requisite expertise to identify complaints that are *not* within OLE's jurisdiction and direct callers to appropriate agencies.

Second, the Department has correctly summarized the advice of experts as recommending that agencies "implement rigorous triage systems as part of their intake processes that sort and prioritize complaints based on meeting certain criteria" which determine how the complaint will be categorized and handled.[64] An OLE counselor will be trained in OLE's triage and prioritization system and thus will know how to ask the right questions to determine the priority level. This accomplishes two goals: first, identifying high-priority intakes helps ensure that they are handled promptly and appropriately in order to be most impactful in egregious or urgent cases (such as quickly responding to a retaliation complaint), and second, identifying lower-priority matters will ultimately preserve resources by referring them or directing them to a lower resource track. Further, "[b]y investing resources at the intake stage, the agency will ultimately be more effective as it will have the information it needs to properly prioritize and triage complaints, which are key aspects of strategic enforcement."[65]

Finally, moving this initial intake function from the Consumer Counseling Center to the OLE will preserve Department resources by ensuring that the work that goes into an initial intake and counseling session facilitates the case-processing work of the OLE. This includes collecting initial data about the complaint, complainant, and employer, and collecting information that will facilitate OLE's assessment of the complaint's priority level.

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[60] *Id.* at 17-20.

[61] *Id.* at 23-24. For an example of a Spanish press release leading to Spanish-language news coverage, *see Fiscal General James Obtiene $450,000 A Empleados Amenazados Con Deportación Tras Denunciar Violaciones Laborales* [Attorney General James Secures $450,000 For 100 Home Health Aides Threatened With Deportation] (Sept. 13, 2019) available at https://ag.ny.gov/node/51200, and NY1 Noticias, *Trabajadoras de cuidados de salud en el hogar recuperarán salarios no pagados* (Sept. 13, 2019).

[62] August 2021 Report, p. 15-16.

[63] August 2021 Report (citing CIWO Toolbox)

[64] August 2021 Report (citing CIWO Toolbox).

[65] CIWO Toolbox, Tool 2: Investigations, p. 3.

Rotate Staff to Handle Intake and Counseling Functions. I recommend handling intake via a rotation of all investigators or more broadly, of all professional, non-managerial staff, as is done in many offices.[66] Staff should be trained in labor laws,[67] OLE policies, and counseling skills. I have observed important benefits to the rotation method as compared to employing dedicated staff who only conduct intake and counseling. First, staff remain closely connected to the public and regularly hear a variety of concerns during their intake shifts. Second, as this is a critical function of an enforcement agency, maintaining a rotation ensures that there is not a staffing crisis or complaint backlog in the event of turnover by a dedicated intake staff member. Third, handling initial intakes and counseling from workers can be an emotionally-draining process. Workers calling enforcement agencies are often in a state of crisis by the time they make such a call, and whether the worker's emotional state manifests as sadness, anger, or frustration, handling such a call may be emotionally draining for the staff person. For this reason, I recommend that OLE use a rotation method among its staff to handle intake.

Designate a Supervisor to Oversee Intake. OLE should designate one or two supervisors or managers to oversee intake and counseling. This will ensure that there is a manager with ownership over these key functions, and also make sure that staff on intake duty know to whom they should direct any questions or concerns.

Some Complaints Should Not Be Investigated. Based on OLE's selection of priority criteria, some complaints should be handled with minimal resources or not handled at all. OLE should determine certain categories of complaints to refer to other agencies, bar associations who might refer high-wage earners to private counsel, or to community partners to send a demand letter. OLE can also handle some lower-priority matters with less resource-intensive options such as letters, phone calls, negotiation, and a single-employee (not workplace-wide) investigation.

Implement Practices to Protect Immigrant Workers. OLE should have an official policy that in the first meeting with both employees, investigators make clear that immigration status is not relevant to the investigative process or to employees' rights under the County's labor laws. Investigators should also make clear to employers that any immigration-related retaliation will be treated seriously.[68]

OLE should also permit anonymous and third-party complaints. Since the agency has authority to conduct self-initiated investigations, OLE can use this authority to conduct investigations based on anonymous complaints. Academics have found that immigration status negatively impacts workers' willingness to make complaints, and recommend that agencies address this problem by developing ways for workers to make complaints that are "truly anonymous and hidden from their employers."[69]

Further discussion of the immigration-law-related protections for worker-witnesses is contained in Section V., "Resources for Protecting Immigrant Workers," below.

2. Recommendations for Investigative Process and Worker Interviews

As discussed above, OLE's strategic enforcement model should use different investigative tools depending on the priority level of the matter. Applying this principle to OLE's current practices, I recommend that the OLE use certain tools only in high-priority cases and/or in situations where they are strategically warranted, including site inspections, onsite interviews, full workplace audits, personal service of Correction Orders, and reinspection or follow-up site visits. These tools are each discussed in more detail below.

Not all Investigations Should Include a Site Visit, and Off-Site Interviews Should Precede Site Visits in High-Priority Cases. OLE's current Policy and Procedures call for a site visit (or

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[66] August 2021 Report, p. 16.

[67] This training includes laws *not* enforced by the OLE in order to make appropriate referrals.

[68] *See*, *e.g.*, Su, Enforcing Labor Laws, 37 Berkeley J. Emp. & Lab. L. at 155 (discussing importance of practices by which investigators "make clear that immigration status is totally irrelevant to the process, that any comment about it will not be tolerated").

[69] Matthew Johnson & Amanda Grittner, *When Labor Enforcement and Immigration Enforcement Collide: Deterring Worker Complaints Worsens Workplace Safety* (December 29, 2020).

"inspection") in every case.[70] However, experts in labor standards strategic enforcement have observed, "Site visits are resource intensive, so while every investigation will likely not require a site visit, they should be used for high priority investigations, especially those involving bad faith employers, employers with vulnerable workers, or employers who refuse to cooperate in the investigation."[71]

As state enforcers came to recognize, "Effective investigations should involve far more than just on-site inspections. Now we do off-site interviews with workers, in advance of our inspection whenever possible, relying heavily on community partners to make that happen. . . . On-site interviews with workers who are being watched by their employer are not going to tell you exactly what goes on in that workplace"[72]

I recommend that OLE revise its practices so that a site visit is not used in every case, but continue to deploy this important tool in high-priority cases in which it is strategically appropriate. As experts have noted, a site visit, especially unannounced, can be useful in particular situations where there is a risk that an employer will not turn over records voluntarily or may destroy or fabricate records.[73] Indications that an employer might fabricate records include evidence of fraud, cash payments, or evidence of threats and intimidation.

Additionally, an unannounced site visit can be useful in situations where there is reason to believe that, once the employer has knowledge of the investigation, it will be able to intimidate vulnerable workers and coerce them into not cooperating with OLE investigators. In such cases, an early site visit can include onsite worker interviews before the employer has a chance to intimidate such workers. Ideally, OLE will collaborate with a community partner who will facilitate offsite worker interviews before OLE surfaces to an employer, and this technique will only be applicable in those few cases where this is not the case.

Not all Investigations should Include Onsite Worker Interviews. The OLE's current Policy and Procedures call for every investigation to include onsite worker interviews (during the onsite inspection). But as the CIWO Toolbox explains, "onsite interviews are not always ideal, as employees are more likely to be afraid of retaliation or assume the investigator is associated with the employer."[74] Thus, investigators should first attempt to schedule offsite interviews working in collaboration with a community partner, or, if that is not feasible, by trying to call employees during off hours to request interviews.

A commendable practice that OLE investigators have previously used is that when they encounter workers during a site visit, they have provided them with a "business card and retaliation notice."[75] I recommend OLE investigators distribute such materials to all workers present at the facility during a site visit.

Best Practices for Onsite Worker Interviews. There are some cases where onsite interviews are appropriate or may be the only way an investigator will be able to speak with employees. In some situations, there are advantages to onsite interviews. First, "when the site visit is unannounced, the employer is unlikely to have had the opportunity to threaten or coach workers prior to the interviews."[76] Second, "onsite interviews do give the investigator an opportunity to interview a large number of employees." *Id.*

When OLE staff determine that it is appropriate to conduct onsite worker interviews, I recommend following certain best practices. First, the investigator should not permit the employer to select the employee interviewees, should interview employees in a place where management cannot hear or see the interview, and should interview a sufficient number of employees such that the employer cannot identify which witnesses provided information to the OLE.

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[70] 2017 Manual, Section 7.2, 7.5.
[71] CIWO Toolbox, Tool 2: Investigations, p. 7.
[72] Su, *Enforcing Labor Laws*, 37 Berkeley J. Emp. & Lab. L. at 152.
[73] CIWO Toolbox, Tool 2: Investigations, p. 6-7.
[74] CIWO Toolbox, Tool 2: Investigations, p. 6.
[75] OLE Case Notes.
[76] CIWO Toolbox, Tool 2: Investigations, p. 6-7.

Best Practices for All Worker Interviews. I recommend that OLE adopt certain practices to facilitate worker trust and participation in the investigation and to conduct the most robust investigation possible. Most fundamentally, interviews should be arranged in collaboration with community partners. Beyond this, I recommend a few changes to current policies and practices.

First, the Policies and Procedures call for investigators to request a witness's identification or driver's license. However, such information is not sufficiently necessary to an investigation to warrant the fear such a request may cause to immigrant workers with status or documentation issues. Instead, investigators should ask for any identifying and contact information workers are comfortable providing, while informing them of the reasons for the request: to facilitate future contact both for investigative purposes and in the event that the Department collects monies owed to workers and needs to reach them for distribution of these funds.

Second, the Policies and Procedures currently call for investigators to direct workers to maintain confidentiality. Instead, workers should be encouraged to discuss the existence of the investigation with each other to facilitate identifying additional worker-witnesses willing to participate in the investigation and to provide support to each other.[77] (One nuance is that investigators may instruct witnesses that they should not discuss with each other the specifics of any testimony they provided in their witness statement in order to maximize the credibility of each person's testimony during the investigation and in connection with any future litigation.)

At the same time, the OLE investigator should provide assurances to the witnesses that the OLE will maintain confidentiality. OLE investigators should assure the witness that the OLE will not disclose to the employer the identity of workers who have spoken with OLE[78], and that the written statement will be considered a confidential law enforcement record that will not be disclosed unless it becomes legally required to do so.

As a final best practice for witness interviews, in cases "where workers already came forward in a display of collective action," investigators should begin with a group conversation with the workers to build trust, get a sense of the general issues, and explain OLE's process to them.[79] The investigator should then conduct one-on-one interviews to maximize the credibility of each person's testimony.

Best Practices for Recording Witness Statements. I recommend certain revisions to the 2017 Manual in order to better reflect the Rules of Evidence in the preparation of investigative witness statements in anticipation of future litigation, while also ensuring that non-admissible facts are retained in other form. Investigators should record statements that are relevant and facts for which the witness has personal knowledge. In the event that the witness possesses pertinent information which they heard about second hand, this may be recorded in the statement if they learned the fact from an employer representative, but should be recorded in the investigator's notes (and not the witness statement) if they heard the information from another employee.

In preparing a statement, the OLE investigator should use simple narrative style, and write in first person in the voice of the witness; include facts showing why the witness is qualified to make the statement based on their position, experience in, and knowledge of the company; include only facts and information relevant to the issues in the investigation; present the facts in chronological order; and narrate the facts in the words of the witness to the extent possible, although the statement need not be verbatim and investigators may use phrasing and chronology that clarifies the witness's exact words.

Ensure that the Investigative Report is Drafted to Clearly Track Potential Legal Violations. I recommend certain revisions to the 2017 Manual to facilitate the OLE's assessment of whether the investigation uncovered violations of the law and facilitate next steps in the enforcement process.

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[77] Such conversation is arguably protected by federal labor law's protection for workers providing each other with "mutual aid and protection." 29 U.S.C. § 157.

[78] OLE should research whether certain evidentiary privileges protecting law enforcement witnesses and investigative methods apply to its proceedings.

[79] Su, Enforcing Labor Laws, 37 Berkeley J. Emp. & Lab. L. at 155.

Investigators should: (1) structure the report such that, for each violation, they set forth the requirements of the law followed by facts that provide evidence of each element of the violation; (2) clearly identify all potential violations, with reference and citation to the applicable law, observed during the inspection or evaluated prior to the report write-up, and for each potential violation, set forth the requirements of the regulation followed by facts that provide evidence of each element of the violation; and (3) provide a complete and detailed description of all items gathered (*i.e*., photographs, copies of records, business license, etc.), citing the documents and materials which provide evidence of the alleged violations.

Use Letters and Subpoenas in Some Investigations. In all but those few cases where a site visit is strategically appropriate, OLE should use letters and, where necessary, subpoenas to demand access to the employers' records. There should not be any real debate that employers are required to comply with such requests. The County's Minimum Wage Enforcement Ordinance requires employers to maintain payroll records and provide the Department with "access" to those records and the Department's authority includes the power to "review document and records" *in addition to* the power to conduct "site inspections."[80] Sending these requests in writing in the majority of cases will greatly preserve resources for those few cases where a site visit is necessary.

OLE Staff Should Personally Serve the Correction Order Only in Certain Cases. The Policies and Procedures currently require OLE investigators to serve the correction order by personal service in all cases as "the first option." While personal service may be a particularly reliable method of service, having the investigator travel to the site location will not be an appropriate use of resources in most cases. Instead, OLE policy should be to serve the correction order by personal service in high-priority cases in which there is reason to believe that a bad-faith employer might deny or refuse to accept mail service. In low-and middle-priority cases, OLE staff should effectuate service of the correction order by mail service.

OLE Staff Need Not Conduct a Second Site Visit in Most Cases. The Policies and Procedures currently require an OLE investigator to conduct a second visit to a worksite subsequent to issuance of the Correction Order. However, consistent with the above discussion of site visits generally, a second site visit will not be an appropriate use of resources in most cases. First, second visits should not be used in middle-and-low-priority cases. But even in high priority cases, there will be situations where OLE resources need not be expended on a second visit. In most high-priority cases, OLE investigators can speak directly with worker witnesses and community partners to learn whether the employer has come into compliance or continues to engage in non-compliant conduct. OLE staff should also consider whether an employer's compliance may be verified through documentary evidence provided by the employer.

OLE staff need not conduct a full workforce or multilocation audit in certain cases. The current practice of OLE is, upon receipt of a complaint, to audit the payroll records for all employees in a workplace and to audit all work locations of an employer within OLE's jurisdiction. While use of this tool is important for uncovering potential widespread non-compliance in many cases, this will not be an appropriate use of resources in every case. In low-priority cases in which a complainant describes a practice that appears situation-specific, isolated, or a minor (low dollar-value) violation, OLE can preserve resources by foregoing this expanded audit.

3. Case Resolutions and Penalties

OLE should assess fines based on the egregiousness of the violation. OLE should implement a policy that ties the amount of penalty to the nature of the violation in order to maximize the potential deterrent effect of fines. Although the MWEO refers to the maximum amount of fines on a "per day" basis, § 8.101.150, calculating fines from the outset based on the passage of time since the violation occurred risks basing fines on matters outside the control of the employer, such as the time it took an employee to file a complaint or OLE to investigate it. Instead, I recommend that penalties be calculated based on factors such as the length of time over which the violation persisted, the number of employees affected, the severity of the violation, or whether the employer tricked or deceived the worker. To be consistent with

[80] L.A.C.C, § 8.101.070(C), § 8.101.110. That said, it may prove useful to amend the Minimum Wage Enforcement Ordinance to explicitly grant subpoena authority to the Department and I discuss this recommendation below. Sec. VIII.B.1.

the ordinance, this penalty can be structured to ultimately require no more than $100 per day. Within this upper limit, OLE might consider standard penalties equal to double damages, or some other standard multiplier, depending on the presence of these aggravating factors.

Settlement. These fines can be reduced in a settlement in order to encourage settlement, preserve resources, and obtain monies quickly for workers. Any reduction should take into account the above factors as well as litigation risk—the risk that OLE will not prevail in litigation due to any legal issues presented in the case. The permitted percentage amount of reduction for which OLE will settle should be standardized, with investigators having authority to settle for this amount and reductions below this percentage requiring approval from the OLE Deputy Director or DCBA Director.

Litigation strategies should be integrated into OLE's strategy from the outset. OLE investigators should work closely with counsel, both directly and indirectly through oversight from OLE managers trained in law, so that investigations are treated as preparing for potential litigation. Among other objective, counsel should support investigative staff in developing potential "hard cases" from the outset, and ensuring that the investigation gathers the key evidence that will be necessary to prove all elements of the violation and refute the employer's likely defenses. This includes evidence that will, as appropriate to a given case, prove employer or employee status in cases presenting issues of joint employment, independent contractor fraud, or other payroll frauds.

Contracting and Licensing Penalties. I recommend that the Department take advantage of its power to cause the revocation of business licenses for offending employers. The Minimum Wage Enforcement Ordinance requires DCBA to "provide notice" to all County departments of all employers that have been found to have violated County wage ordinances. Such employers may then be subject to penalties affecting current or potential contractual relationships with the County, and specific penalties "shall be set forth in the Director's Rules."[81] The Director's Rules, accordingly, require the Department to make recommendations for contracting penalties, based on a formula set forth in the Rule, and include offending employers' names on a public list. The MWEA also gives DCBA authority to "recommend" that county licenses be revoked, suspended or denied.[82] OLE should ensure that it is fully utilizing its authority to make such recommendations.[83]

E. OLE Should Develop Meaningful Data Collection and Metrics

I recommend collecting data that will facilitate the investigations themselves, as well as facilitate meaningful metrics and assessment. I recommend collecting the following data:

- Complaints/contacts received; method of complaint/inquiry; date; topic of contact; industry, outcome (e.g., complaint filed, referred, information provided)
- Outreach events, partner organizations, number of workers attending, (if applicable) audience demographics or industry;
- For each investigation:
    - Number of affected employees;
    - Industry;
    - Job classifications of employees;
    - Violations investigated and violations found;

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[81] L.A.C.C., § 8.101.160.
[82] *Id.*
[83] San Francisco has a similar law regarding revocation of licenses, but it also includes language arguably giving the licensing recommendations more weight: "All City agencies and departments *shall cooperate* with revocation or suspension requests from the Agency." Cal. Admin Code. ch. 12R7(c)(2) (2003) (emphasis added). The Board could consider amending the MWEA to impose requirements on the County agencies with licensing authority if the situation emerges that OLE is utilizing is recommending authority but agencies are not acting on the recommendations.

- Strategic partnership involved;
- Complaint based, referral, or self-directed; and
- Employer's related businesses (e.g., prime contractor, sub-contractor, brand, parent company, etc.);

- Correction orders and wage enforcement orders issued;
- Use of various tools, including site visit, letter request for materials, subpoenas issued, full workforce audit,
- Restitution and penalties: (1) assessed, (2) collected; and (3) distributed.

Based on my review and assessment of the data that other municipal labor agencies make publicly available,[84] I recommend that OLE collect data enabling it to produce the following metrics:

- Average complaints/contacts received, by topic and industry, by date
- Restitution and penalties (1) assessed by industry; (2) collected by industry; (3) distributed by industry; (4) assessed by violation category; (5) collected by violation category; (6) distributed by violation category
- Number of violations found as a percentage of investigations conducted
- Per investigation, (1) average restitution assessed, (2) average penalties assessed, (3) average restitution collected; (4) average penalties collected; (5) average number of employees affected;
- Length of investigations/days to resolution: (1) complaint-based, self-initiated, and strategic partnership investigations; (2) by number of affected employees; (3) by restitution and penalties assessed; (4) by restitution and penalties collected
- Type of resolution (litigation, settlement, or administrative closure) and: (1) type of violation, (2) restitution and penalties assessed; (3) restitution and penalties collected
- For each law enforced by OLE, (1) type of violation complained of; (2) type of violation found by OLE; (3) restitution and penalties assessed; (4) restitution and penalties collected

These data and metrics serve multiple functions. Among other things, they allow the County and the public to assess the impact and effectiveness of OLE's investigations and also to analyze the nature of labor violations in the County.

F. OLE Should Prioritize Collections and Distributions

Finally, all of the work to develop cases is of little impact if the unpaid wages and penalties go uncollected. OLE should be sure to devote sufficient resources to these post-resolution stages of a case, and include monies actually collected and distributed in its metrics and in evaluations of employees' work. I recommend that OLE take steps to remain in communication with workers from the inception of a case throughout its lifespan in order to be able to find them years later once the case is resolved and monies are obtained. These communications may be handled or facilitated by paid community partnerships, and can be supported by OLE administrative staff who can periodically send mass mailings or other communications to affected workers. In addition, to demonstrate that this is a priority, OLE leadership and staff should be assessed based on distributions, not just investigative work.

OLE should examine whether there are any obstacles for workers—especially immigrant workers or other vulnerable populations—to obtain monies they are entitled to. For example, when money is

[84] *See*, *e.g.*, Seattle OLSE Data Interactive Dashboards, avail. at https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards; NYC DCWP, State of Workers' Rights, available at https://www.nyc.gov/assets/dca/downloads/pdf/workers/StateofWorkersRights-Report-2022.pdf.

distributed, OLE should examine whether it requires workers to provide identification, SSNs, or ITINs, or to complete a W-9, and whether these steps are necessary.

I also recommend that OLE consider contracting with a partner for judgment collection. As a reference, among the State DLSE's partnerships is one focusing on wage judgment collection in which the state contracts with the Wage Justice Center, a Los Angeles-based nonprofit, to enforce unpaid judgments.[85]

V. RESOURCES FOR PROTECTING IMMIGRANT WORKERS

OLE should ensure that it is using all available immigration-law tools to support immigrant workers and encourage immigrant workers to participate in OLE's investigations. The County's population includes many immigrant workers, with multiple kinds of immigration status, and the County should protect these workers. Violating the rights of vulnerable immigrant workers creates a race to the bottom that can harm all workers in the County. Immigrant workers are often reluctant to complain of violations and the federal government has made available U visas, T visas, and labor-based deferred action in an attempt to counter this reluctance. Accordingly, I recommend that the Department certify U and T visas and support requests for labor-based deferred action made to the Department of Homeland Security ("DHS") under DHS's recently streamlined policy. OLE should create a process for workers and their advocates to make such requests, should designate staff to handle these requests, and should train all other staff in providing the public with information about these processes.

A. T and U Visa Certifications

In 2000, Congress created the T and U nonimmigrant visas ("T visa" and "U visa") in its reauthorization of the Violence Against Women Act ("VAWA II") to provide protection to noncitizen victims of certain qualifying criminal activities that occurred in the United States.[86] VAWA II explained that its purpose was that immigrants "who are victims of these crimes committed against them in the United States must be able to report these crimes to law enforcement and fully participate in the investigation of the crimes committed against them and the prosecution of the perpetrators of such crimes."[87] Congress also explained that such visas "will facilitate the reporting of crimes to law enforcement officials," "give[] law enforcement officials a means to regularize the status of cooperating individuals during investigations or prosecutions," and finally, "comport[] with the humanitarian interests of the United States."[88]

To qualify for a T visa, an applicant must demonstrate that the applicant:

(1) is or has been a victim of a severe form of trafficking in persons;

(2) is physically present in the United States or at a port-of-entry thereto;

(3) has complied with any reasonable request for assistance in a Federal, State, or local investigation or prosecution of acts of trafficking in persons, or the investigation of a crime where acts of trafficking in persons are at least one central reason for the commission of that crime, or falls into an exception because the applicant: (a) is a minor or (b) is unable to cooperate due to physical or psychological trauma;

(4) would suffer extreme hardship involving unusual and severe harm upon removal from the United States.[89]

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[85] Patel & Fisk, p. 17.

[86] Battered Immigrant Women Protection Act of 2000, Pub. L. 106–386, §1513, 114 Stat. 1464, 1533–37 (2000). See generally, U.S. Dep't of Homeland Security, U Visa Law Enforcement Resource Guide, available at https://www.dhs.gov/sites/default/files/2022-05/U-Visa-Law-Enforcement-Resource-Guide-2022_1.pdf (hereinafter, "U Visa Guide"); T Visa Law Enforcement Resource Guide, available at https://www.dhs.gov/sites/default/files/publications/t_lea_guide_10182021_v2_508_sp_508.pdf (hereinafter "T Visa Guide").

[87] Pub. L. 106–386, § 1513(a)(1)(A), (B).

[88] *Id.*, sec. 1513(a)(2)(A), (B).

[89] 8 CFR § 214.11(b).

Most pertinent for OLE, a T visa applicant may submit a Law Enforcement Agency Endorsement as part of the application, confirming law enforcement's view that the applicant is a victim of trafficking and cooperated in any reasonable law enforcement request.

To qualify for a U visa, an applicant must demonstrate that the applicant:

> (1) has suffered substantial physical or mental abuse as a result of having been a victim of qualifying criminal activity;
>
> (2) possesses credible and reliable information establishing that he or she has knowledge of the details concerning the qualifying criminal activity upon which his or her petition is based; and
>
> (3) has been helpful, is being helpful, or is likely to be helpful to a certifying agency in the investigation or prosecution of the qualifying criminal activity upon which his or her petition is based.[90]

The applicant must also demonstrate that "[t]he qualifying criminal activity occurred in the United States."[91]

Qualifying criminal activity covered under the statute includes the following crimes or "any similar activity":

> rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of Title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes.[92]

Most relevant for OLE, applicants must submit Supplement B to Form I-918, also known as the "U Nonimmigrant Status Certification," which is completed by a certifying official at a law enforcement agency. Supplement B requires a qualified "certifying official" to affirm:

> (A) the person signing the certificate is the head of the certifying agency, or any person(s) in a supervisory role who has been specifically designated by the head of the certifying agency to issue U nonimmigrant status certifications on behalf of that agency, or is a Federal, State, or local judge
>
> (B) the agency is a Federal, State, or local law enforcement agency, or prosecutor, judge or other authority, that has responsibility for the detection, investigation, prosecution, conviction, or sentencing of qualifying criminal activity
>
> (C) the applicant has been a victim of qualifying criminal activity that the certifying official's agency is investigating or prosecuting
>
> (D) the petitioner possesses information concerning the qualifying criminal activity of which he or she has been a victim
>
> (E) the petitioner has been, is being, or is likely to be helpful to an investigation or prosecution of that qualifying criminal activity
>
> (F) and the qualifying criminal activity violated U.S. law, or occurred in the United States, its territories, its possessions, Indian country, or at military installations abroad.[93]

DHS has published guidance for law enforcement agencies regarding T and U visas.[94] Based on the language in these guides and in the authorizing statute, many labor agencies interpret the relevant

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[90] 8 C.F.R. § 214.14(b).
[91] *Id.*
[92] 8 U.S.C. § 1101(a)(15)(U)(iii).
[93] 8 C.F.R. § 214.14(c)(2)(i); see also 72 Fed. Reg. 53023-24.
[94] U and T Visa Guides.

law to mean that they can certify helpfulness based on their experience with the witness's helpfulness during the investigation of a separate but related civil labor investigation. Further, they can satisfy the requirement of "detect[ing]" criminal activity during the course of a civil investigation and there is no requirement that the criminal activity actually have been referred or criminally investigated at the time the U visa is certified. ICE has approved U visas based on this kind of certification.

The U Visa Guide does not limit this certifying authority to agencies with criminal jurisdiction and explicitly states that certifying "agencies may include state and local agencies that enforce relevant labor and employment laws (when such violations are also qualifying criminal activities)."[95] Indeed, for many years labor agencies have certified U visa requests, and DHS has approved U visas certified by such agencies.

The Department can certify a U visa application at any stage of a case when it is requested, if certain criteria are met. DHS explains that an agency "can certify a Form I-918B based on past helpfulness, present helpfulness, or the likelihood of a victim's future helpfulness." In other words, "By signing the form, you are certifying that the victim has been, is being, or is likely to be helpful to law enforcement, prosecutors, judges, or other government officials in the detection, investigation, or prosecution of the qualifying criminal activity of which they were a victim." DHS explains, "There is no requirement that you sign the certification at a specific stage of the investigation or prosecution (for example, active/open or closed) or that the investigation or prosecution result in a specific outcome (for example, the perpetrator was charged, arrested, or convicted). There is no requirement that an investigation or prosecution be initiated or completed after the victim reports the crime and makes themselves available to reasonable requests for assistance."[96]

The example of USDOL's well-established U Visa certification protocols provide additional guidance and further demonstrate how a certifying law enforcement agency may issue certifications for criminal activity outside of its jurisdiction in the sense of prosecutorial authority. USDOL has delegated authority to complete U Visa certifications to the Wage and Hour Division ("WHD"), which does not investigate violations of qualifying criminal activities.[97] In particular, WHD's policies permit it to certify U visas for criminal activity related to its labor investigations, explaining that it will "certify for [certain enumerated criminal activities] when they are detected in the process of investigating an allegation of a civil law under its jurisdiction."

B. Labor-Based Deferred Action

DHS recently announced a streamlined process in which labor and employment agencies can seek DHS support in an ongoing investigation or enforcement action by supporting requests by workers' requests for deferred action.[98] Deferred action is a form of prosecutorial discretion by which DHS will "defer removal action (deportation) against a noncitizen for a certain period of time," it is a powerful tool because a noncitizen granted deferred action may be eligible for employment authorization.[99] Deferred action can be approved much faster than U visas, but deferred action is a temporary status that, unlike U visas, does not provide a path to permanent residence. Thus, many workers will apply for both and may request OLE's support for both applications.

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[95] U Visa Guide, p. 3.

[96] U Visa Guide, p. 8. *See also* p. 10 ("Whether a crime is investigated or prosecuted depends on many factors outside of the victim's control. If your agency has identified a person as a victim of a qualifying crime, you can choose to complete and sign the Form I-918B. There is no requirement that an investigation or prosecution be initiated or completed after the victim reports the crime and makes themselves available to reasonable requests for assistance.")

[97] Dep't of Labor U and T Visa Process and Protocols Question - Answer, U.S. Dep't of Labor, https://www.dol.gov/agencies/whd/immigration/u-t-visa/faq.

[98] DHS Support of the Enforcement of Labor and Employment Laws, available at https://www.dhs.gov/enforcement-labor-and-employment-laws.

[99] FAQs, DHS Support of the Enforcement of Labor and Employment Laws, available at https://www.dhs.gov/enforcement-labor-and-employment-laws.

As experts have explained, "All federal, state, and local labor and employment law enforcement agencies may issue statements of interest (i.e., letters of support) to DHS as part of this process. This includes the federal labor agencies . . . as well as state and local labor enforcement agencies, state Attorneys General, and municipal-level labor and enforcement agencies."[100]

The labor agency should include "a statement of interest" that addresses the following:

- Details the nature of their investigation and the need for DHS support;
- Describes the agency's enforcement interests that provide the basis for their request;
- Describes the worksite and the workers who may be helpful with the agency investigation; and
- Provides an agency point of contact who can address follow up questions from DHS.[101]

The agency's statement of interest does not need to identify the individual workers involved in the case, but instead should generally describe the categories of workers and relevant time period, and worker-applicants will then self-identify as falling within that scope. While the agency is required to describe the "worksite and the workers who may be helpful," the worker-applicant must provide, "Evidence to establish that the worker falls within the scope identified in the labor or employment agency letter, . . . to demonstrate that the worker was employed during the period identified in the labor or employment agency statement."[102]

A labor agency may issue a statement of interest as soon a complainant informs it that witnesses will not be willing to come forward without deferred action. At that time, the agency would be in a position to issue a general letter about the nature of the allegations on which their investigation is based, and the categories of workers who would be involved in such an investigation.

It is not necessary to wait until a later point in an investigation. Indeed, the very purpose of the labor-based deferred action program is to "increase[] the ability of labor and employment agencies to more fully investigate worksite violations." [103] DHS appears to understand that labor-based deferred action will allow a labor agency to fully investigate the allegations by creating an environment where workers are willing to come forward, and that without it, an agency may not be able to "fully investigate" the allegations. Thus, once a complaint is accepted for processing or investigation by determining minimal criteria (such as falling within the agency's jurisdiction), the agency should be willing to provide a letter of support upon request.

Further, the agency should be willing to issue a letter of support at any time during an investigation or the life of a case. This includes, at the outer limit, following a settlement or court order, so long as the employer is still required to comply with the terms of the settlement or order and thus the agency is monitoring the employer's compliance.

C. OLE Should Develop and Communicate Protocols to Staff and the Public

DHS has recommended, as best practices, that certifying agencies establish certain procedures and policies for U and T visas, and this advice holds for the newly-announced labor-based deferred action. In general, agencies should "train relevant personnel in your agency on that policy to promote consistency and transparency and improve the quality of certifications." The best practices include:

- Procedures regarding the agency's verification of the qualifying criminal activity, victimization, and the victim's helpfulness in the detection, investigation, prosecution, conviction or sentencing related to the qualifying criminal activity'

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[100] National Immigration Law Center, New DHS Guidance on Prosecutorial Discretion for Labor Disputes, p.3 (Jan. 2023).
[101] *See* DHS Support.
[102] *Id.*
[103] *Id.*

- Procedures for handling future requests for a new or re-signed Form I-918B;
- Establishing general expectations around anticipated response timeframes; and
- Processes for increasing transparency of the agency's certification policies (if any) to the public.[104]

Consistent with these best practices, I recommend that OLE take the following steps:

- Designate certain key personnel to handle and supervise all requests for T and U visa certifications and support for labor-based deferred action. These individuals should be managers who develop an expertise in these areas. Their responsibilities will include communicating with immigration attorneys, working with staff to assess whether to complete a certification or letter of support, supervising the preparation of the Form I-918B and letters of support for deferred action, and communicating with Department leadership about the requests.
- Communicate to all staff that the Department is a certifying law enforcement agency, and provide protocols to follow if they receive inquiries or requests to certify. These protocols might include notifying their supervisor and managers, who will then notify the immigration supervisors.
- Communicate to the public that the Department is a certifying law enforcement agency and provide a point of contact for inquiries and requests.

VI. RECOMMENDED STAFFING

I recommend certain organizational changes to strengthen OLE's enforcement work and facilitate its transition to a strategic enforcement model. My staffing recommendations include dedicated senior leadership, increased permanent staffing, and the addition of positions specialized in community engagement, communications, and research, among others. In addition, as new ordinances are enacted, I recommend adding additional staff to ensure that OLE's resources keep pace with its added responsibilities to enforce a wider range of laws.

As experts have explained, "Providing resources to enforcement agencies to have a sufficient number of investigators in the field and the tools they need to do their work is fundamental and essential to assure compliance with workplace and labor laws."[105]

A. Learning From Other Municipal Labor Agencies

As Figure 2 shows, the most highly-regarded municipal labor agencies around the country operate with staffing levels of at least twenty-five FTEs, and in many cases with more than thirty.

[104] U Visa Guide at 15.
[105] Weil, "Preparing for the Future of Work".

Figure 2 - Prominent Municipal Labor Agencies[106]

Office	FTEs	Population Served[107]	Date Created	Laws Enforced (not comprehensive)
Denver Labor	25	711,000	2019	Minimum wage, prevailing wage, living wage
Los Angeles City OLSE	30	3.8 million	2015	Minimum wage, paid sick leave, fair chance hiring, fair scheduling
New York City OLPS	33	8.5 million	2016	Paid sick and safe leave, fair scheduling, just cause termination, freelancer protection law (*not minimum wage*)
San Francisco OLSE	30	815,000	2001	Minimum wage, paid sick leave, fair chance employment, scheduling laws
Seattle OLSE	35	734,000	2015	Minimum wage, paid sick and safe leave, fair chance employment, secure scheduling, domestic worker protection, gig worker sick leave, gig worker premium pay, transportation network company

In contrast to these agencies, some municipal labor agencies operate with lower staffing levels, such as Chicago (8 FTEs), Philadelphia (9 FTEs), and Santa Clara County (5 FTEs). It appears that these agencies generally do not achieve the same results as the ones operating with larger staffs. For example, in 2021 (or fiscal year 2020-21), Chicago collected $1 million in restitution and $236,000 in fines and Santa Clara County collected less than $10,000 in unpaid wage restitution, while among larger offices, San Francisco collected $10 million in restitution and $2 million in penalties and New York collected $4 million in restitution (without even enforcing a minimum wage law). Observers have also remarked on the disappointing results of some of the smaller agencies. Philadelphia's agency, created following the passage of 2016 minimum wage laws, got off to a "sputtering start" according to a media report, and suffered from a "lack of resources" even according to the city's own deputy mayor for labor.[108] Scholars have observed that Chicago has "vastly under-resourc[ed] OLS," and thus "risks hobbling its new enforcement agency."[109]

In terms of specific positions, the agencies in Figure 2 employ investigators as well as various levels of managers and certain specialized positions. For example, Seattle OLSE employs a director, deputy director, and communications manager, as well as seven staff responsible for outreach and four staff responsible for policy-focused work. For its enforcement work, Seattle OLSE employs twelve investigators and four other staff members reporting to the Enforcement Manager, who in turn reports to the Director. Denver Labor also employs full-time community education staff in order to implement an annual outreach and education plan. New York City's Office of Labor Policy and Standards ("OLPS") employs thirteen investigators, ten lawyers, four researchers, and additional staff responsible for intake, outreach, and other duties.[110]

[106.] Information in Figure 2 is derived from Gerstein & Gong, *The Role of Local Government*, p. 7-10.

[107] Census data available at United States Census Bureau Quick Facts (numbers have been rounded to the nearest hundred thousand). These figures, based on residential population of the jurisdiction, likely undercount the numbers of employees who travel into the jurisdiction to perform work for employers over which the relevant agency has enforcement jurisdiction.

[108] Juliana Feliciano Reyes, How Philly's office to protect workers is changing after a sputtering start," Phila. Inq. (Mar. 20, 2019), avail. at https://www.inquirer.com/news/fair-workweek-enforcement-philadelphia-office-of-labor-standards-20190320.html#loaded.

[109.] Fine & Round, *Federal, State, and Local Models*, p. 35.

[110] NYC DCWP, Fifth Annual Report on the State of Workers' Rights in NYC, p. 22 (2022), avail. at https://www.nyc.gov/assets/dca/downloads/pdf/workers/StateofWorkersRights-Report-2022.pdf

As to the leadership of these similar agencies, New York City's Office of Labor Policy and Standards ("NYC OLPS") is led by a Deputy Commissioner who reports directly to the Commissioner of the Department of Consumer and Worker Protection ("DCWP").[111] Reporting to the Deputy Commissioner are managers with supervisory responsibility for investigations, litigation, research, and policy. In Seattle, the Director of the OLSE reports directly to the Mayor and serves as a member of the Mayor's Cabinet.[112] Likewise, the SF OLSE is led by a Director appointed by the Mayor.[113]

In comparing the staffing levels of these offices, it bears emphasis that the NYC OLPS lacks any authority to enforce minimum wage and related laws and thus the staffing numbers are almost certainly lower than would be necessary if wage-and-hour laws were among its mandate. Through enforcement of its paid sick leave and other laws, in 2021, the NYC OLPS assessed approximately $4 million in restitution owed to approximately 8,000 workers. As a point of comparison, through enforcement of minimum wage and a host of other laws, in 2021, the Seattle OLSE assessed approximately $12 million in restitution owed to approximately 22,000 workers (in a city half the size of New York).[114]

B. Recommended OLE Staffing and Organization

OLE's current staffing levels and organization are currently inadequate to effectively enforce L.A. County's current worker protection laws, and adoption of recommended ordinances will only exacerbate the need for additional staff and leadership. First, OLE lacks dedicated senior leadership with labor expertise. Second, many positions are not permanently budgeted and thus hard to fill with appropriately trained staff. Third, OLE does not have staff in important areas, such as community engagement or communications.

My recommendations call for a full complement of at least twenty-seven full-time, permanent staff (inclusive of current staff) (see Figure 3 below). These include a deputy director with two direct reports: a Strategic and Program Operations Chief and a Field Operations Chief. The Strategic and Program Operations Chief would have five direct reports: a Community Engagement Director, a Communications Director, two Researchers, and a Program Manager. The Field Operations Chief would supervise two first-line supervisory investigators, and directly or indirectly, three auditors, twelve investigators, and two clerks. Among the twelve investigators, four would specialize in human trafficking, the domestic work industry, and the massage industry, and eight would be generalists. This organizational structure, and these staffing levels, will begin to bring L.A. County's labor enforcement office in line with the leading municipal labor enforcement agencies around the county.

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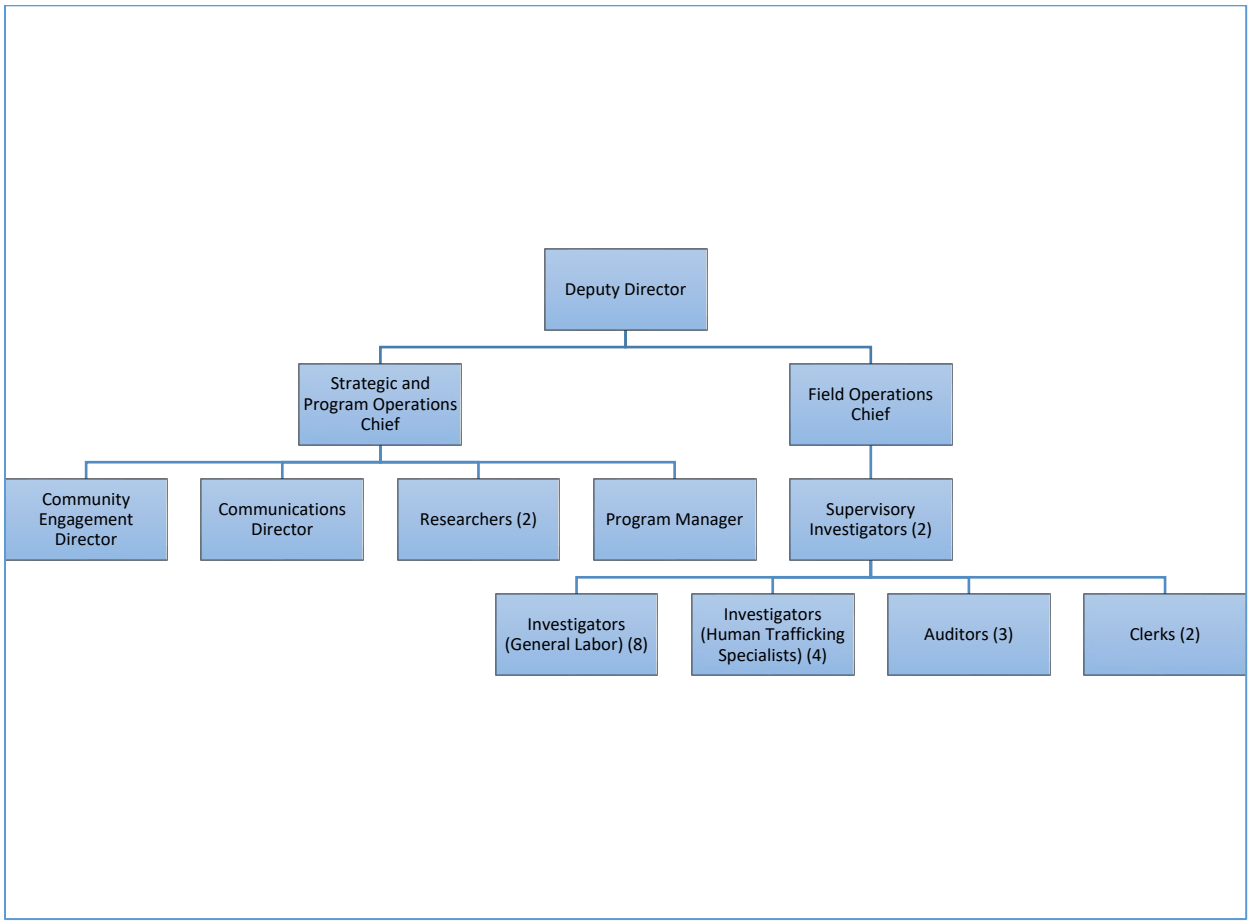
[111] DCWP adopted its current name in 2019, changing the prior name Department of Consumer Affairs in order to convey the agency's focus on workers as well as consumers. Press Release, January 10, 2019, available at https://www.nyc.gov/office-of-the-mayor/news/021-19/mayor-de-blasio-delivering-our-promise-make-new-york-city-fairest-big-city-america#/0

[112] *See* Posting, Director, Seattle OLSE (2020).

[113] *See* https://sf.gov/profile/patrick-mulligan.

[114] Seattle OLSE Interactive Data Dashboard, avail. at https://www.seattle.gov/laborstandards/ols-data-/data-interactive-dashboards/financial-remedies-dashboard

Figure 3 - Recommended OLE Staffing and Organization



While it is certainly possible (and likely necessary) to phase in these recommended staffing levels over time, the County should be mindful of the types of work that need to be conducted in a successful labor standards enforcement agency and create a growth plan that spreads the work to appropriate staff people while preparing to hire the full complement of positions and staff. Further, it is essential that all OLE positions are permanently-funded, budgeted positions. The enforcement work performed by OLE investigators requires training and specialization developed over years on the job, including an understanding of local and state labor laws, analysis and evaluation of payroll records and other evidence, experience with community partnerships, and strong skills in building rapport with witnesses from vulnerable populations.

Finally, I will note that some of the positions I recommend, and the backgrounds of ideal candidates I suggest for them, may not be possible to achieve within the current civil service requirements. The County may want to consider adding new job classifications to reflect the needs of the Department or analyzing whether the civil services laws permit hiring these specialized positions outside of the civil service rules, especially to ensure that potential candidates may apply who are representative of the communities OLE serves.

1. OLE Leadership

a) Deputy Director

I recommend that the head of OLE serve in the position of Deputy Director, reporting to the Chief Deputy and with managerial responsibility dedicated exclusively to OLE.

The Deputy Director's responsibilities will include (1) overseeing OLE's field operations, investigations, and case resolutions, including developing generally-applicable policies and procedures to

govern investigations and supporting the analysis and strategy needed to resolve complex problems in specific cases; (2) leading OLE's program operations in order to improve protections for vulnerable workers, address evolving business practices that violate workers' rights; and create a culture of compliance in the County with current laws, (3) lead and supervise OLE's relationships in the Department and external relationships with community groups, unions, the business community, and local, state, and federal government partners; (4) oversee outreach and education, and (5) supervise all internal management matters within OLE, including budget, personnel, strategic planning, and operational.

The Deputy Director will serve as the public face of OLE to the media, other parts of County government, other law enforcement agencies, and the community at large. The Deputy Director will have ultimate responsibility for building and maintaining OLE's relationships with both community groups and employer groups. It is essential that the Deputy Director have experience working with vulnerable populations, working with community groups, and building strategic coalitions. The ideal candidate would have experience working in or collaborating with community groups.

This position should be filled by an experienced leader with a demonstrated commitment to workers' rights and social justice. The Deputy Director should have strong operational and management skills, interpersonal and communications skills, and analytical skills.

The ideal candidate will have a law degree and expertise in labor and employment law, which is important in order to oversee investigations, deal effectively with opposing counsel, and prepare investigations for possible litigation. As Julie Su has explained, employers sometimes use legally complex means to try to violate workers' rights, and they shouldn't be able to out-maneuver government enforcers: "Rather than running away from the difficult or complex cases, we should be doing that much more to get them right."[115] The Deputy Director will ultimately be responsible for ensuring that the County's labor work is able to protect workers even in these difficult and complex cases.

b) Two Chiefs

I recommend that OLE be composed of two units, each led by a chief reporting to the Deputy Director. The Field Operations Unit will handle all field work and investigations, under the supervision of a Field Operations Chief, and the Strategic and Program Operations Unit will handle broader aspects of the operations of the labor equity program, under the supervision of the Strategic and Program Operations Chief.

The Strategic and Program Operations Chief will assist the Deputy Director with community engagement, policy, outreach, communications, and supporting the overall operations of the labor equity program. This work includes managing OLE's external relationships through outreach, contracts and relationships with community groups, working with community partners, overseeing communications and education, and preparing for and attending Board meetings. The Strategic and Program Operations Chief will also assist the Deputy Director with oversight of the labor equity program by developing priorities and strategic enforcement practices, managing implementation of new ordinances, and drafting internal rules and policies.

The Field Operations Chief will supervise the day-to-day work of investigators, through two direct supervisors, making decisions about complex and difficult issues that arise, ensuring that policies and procedures are properly implemented in the day-to-day work of OLE's investigations, reviewing Correction Notices, Wage Enforcement Orders, and other key documents, and generally managing the OLE's investigative work.

As explained below, the Field Operations and Strategic and Program Operations Chiefs will share direct supervision of the remaining staff.

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[115] Su, *Enforcing Labor Laws*, 37 Berkeley J. Emp. & Lab. L. at 151.

2. Strategic and Program Operations Unit

a) Community Engagement Director

I recommend adding a community engagement director, who will be responsible for OLE's relationships with community partners, including conducting strategic outreach and building relationships with community groups, law enforcement agencies, consulates, and business groups, as well administering grants to and contracts with community partners. This position would collaborate with the communications, policy, and enforcement teams in order to best serve as a liaison between OLE and community partners. The ideal candidate will have experience working in or collaborating with community groups.

This position would share with the Communications Director responsibility for outreach, with primary responsibility for coordinating outreach activities with community groups.

b) Communications Director

I recommend adding a communications director, who will be responsible for OLE's communications strategies, including drafting and issuing press releases and engaging with members of the media, as well as producing know-your-rights and other educational materials for distribution to the public, community groups, and industry groups. Experience with Spanish or other non-English media and communications would be an asset and may be a requirement.

This position would share with the Community Engagement Director responsibility for outreach, with primary responsibility for preparing materials for outreach.

c) Two Researchers

I recommend adding two researchers, with strong data analytics skills, to support both the Field and Program Operations teams with research into specific businesses and industries. In any given investigation, researchers can use specific tools and skills to map out corporate ownership and relationships, and more generally, researchers can support strategic enforcement by conducting research into the players and practices in any given industry. Such research can help identify which industries OLE should prioritize, and within an industry, which enforcement targets are likely to be most impactful in bringing about industry-wide compliance. Other enforcement agencies have found candidates with useful skills sets by hiring data analysts from unions that have in-house research departments, where researchers have developed the skills to research industry structures and their impact on workers.

While the work of the researchers will also directly support investigations, the Strategic and Program Operations Chief should have day-to-day supervisory responsibility for the Researchers and ensure that their time is utilized strategically to best support the initiatives and casework of the OLE.

d) Program Manager

In addition to the specialized positions set forth above, I recommend that OLE add a program manager position to broadly support the work of the Strategic and Program Operations Team. The program manager can assist the Strategic and Program Operations Chief with responding to board motions, drafting report backs, and legislative proposals and tracking, and can provide assistance to the Communications Director and Community Engagement Director with drafting outreach and educational materials and conducting outreach. The program manager can also assist with internal operations such as overseeing implementation of new programs, drafting rules, and drafting policies and procedures. In addition, the program manager can assist with responding to public records requests, tracking case outcomes, and generally assist the Deputy Director and Strategic and Program Operations Chief and all other matters related to program operations.

3. Field Operations Unit

a) Two Supervisors

Two front-line supervisors should continue to oversee the day-to-day work of the investigative staff, including by assigning cases, ensuring that investigators follow applicable policies and procedures, and answering questions and resolving issues that arise during investigations. The County should ensure that

these are funded as full-time, permanent positions to attract and retain experienced, well-trained investigators in these positions.

b) Three Auditors

I recommend that OLE employ three staff members with expertise in accounting, auditing, and/or data analysis. These staff members will be responsible for analyzing the data collected and calculating backpay and fines owed. While investigators will still conduct some of this work, the Audit Team will be responsible for conducting analyses in high-priority, large, and complex cases, and will provide guidance to investigators conducting audits in smaller cases.

c) Twelve Investigators

I recommend that OLE employ twelve full-time, permanent investigators, including eight general investigators and four investigators specialized in human trafficking, the domestic work industry, and/or the massage industry.

(1) General Investigators

Under my recommended framework, with some of the responsibility for research and audits shifted to new, specialized positions, investigators can focus their time on fieldwork. Under this new model, investigators will be responsible for site inspections, speaking with employer representatives at site inspections and during ongoing negotiations about the provision of documents to OLE, interviewing and communicating with workers and their advocates, and generally overseeing the progress of an investigation. In addition, investigators will be responsible for preparing Correction Notices, Wage Enforcement Orders, and internal case reports, and in cases not involving site visits, for drafting letters and subpoenas. Investigators will be responsible for audits and backpay calculations in smaller cases. Investigators should also assist with OLE's compliance, collections, and distributions work.

Within the team of general labor investigators, I recommend that OLE consider assigning some investigators to specialize in certain industries in order to build their expertise and institutional knowledge in areas that are priorities for the OLE.

(2) Four Specialist Investigators: Domestic Workers, Massage Parlors, and Human Trafficking

The OLE's work enforcing wage laws in the domestic work and massage parlor industries, and enforcing the human trafficking ordinance generally, require investigators with specialized skills and experience, including (1) experience working with vulnerable immigrant populations and especially women, including proficiency in a non-English language, (2) experience collaborating with community-based organizations, (3) experience with human trafficking issues, enforcement, victims, and/or perpetrators; and (4) experience with domestic work and/or massage industries and workers. The appropriate candidates for these positions should be able to satisfy some combination of this set of prerequisites.

I am recommending that four investigator positions specialize in these areas given that these are priority areas for the OLE and that they are all resource intensive. I have grouped them together because of their overlapping skillsets. Investigations of human trafficking, or in industries where human trafficking may be present, requires special training in the factual and legal issues, expertise in working with witnesses who may have experienced trauma, and the ability to identify other crimes carried out in connection with County labor violations in order to make appropriate referrals to prosecutors. These investigators must also be specially trained to identify whether such witnesses, depending on their immigration status and the nature of any related crime of which they were a victim, may be eligible for U and T visas, as discussed above.

OLE staff have already seen that enforcement in the massage industry is time-consuming and resource-intensive given the complex business structures in that industry, transience of workers, and common use of fraudulent business tactics. Enforcement in the personal care/domestic work industry is highly time-intensive because each workplace typically employs only one worker and pays that worker off the books, so each investigation is individualized and cannot be scaled or automated the way that investigations in other industries can be. Investigators' enforcement work consequently requires extensive

one-on-one interviews and rapport-building with the domestic worker-witness in the case, as well as time-consuming audits and backpay calculations when payments have been in cash and relevant figures must be entered manually.

Accordingly, this team will benefit from having four investigators. While the Field Operations Chief, through first-line supervisors, will directly oversee the team members' day-to-day work on specific investigations, the Strategic and Program Operations Chief will play a significant role in ensuring that this team is properly trained in human trafficking and industry-specific issues.

d) Two Clerks

I recommend that the OLE employ at least two support staff FTEs to provide administrative support to investigators and the rest of the team for matters such as tracking payments of wages and fines, assisting with the distributions of wages and fines to employees, providing administrative support in issuing and serving citations and other documents, and assisting with calendaring and tracking deadlines and important dates. Employing clerks or support staff in these roles will ensure that these essential administrative tasks are correctly handled while also freeing up investigators' time to focus on the more substantive aspects of investigations.

VII. ADDITIONAL BUDGET ITEMS

A. Contracts with Community-Group Partners

I recommend that the Department budget $1.75 million over two years for contracts with community groups to provide outreach, education, and other services to low-wage workers.

Community groups do not substitute for Department staff; this is not a recommendation to privatize government functions. Rather, as discussed in Section IV.A.1 above, formalizing relationships with community groups provides unique opportunities to collaborate with community groups in a way that strengthens OLE's enforcement work.

One relevant reference point for the cost is the Department's prior contract with community groups. In 2016, the Board approved a $1 million, four-year contract between the Department and the Koreatown Immigrant Workers Alliance ("KIWA") to assist the Department in educating workers and employers about the then-new minimum wage ordinance (the "2016 KIWA contract"). The contract provided that KIWA, with its own staff and through eleven community-group subcontractors, would provide a list of services to the Department: (1) outreach to workers; (2) outreach to employers; (3) worker training and education; (4) counseling and consultation to workers; (5) claims evaluation, gathering of worker documents, and claims resolution; (6) referral services; (7) translation and distribution of the Department's outreach materials; (8) publication of success stories; (9) collections assistance; and (10) assistance to the Department with translations, counseling, interviews, and other work. The contract required the community groups to provide services to workers from multiple language and cultural communities, including in six specified languages. Under the contract, the contractors and subcontractors attended quarterly meetings with Department staff.

Another useful reference are the similar contracts entered into by other municipal labor enforcement agencies. The SF OLSE entered into a $1,980,000 three-year contract with seven organizations providing services to workers in certain ethnic and language communities, with a focus on employees in low-wage industries.[116] The services included outreach, one-on-one counseling, provision of information and referrals, assisting with complaint resolution, tracking, and attending quarterly meetings.[117] Likewise, the Seattle OLS currently budgets $3 million for two-year contracts with community groups that provide assistance with worker education and outreach,[118] and an additional $500,000 to contract with organizations that assist with "outreach to small businesses owned by low-income and

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[116] Fine & Round, Federal, State, and Local Models, p. 27.
[117] *Id.*
[118] *See* https://www.seattle.gov/laborstandards/funding/community-outreach-and-education-fund/coef-current-recipients.

historically disenfranchised communities . . . to increase awareness and compliance with Seattle's labor standards."[119] These current figures represent a significant increase from the budget allocations five years earlier when Seattle's community outreach program was getting off the ground: in 2016, the Seattle OLSE allocated $1 million to contracts with community groups, and in 2017, the Seattle OLSE had a $5.3 million overall budget and allocated $1.5 million to contracts with community groups.[120]

Taken together, I recommend that the OLE largely model such partnerships on the 2016 KIWA Contract, but budget more than it did at that time for formal partnerships with community groups in order to bring it closer in line with the municipal labor organizations that have more experience with such partnerships. The 2016 KIWA Contract's format of a two-year contract with the right to renew is a sound format in order to give the relationships time to grow and develop. However, the 2016 KIWA Contract's $250,000 annual allocation is significantly lower than San Francisco's more than $600,000 annual expenditure and Seattle's current $1.5 million expenditure. Thus, I recommend that the Department allocate $750,000 for the first year and $1 million for the second year of the contract, and re-evaluate whether that amount should be increased in any contract extensions.

For the work covered by the contract, I recommend the following, which is based on the 2016 KIWA Contract with certain changes and additions:

(1) conduct outreach to workers via educational workshops, know-your-rights trainings, and distribution of educational materials

(2) conduct regular intake clinics in order to provide counseling and consultation to workers and assist workers with filing claims with OLE;

(3) develop potential cases prior to filing with OLE, including making an initial assessment of the factual and legal strength of workers' claims, gather worker documents, identify and speak with additional workers from the same workplace, and provide initial assessments of prioritization of case within OLE's strategic enforcement priorities;

(4) assist OLE with initial investigation by assisting with coordination of worker interviews, identifying and providing interview locations, providing culturally-competent language interpretation services, scheduling workers for interviews, and discussing the interview and investigation process with workers to facilitate their trust and comfort with the OLE investigators;

(5) providing culturally-competent translation of the Department's outreach materials;

(6) assisting with publication of success stories;

(7) providing legal services to witnesses, particularly where worker-witnesses require independent immigration counsel;

(8) track data on workers contacted to highlight the effectiveness of the outreach and what demographic groups and geographies are reached; and

(9) attend regular meetings with OLE.

As discussed above, OLE should employ certain best practices in these partnerships, including ensuring that the community partners are given discretion to exercise their professional judgment about how best to develop new cases.

As in the 2016 KIWA Contract, the contractor (including through any subcontractors) should be required to provide services in specified language, ethnic, and demographic communities. Multiple community groups will likely need to participate as contractors or subcontractors in order to meet the

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119.. *See* https://www.seattle.gov/laborstandards/funding/business-outreach-and-education-fund/boef-current-recipients.

120 Fine & Round, Federal, State, and Local Models, p. 32.

needs of all demographic populations most likely to occupy low-wage jobs and experience workplace violations in L.A. County. This need might be modeled, as in Seattle, by encouraging collaborative applications which require applicants to explain their vision for working together and have a lead organization with the infrastructure and capacity to collect reports, disperse funds, and provide consistent training and technical support to other sub-contracting organizations.[121]

B. Contracts with Employer Groups

I also recommend that the Department budget $400,000 over two years for contracts with organizations to provide outreach and education to small businesses.

Following Seattle's useful model, I recommend that the Department budget additional money to contract with groups that can assist with "outreach to small businesses owned by [members of] low-income and historically disenfranchised communities." While the Seattle OLSE currently budgets $500,000 for this program, as a similar program gets off the ground in L.A. County, I recommend that the Department budget $150,000 for the first year and $250,000 for the second year of a two-year contract. The work covered by such contracts would largely consist of conducting outreach to employers via educational workshops, trainings, and distribution of educational materials. The contracting parties would be able to provide such services in specified language, ethnic, and demographic communities.

As noted, this discussion is intended to assist the Department in developing an appropriate budget; as noted, additional portions of this Report will include more discussion of best practices in strategically managing such relationships.

C. Payment System

OLE staff have identified a need for a payment system that will facilitate and streamline the payment of fines owed to the County and to workers and the tracking of payment of such fines. Currently, the OLE does not have any means to allow for payment by credit cards and, in many cases, must rely on case resolutions involving long-term monthly payment plans, even where an employer is willing to make an upfront payment via credit card. Such payment plans result in delayed payment of fines, and over time, an employer may cease complying with its obligations under a payment plan, causing a collections challenge for the County. It may make the most sense for OLE to accept payment via a county-wide payment processing program,[122] rather than administer its own program with its attendant risks.[123] The Department budget should account for the costs of OLE's participation in an available payment processing program. It would also be helpful to OLE staff for the payment system to automatically tracks debts owed and payments made to the County where there are payment plans requiring multiple payments over time.

VIII. RECOMMENDATIONS FOR NEW L.A. COUNTY LABOR LAWS

A. Laws Enforced by Other Municipal Labor Agencies in the U.S.

Municipal labor agencies around the country enforce a variety of laws, some similar to those in L.A. County enforced by OLE, and some additional kinds of laws.

As in L.A. County, municipalities around the country have passed laws setting minimum wages in a municipality higher than that required by state or federal law and laws establishing fines, penalties, and other consequences for the failure to pay workers the wages they are owed by law. In addition to setting

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[121].. Seattle OLSE 2022-23 RFP Guidelines, available at https://www.seattle.gov/documents/Departments/LaborStandards/2022_2023COEFRFP_FINALClean.pdf.

[122] It appears that multiple L.A. County agencies currently accept payment for services and fees online. *See* https://lacounty.gov/services/pay/. Based on the direction of the various links on this page, it appears that the most analogous of such payment programs (business license, property taxes, collections) are currently administered by the Treasurer and Tax Collector.

[123] *See, e.g.,* New York State Office of the Comptroller, Local Government Management Guide: Cash Management Technology (Dec. 2021) (discussing benefits of using cash management technology alongside the need for internal controls, financial costs associated with credit card transactions, and risks of computer security problems and fraud).

across-the-board minimum wages that are higher that state or federal wages, many localities have passed laws setting industry-specific wages. These include higher hotel worker wage laws in Los Angeles, Oakland, Santa Monica, and West Hollywood, and Seattle's Domestic Workers Ordinance correcting the exclusion of domestic workers from state wage laws. Some municipalities have effectively increased wages for service workers by disallowing the lower wage often permitted under state and federal law for workers who customarily receive and regularly receive tips, a practice which is already disallowed under California law.

Most municipal minimum wage laws include requirements that employers provide employees with certain information about their wages and hours, and that they maintain and make available records of wages paid and hours worked. Most laws also include some combination of additional damages, fines, and penalties for violations.

At least four municipalities have passed laws to protect workers' continued employment when services are sub-contracted or a contract changes hands. New York City, Philadelphia, Hoboken, and Newark have all passed laws that generally require successor contractors to retain employees for at least 90 days, provide written offers of employment, retain employees by seniority, and maintain a preferential hiring list of employees not retained.[124] Some cities have passed such laws applying to specified industries, such as hotels and grocery stores.

Many municipalities have passed laws providing additional protections for certain sectors or categories of workers. For example, Chicago, Philadelphia, and Seattle have passed laws to provide domestic workers' rights. Seattle's domestic worker bill of rights gives minimum wage, rest break, and meal break rights to domestic workers, and includes domestic workers under existing laws protecting workers from discrimination and sexual harassment and entitling them to paid sick leave.[125.] Philadelphia's domestic worker bills of rights requires employers to provide employees with meal breaks, a written contract, and protects employees from sexual harassment and discrimination.[126]

For hotel workers, at least seven cities have passed laws creating health and safety protections (such as requiring panic buttons), while others have regulated workloads and created preferred hiring when ownership changes.

Finally, municipalities have enacted paid sick and safe leave laws, fair scheduling laws, and just cause laws, which are described in more detail in the following section.

B. Recommended New Laws for L.A. County

This section sets forth recommended new ordinances both to strengthen OLE's procedures and jurisdictional authority as well as to grant new substantive rights to workers within the County.

The first recommended jurisdictional change, enforcement of state law, would grant authority to OLE directly in response to the California State Legislature's 2020 statute expressly authorizing municipalities to enforce state wage laws. The second also reviews OLE's jurisdiction by considering whether OLE can assert jurisdiction over the entire county. Third, the County should grant subpoena authority to the Director of DCBA.

In the substantive rights category, the first and second recommendations, a hotel living wage law and a paid sick and safe leave law would grant workers in the unincorporated areas the same rights as those enjoyed by workers in the Cities of Los Angeles and Santa Monica (the latter of which are protected by laws enforced by OLE.) Third, I recommend that the County enact a fair scheduling law for the retail industry, which was the subject of a recent Board resolution, and consider expanding this protection to workers in the restaurant industry in the near future. Fourth, I recommend that the County enact a just-cause termination law. Finally, I recommend that the County enact a fair chance law, which was also the subject of a recent Board resolution, to protect workers with histories of criminal justice involvement.

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[124] Gerstein and Gong, *The Role of Local Government*, p. 24.

[125] https://www.seattle.gov/laborstandards/ordinances/domestic-workers

[126] https://www.phila.gov/services/working-jobs/worker-protections/report-a-domestic-workers-bill-of-rights-violation/

In order to effectively enforce these recommended ordinances, I recommend allocating additional resources with each new ordinance so that OLE can ensure that it has sufficient staff to carry its expanded responsibilities to enforce additional laws.

1. Procedural and Jurisdictional Changes

a) State Law Enforcement Authority

In 2020, California enacted AB 3075, which expressly authorized local governments to enforce state labor laws and eliminated any conclusion that local governments were preempted from such enforcement. The law provides, "Local jurisdictions may enforce state labor standards requirements regarding the payment of wages set forth in Division 2 (commencing with Section 200)."[127] I strongly recommend that the Board grant OLE authority to enforce state law. While Labor Code Division 2 includes an extensive set of laws, I would recommend that the Board grant OLE authority to enforce all Labor Code laws that it is legally permitted to enforce pursuant to AB 3075, and OLE can exercise its discretion—and promulgate Rules—regarding which state laws to enforce, and under what circumstances. But at a minimum, the County's wage enforcement should include fundamental wage protections that are uncovered in the course of an investigation of alleged County law violations. This would include overtime and double overtime (§ 510), meal breaks (§ 512), and until the County passes its own paid sick leave law, the State's paid sick leave law (§ 245 et seq.).

Adding state labor law enforcement to the County's existing enforcement of minimum wage laws will require only limited additional resources. Since OLE staff are already conducting audits to assess the wages paid to employees, they will simply add additional analytical steps to those same audits.

OLE might also consider, however, exercising discretion to enforce certain state laws that would allow it to regulate the conditions in industries over which it currently has only limited jurisdiction. This might include laws governing the warehouse industry (California Assembly Bill 701) and garment industry (Garment Worker Protection Act, California Senate Bill 62). In cases such as these, where the state has already enacted comprehensive and complex legislation balancing the interests of multiple stakeholders, it likely makes more sense for OLE to enforce these laws rather than enact a County-specific variation on the same complex set of laws.

b) Jurisdiction

The County should consider whether it can assert jurisdiction over the entire county. Advocates have suggested that the County could interpret its authority more broadly so as to create workplace protections covering workers at all businesses in the County, including the eighty-eight incorporated cities (possibly excluding only those cities that have passed their own labor protections). I recommend that the County analyze whether its laws could be interpreted to provide this protection. While more staff would be required to handle this broader enforcement, the "return on investment" would be substantial in the tremendous impact such enforcement would have on County labor practices as well as the resulting wages and fines that could be recouped.

c) Subpoena Authority

The County should grant subpoena authority to the Director of DCBA. OLE should be able to exercise legal authority to "access" records without need to conduct a physical inspection of every workplace, an untenable resource drain. Instead, OLE should be able to request records by letter and, where an employer fails to cooperate, to issue a subpoena compelling the production of the records necessary to conduct its inspection. Changing to this model will not be feasible if the Department needs to request Board approval for every subpoena issued, and thus the Board should grant or delegate this authority to the Department.

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[127] Cal. Labor Code. § 1205(b).

2. Substantive Rights for Workers in L.A. County

a) Hotel Living Wage

Neighboring jurisdictions have passed hotel worker living wage ordinances, and I recommend that the County do so as well. In 2007, the Los Angeles City Council passed a living wage ordinance for workers employed in hotels near Los Angeles International Airport (LAX), and in 2009, passed an ordinance that raised the wages for airport employees. Following the success of these ordinances, in 2014 the L.A. City Council passed a living wage ordinance covering workers in hotels with more than 150 rooms, which it amended in 2022 to cover hotels with more than 60 rooms. In 2016, Santa Monica passed its own hotel worker living wage ordinance, explicitly adopting the same wage rates as Los Angeles.

Key provisions include:[128]

- As of July 2022, the wage rate was set at $18.86 per hour in both jurisdictions.
- In Los Angeles, the ordinance was originally limited to hotels with more than 150 rooms,[129] and in 2022 was amended to cover all hotels with more than 60 rooms. Santa Monica's ordinance applies without limit to all hotels but permits hotels to request one-year hardship waivers.
- Both ordinances apply, by the definitions of "Hotel employer" and "Hotel worker," to subcontractors operating on the premises of such hotels.[130]
- Los Angeles's ordinance also provides additional sick leave to hotel workers, mandating 96 hours of paid leave (sick, vacation, and personal combined) plus 80 hours of unpaid sick leave. Santa Monica's ordinance incorporates by reference the city's general paid sick leave law applies.
- Both ordinances provide for treble damages in the case of "willful" violations.

I recommend that the County pass a similar ordinance for the same policy reasons set forth by the cities of Los Angeles and Santa Monica, and providing for consistency with neighboring jurisdictions in order to give hotel workers in the unincorporated areas the same rights as their colleagues in L.A. and Santa Monica. Such an ordinance will also be good for businesses as hotels in the unincorporated areas will not lose employees to higher paying jobs in neighboring areas if the wage rates are the same.

Adding a hotel living wage ordinance to the County's existing enforcement of minimum wage laws will require only limited additional resources since it is similar to minimum wage laws, and especially since OLE already has developed expertise in the substantive requirements and best practices of hotel living wage enforcement from enforcing Santa Monica's law.

b) Paid Sick and Safe Leave

To date, around twenty municipalities have passed some form of laws that require employers to provide paid time off for employees when they are sick, attending a medical appointment, or caring for a sick relative. California is among the more than fourteen states that has a statewide paid sick leave law, requiring employers to provide at least 24 hours of paid sick leave each year to workers who meet certain qualifications. California, along with some municipalities around the country, also includes a right to "safe leave" for situations in which workers or their family members are victims of domestic violence, stalking, and sexual assault. Multiple municipalities in California, including Los Angeles, San Francisco, Berkeley,

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[128] Santa Monica Mun. Code § 4.63.015 ("On July 1, 2017, and annually thereafter, the hourly wage shall match the hourly wage set for Hotel Workers in the City of Los Angeles.")

[129] *See* L.A. City Council Ordinance 183241, p. 2 (explaining policy reasons for this limitation).

[130] *See*, *e.g.*, L.A. Ordinance, § 186.01 ("'Hotel Employer' means a Person who owns, controls and/or operates a Hotel in the City, or a Person who owns, controls and/or operates any contracted, leased or sublet premises connected to or operated in conjunction with the Hotel's purpose, or a Person who provides services at the Hotel.")

and Santa Monica, have passed laws requiring employers to provide higher amounts of paid leave, ranging from 40-72 hours, depending on the jurisdiction and employer size.

OLE currently enforces Santa Monica's paid sick leave law, as well as the County's COVID-19 Supplemental Paid Leave Ordinance, which was designed to fill gaps in federal and state COVID-19-related paid leave laws.

I recommend that the County pass its own paid sick and safe leave law, providing employees in the unincorporated parts of the county amounts of sick leave commensurate with Santa Monica. Santa Monica requires that employers with 26 or more employees provide 72 hours of paid sick leave and smaller employers provide 40 hours. I recommend that the County adopt the same amounts as Santa Monica, which will streamline OLE's enforcement work and also because it is a good policy: more protective for workers where possible but recognizing the challenges to small businesses.[131] Further, the separate thresholds for small and large businesses are consistent with the County's minimum wage law, which set separate wage rates for employers with more or fewer than twenty-five employees from 2016-2021.

Adding paid sick leave to the County's existing enforcement of minimum wage laws will require only limited additional resources, especially since OLE already has developed expertise in the substantive requirements and best practices of paid sick leave enforcement from enforcing Santa Monica's paid sick leave laws.

There are additional provisions I recommend including based on the lessons learned by jurisdictions with extensive experience in paid sick leave enforcement, such as New York City. New York City recently amended its laws to clarify the penalties and enforcement mechanism appliable where an employer has an unlawful official or unofficial policy or practice. Under the amended law, the city may impose penalties (1) for each instance where an employer fails to properly compensate an employee for taking sick leave, (2) each instance where an employer unlawfully denies a request to use sick leave, (3) each instance of unlawful retaliation, and most notably, (4) "for each employee covered by an employer's official or unofficial policy or practice of not providing or refusing to allow the use of accrued safe/sick time in violation of [the law]."[132] Including this provision allows the enforcement agency to apply penalties and compensate employees where an employer violates the law by having an unlawful policy. This kind of provision is consistent with the public policy logic that an unlawful policy will deter employees from requesting paid sick leave, and thus penalties that only apply where an employer has refused payment or denied leave requests will not fully capture every employee who has been harmed by a facially unlawful policy or practice. Further, such a provision will significantly reduce the resources required for enforcement as the agency can avoid overly-individualized determinations where an employer has a facially-unlawful policy or practice.[133]

c) Fair Scheduling and Hours Protection

On December 20, 2022, the L.A. County Board of Supervisors passed a resolution requiring the Department to analyze issuance of a fair scheduling ordinance, and subsequently, to work with county counsel to draft such a law. A review of these laws in other jurisdictions and expert analysis demonstrates that such laws provide valuable protections to law-wage workers, but in enacting such a law, the County should be well-aware that enforcement of fair scheduling laws is technical and labor-intensive. Effective

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[131] The City of Los Angeles currently requires that all employers provide 48 hours of paid sick leave per year. The County's adoption of the more worker-protective threshold currently in effect in Santa Monica could inspire the City to increase its requirements.

[132] N.Y.A.C. § 20-924(d) (emphasis added).

[133] In contrast, the terms of a settlement with Starbucks pre-dating the 2020 amendment provided for an independent claims administrator to assess claims filed by employees documenting that they "were required to find a replacement in order to use sick leave and/or were disciplined for not finding a replacement to use sick leave," in violation of Starbucks' facially-violative "find-a-replacement" policy. https://www.nyc.gov/office-of-the-mayor/news/631-19/mayor-de-blasio-new-york-state-attorney-general-james-settlement-starbucks-for. The 2020 amendment would have permitted New York City to recover across-the-board penalties on behalf of all workers who were employed during the time that the facially-violative policy was in effect.

enforcement will require more resources, including, at a minimum, additional investigators, and ideally, additional data analysts and involvement of lawyers in the investigative stage.

(1) Purposes of Fair Scheduling Laws

Experts and worker advocates have found that fair scheduling laws are valuable tools to protect workers from increasingly unpredictable scheduling and under-employment. This workplace trend results from retailers' increasing use of "just-in-time scheduling to reduce labor costs," which places "tremendous pressure on frontline managers to calibrate staffing with customer demand."[134] As academics have explained the industry trends leading to widespread use of this practice, " employers engage in short-term optimization on labor costs by having the access to a flexible workforce and the ability to staff-up when needed without the expense that would come from guaranteeing a set number of hours per week or honoring work schedules once assigned."[135] The practices allowing employers this "access to a flexible workforce" include just-in-time scheduling, reliance on part-time workers who have incentives to accept any shifts offered, on-call scheduling, and sending workers home without pay after they report for a scheduled shift.[136] In short, these scheduling practices "effectively shift more of the risk and costs of doing business from firms onto their employees."[137]

Experts have found that these business practices exert terrible costs on workers, their families, and their communities. One report concluded, "Volatile hours not only mean volatile incomes, but add to the strain working families face as they try to plan ahead for child care or juggle schedules in order to take classes, hold down a second job, or pursue other career opportunities."[138] Economists have identified troubling social costs related to such practices, including that "children whose parents work nonstandard work schedules are more likely to have lower cognitive and behavioral outcomes."[139] They have also found benefits to businesses and the overall economy in jurisdictions that implemented fair scheduling laws: "A growing body of research has also found that increasing predictability, stability, and flexibility of worker schedules can lead to higher productivity and increased sales for retail stores, so such laws can also benefit employers and the greater economy."[140]

Retail workers in Los Angeles have shared the experience of their peers nationwide. A UCLA Labor Center report described the conclusions of a comprehensive study detailing the adverse impacts of unpredictable scheduling in Los Angeles.[141] The UCLA Report found that 72% of workers are assigned different schedules each week, more than half are required to have open availability[142], and 77% receive less than a week's notice of their schedule. 44% of workers surveyed had worked "clopening" shifts, the practice in which workers are scheduled to close a store late at night and then open early in the morning. Further, about half of workers would like more hours than they are currently assigned, of which the majority were not given full-time, forty-hour workweeks.[143] As a result, of these practices, L.A. retail

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[134] Center for Popular Democracy and State Innovation Exchange, *Restoring a Fair Workweek: State Policies To Combat Abusive Scheduling Practices*, p. 2 (Jan. 2020).
[135.]Daniel Schneider & Kristen Harknett, Center for Equitable Growth, *Hard Times: Routine Schedule Unpredictability and Material Hardship among Service Sector Workers* p. 3 (October 2019).
[136] *Id.*
[137] *Id.*, p. 2.
[138] Julia Wolfe, Janelle Jones, & David Cooper, Econ. Progress Institute, '*Fair workweek' laws help more than 1.8 million workers*, p.1 (July 19, 2018).
[139] *Id.*
[140] *Id.*
[141] UCLA Labor Center, Hour Crisis: Unstable Schedules in the Los Angeles Retail Sector (2018) (the "UCLA Report").
[142] "Open availability" is defined as the practice in which "Workers are expected to give a wide range of availability rather than their preferred days/ times/ shifts," and "Managers select days, hours, and shifts when they make the workers' schedule."
[143] *Id.*, p. 5-6.

workers experienced income instability, stress, difficulty obtaining childcare, and difficulty successfully pursuing education.[144]

(2) Fair Scheduling Laws in Other Jurisdictions

As the Board's Fair Workweek Motion observes, in recent years, a growing number of municipalities (and one state) have passed "fair workweek" or "fair scheduling" laws with the goal of ensuring that workers have predictable schedules, more opportunities for existing employees to work, and sufficient periods of rest between shifts. Such laws have been enacted in, among others, San Francisco, San Jose, Emeryville, Chicago, New York City, Philadelphia, Seattle, and the State of Oregon.[145]

Most recently and most pertinent here, on November 22, 2022, the Los Angeles City Council unanimously passed a Fair Work Week Ordinance, which became effective on April 1, 2023.[146] This ordinance requires certain large retail employers in L.A. City to, among other things, provide employees at least 14 days' advance notice of their work schedules and to compensate employees in the event of certain schedule changes. Similarly, San Francisco's fair scheduling law, which has been in effect, with some amendments, for nearly a decade, and currently requires certain large retail employers to provide schedules two weeks' in advance and to compensate employees if changes are made with less than seven days' notice, absent certain extenuating circumstances such as a business need caused by another employee's last-minute absence.[147] In New York City, employers of both retail and fast food workers must give advance notice of schedules and any scheduling changes.[148] If employers do not provide timely notice of scheduling changes, the employer may be required to pay a premium to the employee.

Both the Los Angeles and San Francisco ordinances also require covered employers to offer any extra work hours to certain current employees before hiring new employees or using contractors or staffing agencies to perform additional work.

San Francisco also has a separate law, applying more broadly to all employers with more than twenty employees, giving employees the right to request a flexible or predictable schedule to assist with caregiving responsibilities, and requiring employers to engage in an interactive process with the worker to assess whether the employer can grant the request, or some mutually-satisfactory alternative, without undue hardship to the employer.[149]

These laws are technical and in many jurisdictions are accompanied by detailed guidance, including implementing rules and regulations[150] and frequently-asked questions.[151] Labor agencies have found that enforcement of these laws is more labor intensive and requires more technical expertise than enforcement of wage laws. For example, the NYC OLPS uses teams of lawyers and data scientists to

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[144] *Id*., p. 7.
[145] Wolfe et al. '*Fair workweek' laws*, p. 4; Terri Gerstein et al., *The Role of Local Government in Protecting Workers' Rights*, p. 20.
[146] https://clkrep.lacity.org/onlinedocs/2019/19-0229_ord_draft_02-07-2020.pdf
[147] https://sf.gov/information/understanding-formula-retail-employee-rights-ordinance
[148] https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-137219
[149] https://sf.gov/information/understanding-family-friendly-workplace-ordinance
[150] *See*, *e.g.*, Seattle OLSE, Practices for administering Secure Scheduling Ordinance, available at https://www.seattle.gov/documents/Departments/LaborStandards/SS_Rules120.pdf (27-pages of implementing rules); N.Y.C. Rules § 7-601 *et seq.*, available at https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCrules/0-0-0-103853(16 pages of implementing rules); San Francisco Rules for the Formula Retail Employee Rights Ordinances, available at https://sf.gov/sites/default/files/2022-12/FRERO%20Final%20Rules.pdf (nine pages of implementing rules).
[151] *See*, *e.g.*, NYC DCWP, Fair Workweek Law in Retail:
Frequently Asked Questions, available at https://www.nyc.gov/assets/dca/downloads/pdf/workers/FAQs-FairWorkweek-Retail.pdf (thirteen pages of FAQs); Chicago Fair Workweek FAQ's, available at https://www.chicago.gov/content/dam/city/depts/bacp/OSL/20200518fwwshortFAQ77.pdf.

investigate fair scheduling complaints (rather than the investigators who handle that office's paid sick leave cases) and built up its team of data scientists in order to effectively enforce this law.[152]

(3) Board of Supervisors December 2022 Resolution

As noted above, the Board recently directed County Counsel, in consultation with the Department's OLE and the Department of Economic Opportunity, to draft a fair scheduling ordinance for retail workers. Establishing County Fair Workweek Employment Standards for Retail Workers (Dec. 20, 2022) (the "Fair Workweek Motion"). The Motion requires the Department, through OLE and in collaboration with County Counsel and the Department of Economic Opportunity ("DEO"), to report back to the Board in 120 days on:

- A summary of Los Angeles County's current retail worker and industry landscape;
- An analysis of comparable local jurisdictions' fair scheduling policies' outcomes and lessons learned;
- An analysis of other worker groups or industries that could also benefit from the adoption of fair scheduling policies; and
- Additional learnings from engagement of key relevant stakeholders such as employers, workers, labor, economic development and community-based organizations.

The Motion requires that County Counsel, with support from the Department and DEO, draft an ordinance, within six months, requiring all retail businesses with 300 more employees globally to, *inter alia*:

- Provide employees with 14 days' notice of their work schedule;
- Provide employees with the right to rest between multiple 10-hour shifts;
- Provide employees with a good faith estimate of weekly work hours at time of hire;
- Provide employees with a good faith estimate of potential opportunities for full-time work at time of hire;
- Provide employees with a good faith estimate of predictability of pay at time of hire;
- Provide employees with the right to request schedule changes and ability to decline hours before and after schedule posting;
- Ensure that additional work hours are offered to existing covered employees before hiring new workers;
- Provide employees with predictability pay compensation for last-minute scheduling changes, and
- Refrain from retaliating against employees who exercise their rights under the Fair Workweek ordinance.

The stated rationale for the Motion includes a recognition that retail workers "face significant financial stress and negative impacts on their health and wellbeing," noting that the industry's working conditions disproportionately affect women of color, specifically Latinas.[153] The Motion explains that unpredictable scheduling "rob[s] workers of their free time," while "clopenings" and split shifts do not provide enough time to rest.[154] The Motion also notes that the use of "scheduling programs known as

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[152] Results for America Economic Mobility Index, *Predictable schedules and fair workweeks: New York City, NY*, available at https://catalog.results4america.org/case-studies/fair-workweeks-nyc.
[153] Fair Workweek Motion, p. 1-2.
[154] *Id*., p. 2.

'just-in-time' or 'scheduling to demand'" overworks and underworks employees and, even worse, can be used to "ensure [that] certain workers do not qualify for overtime pay or health insurance."[155]

(4) Recommendations for New Fair Scheduling Laws

Fair scheduling laws provide a unique tool to combat a widespread workplace practice that is responsible for significant harms to workers and their families. As explained above, experts have found that employers' practices shifting business risk onto their low-wage workers contributes to workers' economic insecurity, housing insecurity, hunger, and difficulty paying bills, and is detrimental to their pursuit of educational and professional opportunities and to their children's well-being. These laws play a vital role in combatting major causes of working people remaining financially insecure.[156]

I recommend that the County implement such a law applicable to the retail industry, and potentially add the restaurant industry after the initial experience with retail. I also recommend that the County provide the resources necessary to effectively enforce this technical and complex law. To continue its practice of conducting workplace-wide investigations, OLE should add data analysts, ideally supervised by supervisors with legal training, to identify systemic violations embedded in an employer's standard scheduling practices, especially given that the large employers subject to these laws "rely on sophisticated algorithms and proprietary software for scheduling."[157]

Second, the County should strongly consider adopting the same requirements as neighboring jurisdictions[158]—as of now, the L.A. City—because firms operating in different parts of the county will need to create a single system to comply with the laws, and details that seem minor can prove major in terms of compliance and investigation. For example, whether and how employees "consented" to requested scheduling changes will make a significant difference in whether or not there are widespread violations.

However, there are certain provisions where the County *should* deviate from L.A. City's law. Most notably, the L.A. City Fair Workweek law does not permit workers to file administrative complaints or civil actions until they have given their employer "written notice. . . of the provisions of the Fair Work Week Ordinance alleged to have been violated and the facts to support the alleged violations," and the employer has refused to take action to cure the violations within fifteen days.[159] This language is inconsistent with the importance of encouraging employees to report violations in a system that "depend[s] in large part on worker complaints to direct [government] enforcement activity."[160] It is also frankly unrealistic and reflects a "misplaced assumption[ ] that workers have the substantive and procedural legal knowledge to identify violations of their rights and access the proper enforcement procedures."[161]

With the proper investment of resources, and a carefully drafted law, a fair scheduling law will be a valuable and meaningful protection for workers in the County.

d) Just Cause Discharge

(1) Purposes of Just Cause Laws

Experts have made a strong case for the expansion of "just-cause laws" that protect workers from unfair termination, arguing that "just-cause laws promote economic security and stability for workers and their families and protect workers from being punished or fired in retaliation for speaking up about critical

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[155] Id., 2-3.

[156] *See* Schneider & Hartnett, p. 4 (citing "temporal precarity" as one of the key causes of the "failure of employment to deliver workers from poverty").

[157] Results for America, p. 6-7.

[158] This is not a recommendation that the County wholesale adopt the City's ordinance, but rather that the jurisdictions communicate and collaborate.

[159] Sec. 188.05.

[160] Alexander & Prasad, *Bottom-Up Workplace Law Enforcement*, 89 Ind. L.J. at 1070.

[161] *Id.*

workplace problems such as discrimination or health and safety violations."[162] The current baseline for nearly all private sector American workers, including in Los Angeles, is that an employer can discipline or discharge workers for any reason at all unless the worker (or government enforcement agency) can prove that the employer fired the worker for reasons that violate anti-discrimination laws, or because the worker engaged in concerted or union activity protected by the National Labor Relations Act or made a complaint about workplace health and safety protected by OSHA or Cal/OSHA.

The American system of at-will employment is unique among democratic, capitalist countries,[163] and there is broad, bipartisan support for changing the law and expanding workers' protections from unfair termination.[164] In fact, American workers are often surprised to learn that they do not already have protection from unjust discharge.[165] Just-cause is not a foreign concept in the American system. Government employees at every level typically may only be discharged for good cause, and executive compensation agreements typically include clauses requiring the payment of substantial severance packages unless companies can show the employee was fired for good cause.[166] And as a standard component of collective-bargained contracts, at least one-third of private sector workers were covered by such protections when union density was at its peak in the 1950's.[167]

Studies have demonstrated the severe hardships caused by unfair terminations. As experts concluded, "Job loss and instability have cascading negative impacts on workers and their families. Faced with a steep loss in income, fired workers suffer severe economic dislocation," including food and housing insecurity.[168] These conclusions are consistent with a California-specific report recently published by the National Employment Law Project, which found that most California workers lack access to a meaningful safety net if they lose their job or part of their income and lack the savings necessary to help weather an interruption in work.[169] Just cause laws augment other worker protection laws by encouraging workers to raise complaints about health and safety, and exercise their rights under other laws.[170] As scholars have explained, "[m]ost US workplace rights—including those covering health and safety standards, antidiscrimination, and collective action—depend on workers taking affirmative steps to report employer violations. But if workers fear retaliation for reporting violations, the law will often go unenforced."[171] Government efforts to protect workers during the COVID-19 pandemic brought to light the

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[162] Irene Tung, *et al.*, NELP, *Just Cause Job Protections: Building Racial Equity and Shifting the Power Balance Between Workers and Employers* (April 2021).

[163] Thirty-six countries have ratified that the International Labor Organization Convention 158, Termination of Employment, which stipulates that "[t]he employment of a worker shall not be terminated unless there is a valid reason for such termination," and aside from this, "nearly all rich democracies have just cause provisions in their employment or labor codes." Kate Andrias & Alexander Hertel-Fernandez, *Ending At-Will Employment: A Guide for Just Cause Reform*, Roosevelt Institute, p. 7 (Roosevelt Inst., 2021).

[164] Andrias Hertel-Fernandez, p. 18 ("67 percent of all likely voters, including 73 percent of Democrats and 64 percent of Republicans, said they would [support] a policy 'preventing employers from firing workers for any reason other than legitimate work performance issues"). In California, 81 percent of working Californians of all parties support the adoption of laws protecting workers from unfair and arbitrary firings. Tsedeye Gebreselassie, *et al*, NELP, *How California can Lead on Retaliation Reforms to Dismantle Workplace Inequality* 22 (2022).

[164] Tung, *et al*., p. 14.

[165.] Pauline T. Kim, *Bargaining with Imperfect Information: A Study of Worker Perceptions of Legal Protection in an At-Will World*, Cornell L. Rev. 105 (1997) (finding that overwhelming majorities of workers—as high as 89%--believe that they are legally protected against arbitrary and unjust discharges when in fact they can be dismissed at will); Alexander Hertel-Fernandez, *American Workers' Experiences with Power, Information, And Rights on The Job: A Roadmap for Reform*, p. 23 (Roosevelt Inst., 2020).

[166] Tung, *et al*., p. 22.

[167] *Id.*, p. 21.

[168.] *Id.*, p. 3.

[169] Gebreselassie *et al.*, p. 14.

[170] Tung, *et al.* p. 14.

[171] Andrias & Hertel-Fernandez, p. 10.

dangers of at-will employment: "workers' reluctance to speak up about poor safety and health conditions undermines efforts by local, state, and federal government to implement COVID-19 workplace rules."[172]

Just cause protections can be particularly valuable for workers of color. The National Employment Law Project explained that the uniquely American "at-will" employment has its historical roots in Reconstruction-era efforts to control the labor of former slaves and their descendants, and remains particularly harmful for Black and Latinx employees.[173] As one example, antidiscrimination laws are extremely difficult to enforce because the complaining employees "bear the burden of proof to show that illegal discrimination was the motivation for the employer's adverse employment act,"[174] but just-cause laws shift the burden to employers to demonstrate a legally-valid reason for the termination.[175] There are also practical, financial impediments to vindicating rights through anti-discrimination laws: "by the time a worker obtains any relief from a retaliation investigation or lawsuit in California (if they do at all), a worker who was fired for reporting a violation . . . has suffered potentially devastating and long-term economic consequences."[176]

Studies have shown that half of Black and Hispanic workers, including those with college education and degrees, reported that they had been fired for no reason or a bad reason, demonstrating at least workers' perception of the broad reach of unfair treatment as a result of at-will employment.[177] In California, 46 percent of Latinx workers and 55 percent of Black workers reported that concern about being fired or disciplined prevented them from joining with their co-workers to push for job improvements.[178] As the sponsor to a just-cause law in Illinois explained, "At its core, this is a racial justice and economic justice issue that can no longer be ignored."[179]

Just cause laws also provide valuable protections for immigrant workers, who often work in the jobs that are most precarious and at risk of unjust termination. While immigrant workers are often fearful of reporting workplace violations because of fears of deportation and other immigration consequences,[180] just-cause protections will add another layer of security to the state's other efforts to counteract these fears.[181] Further, "to the extent that just cause can raise working conditions for all workers, immigrants included, it could boost standards for undocumented immigrants as well."[182]

(2) Just Cause Laws in Other Jurisdictions

A small number of municipalities have passed laws protecting workers from unfair termination, and it is under consideration in others. New York's Just Cause protections were passed as part of a package of protections for workers in the fast-food industry, and provide that a fast-food employer shall not discharge or significantly reduce the work hours for fast-food employees, "except for just cause or for a bona fide economic reason."[183] "Just cause" is defined as "the fast food employee's failure to satisfactorily perform job duties or misconduct that is demonstrably and materially harmful to the fast food employer's

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[172] *Id.,* p. 20-21.
[173] Tung *et al*., p. 14
[174] Andrias & Hertel-Fernandez, p. 17.
[175] Tung, *et al.,* p. 12 ("many unfair employment actions where race may be an element cannot realistically be challenged under our civil rights laws").
[176] Gebreselassie *et al.,* p. 16.
[177].. Andrias & Hertel-Fernandez, p. 9; Tung *et al*., p. 3.
[178].. Gebreselassie *et al*., p. 19.
[179].. Jeff Schuhrke, *The Movement to End At-Will Employment Is Getting Serious,* In These Times (Apr. 26, 2021) (quoting Illinois State Sen. Celina Villanueva).
[180].. Kati L. Griffith, *Undocumented Workers: Crossing the Borders of Immigration and Workplace Law*, 21 Cornell J.L. & Pub. Pol'y 611, 630 (2012) ("scholars have argued that restrictive immigration policies have reduced immigrant employees' willingness to come forward to complain about workplace law violations").
[181].. *See* Cal. Labor Code § 244 (making it unlawful for an employer to threaten to report an employee's suspected immigration status because the employee exercised rights under the labor code).
[182].. Andrias & Hertel-Fernandez, p. 22. https://codelibrary.amlegal.com/codes/newyorkcity/latest/NYCadmin/0-0-0-128838.
[183] N.Y.C. Admin. Code §§ 20-1272.

legitimate business interests."[184] New York's law includes other key components, including requiring that employers (1) provide employees notice of their policies, rules, and practice that provide the basis for discipline; (2) provide employees with relevant and adequate training; (3) apply consistently and reasonably the rule forming the basis of the discipline; and (4) conduct fair and objective investigations into the job performance or misconduct.. Further, any discharge must result from the application of progressive discipline unless it was based on "egregious failure by the employee to perform their duties, or for egregious misconduct."[185]

Other jurisdictions have passed or proposed just-cause legislation. In 2019, Philadelphia passed the Wrongful Termination from Parking Employment law, prohibiting parking lot employers from discharging employees without just cause. In 2021, Illinois legislators proposed the "Employee Security Act" (HB 3530/SB 2332) which, among other things, would prohibit the unjust discharge of an employee and require employers to utilize progressive discipline measures.[186] And in New York City, City Council members just recently proposed expanding their just-cause fast food worker protections to all employees.[187] Reflecting the latest innovations in expert analysis of these issues, the proposed pieces of legislation in both New York City and Illinois include provisions that would limit employers' use of discipline and discharge decisions generated through automated systems.[188]

In addition to looking to these existing laws for guidance, scholars have synthesized some principles contained in collectively bargained just-cause clauses from which municipalities can learn and borrow. First, just cause exists when an employee has failed to perform satisfactory work, which has four components: (1) regular attendance; (2) adherence to reasonable work rules; (3) reasonable quality and quantity of work; and (4) avoidance of conduct that would interfere with the employer's ability to carry on the business effectively.[189] Second, just-cause discipline must further one of the employer's legitimate interests: (1) rehabilitation of a potentially satisfactory employee; (2) deterrence of similar conduct by the disciplined employee or by other employees; and (3) protection of the employer's ability to operate the business.[190] Third, the employee is entitled to "industrial due process," including notice of rules and expectations, a decision based on facts following an investigation, progressive discipline, and like treatment in like cases.[191]

(3) Recommendations for a Just Cause Law

I recommend that the County pass a just-cause ordinance covering employees in the retail and fast-food industries, along the same lines as the New York City law, and allocate additional resources to support enforcement of it. Experts have recommended implementing just-cause protections in California based on findings that "Current California laws . . . perpetuate a deep power imbalance between workers and their employers that forces workers into harmful, unjust, and unstable working conditions [stemming]

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[184] *Id.*
[185] *Id.*
[186] *See* Secure Jobs Act, Illinois General Assembly, https://www.ilga.gov/legislation/BillStatus.asp?DocNum=3530&GAID=16&DocTypeID=HB&SessionID=110&GA=102.
[187] A Local Law to amend the administrative code of the city of New York, in relation to wrongful discharge from employment, N.Y. City Council Int. No. 837 (introduced Dec. 7, 2022), available at https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=5958217&GUID=44D72CEC-FE82-4A43-BA31-4BB15FBC15EB&Options=ID%7cText%7c&Search=
[188] *See also* Gebreselassie, *et al*., p. 28 ("Just-cause legislation is an opportunity to begin to address the harmful and discriminatory impact of employers' growing use of electronic surveillance, algorithmic decision-making, and automated employee evaluation systems.").
[189] Sharon Block and Benjamin Sachs, *Clean Slate for Worker Power: Building a Just Economy and Democracy*, p. 48 (Harv. L. School Labor and Worklife Program) (citing Roger I. Abrams & Dennis R. Nolan, *Toward a Theory of "Just Cause" in Employee Discipline Cases*, 1985 Duke L.J. 594, 611–12 (1985)).
[190] *Id*., at 49.
[191] *Id*., at 49.

from unjust and arbitrary firings permitted under California's at-will employment system, rampant retaliation by employers, and economic insecurity."[192]

A just cause law will require some additional resources because investigations and enforcement differs from minimum wage enforcement in that each case requires an individualized assessment. While these investigations cannot be scaled to the full workplace inquiry that OLE typically conducts in other enforcement work, enforcement of laws protecting workers from unfair discharge are extremely impactful because unlawful discharges send a dangerous message to all workers—and legally-required reinstatement provides a powerful antidote.

However, enforcement of just cause laws is significantly less resource-intensive than enforcing anti-discrimination or anti-retaliation laws,[193] in which the worker or enforcement agency has the burden of proving unlawful motive. In such investigations, the County would need to gather sufficient evidence to prove both that the employer fired the worker for an unlawful reason and that the employer's proffered reason is pretextual. By contrast, under just-case laws, the employer has the burden of demonstrating that its decision was based on legitimate reasons, and that its process followed progressive discipline and other "industrial due process" protocols.

In short, a just-cause law would provide a transformative protection to workers in the County that would support enforcement of other laws and make the County a national leader in protecting workers in low-wage jobs from communities of color and immigrant communities.

e) Fair Chance Law

I recommend that the County enact a fair chance law along the lines of the law contemplated by the Board's February 28, 2023 Motion[194] (the "Fair Chance Motion"). In general, fair chance laws are important to ease barriers to employment for people with arrest or conviction records. I agree with the Board that fair chance law serve important public policy goals: "Ensuring that individuals with criminal records have fair and equitable access to opportunities for gainful employment is critical to making communities safer and achieving rehabilitative outcomes."

As noted in the Fair Chance Motion, municipalities in California have enacted local fair chance laws that improve upon California's 2018 Fair Chance Act ("FCA").[195] California's FCA prohibits, among other things, employers from asking about or considering conviction history prior to making a job offer.

The Fair Chance Motion wisely recommends several improvements to the FCA. First, the Board recommends considering a prohibition on a look-back period of more than seven years, and generally prohibiting consideration of old arrests and convictions with no reasonable nexus with job duties. Second, the Fair Chance Motion contemplates providing a process for applicants to defend themselves against adverse hiring decisions, including by requiring employers to provide a written assessment of the relationship between the applicants' criminal history and the job duties and setting a timeframe for an appeal process. Next, the Board suggests considering the inclusion of fines and penalties to ensure that the law provides effective deterrence.

In addition to these commendable directives, I also recommend consideration of a few additional items.

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[192] Gebreselassie, *et al*., p. 22. This report also recommends that California establish a "retaliation fund" which would "allow[] a worker who has filed a wage-theft or other complaint with a state agency to access quick and meaningful financial assistance when their employer fires them or cuts part of their pay because of that complaint," explaining that such a fund would "directly fill the urgent gap left by California's existing anti-retaliation statutes under which it can take months, if not years, for a worker to obtain a final decision on a retaliation complaint." *Id*., p. 23. While this would certainly be valuable to workers, it is unclear whether and how such a fund could be funded at county, rather than state, level.

[193] Including Preventing Retaliation for Reporting Public Health Violations (L.A. County Ordinance No. 2020-0065U).

[194] L.A. Cty. Bd. of Supervisors Motion, Establishing a Fair Chance Ordinance in Los Angeles County (Feb. 28, 2023).

[195] Assembly Bill 1008, codified in Government Code § 12952.

The process for an employee to appeal an adverse decision should identify ways that the employee might make such appeal, and provide sufficient time to do so. This includes the right and sufficient time to submit evidence of mitigation or rehabilitation with evidence that may include letters of recommendation from community members and certificates from programs or education.[196] This process should also include giving the applicant the right to review their background check report for accuracy.[197]

Experts examining employment outcomes for applicants with criminal histories have recently concluded that in addition to fair chance laws regulating the conduct of employers, governments can consider additional actions. These include ensuring that occupational licensing requirements do not unduly restrict people with criminal convictions and enacting measures to automatically clear criminal records (known as clean slate measures).[198]

[196] NELP, Best Practices and Model Policies: Creating a Fair Chance Policy, p. 2 (April 2015).
[197] Angela Hanks, Center for Amer. Progress, Ban the Box and Beyond: Ensuring Individuals with a Criminal Record Have Access to the Labor Market (July 2017).
[198] Marina Zhavoronkova, et al., Center for Amer. Progress, How to Improve Employment Outcomes for Young Adults Leaving Incarceration (Mar. 16, 2023).