



COUNTY OF SAN DIEGO

AGENDA ITEM

BOARD OF SUPERVISORS

NORA VARGAS
First District

JOEL ANDERSON
Second District

TERRA LAWSON-REMER
Third District

VACANT
Fourth District

JIM DESMOND
Fifth District

DATE: May 23, 2023, and June 13, 2023

34

TO: Board of Supervisors

SUBJECT NOTICE OF PUBLIC HEARING

ADOPT AN ORDINANCE TO ADD SECTION 125.25 TO ARTICLE VIII OF THE SAN DIEGO COUNTY ADMINISTRATIVE CODE TO ESTABLISH THE CREATION OF A WORKPLACE JUSTICE FUND (5/23/23 – First Reading; 6/13/23- Second Reading unless ordinance is modified on second reading) (DISTRICTS: ALL)

OVERVIEW

On May 4, 2021 (23), the County of San Diego (County) Board of Supervisors (Board) directed the Chief Administrative Officer (CAO) to create the Office of Labor Standards and Enforcement (OLSE) and explore the creation of a fund that would provide workers seeking justice on a workplace issue with resources and assistance.

OLSE understands the financial losses suffered by workers seeking justice, including retaliatory measures by employers. Working in collaboration with community groups representing workers and organizations representing business groups, OLSE outlined two types of workplace justice funds — the Retaliation Model and the Restitution Model — in its May 31, 2022, annual report.

Today's request is for the Board to approve the introduction of an ordinance creating a Workplace Justice Fund that combines the Retaliation and Restitution Models, authorize OLSE to administer the fund, place \$100,000 in the fund and direct the CAO to report back to the Board with an update. If approved, the ordinance will be scheduled for adoption on May 23, 2023. If the proposed ordinance is altered on May 23, 2023, then on that date a subsequent meeting date will be selected for the ordinance's adoption.

RECOMMENDATION(S) CHIEF ADMINISTRATIVE OFFICER

On May 23, 2023:

1. Approve the introduction of the Ordinance:

AN ORDINANCE ADDING A NEW SECTION 125.25 TO ARTICLE VIII OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES TO ESTABLISH THE CREATION OF A WORKPLACE JUSTICE FUND

SUBJECT: ADOPT AN ORDINANCE TO ADD SECTION 125.25 TO ARTICLE VIII OF THE SAN DIEGO COUNTY ADMINISTRATIVE CODE TO ESTABLISH THE CREATION OF A WORKPLACE JUSTICE FUND (5/23/23 – First Reading; 6/13/23- Second Reading unless ordinance is modified on second reading (DISTRICTS: ALL))

If, on May 23, 2023, the County of San Diego Board of Supervisors takes action as recommended, then on June 13, 2023, consider and adopt second reading:

1. AN ORDINANCE ADDING A NEW SECTION 125.25 TO ARTICLE VIII OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES TO ESTABLISH THE CREATION OF A WORKPLACE JUSTICE FUND
2. Direct the Chief Administrative Officer to report back within 120 days on the status of the Workplace Justice Fund.
3. Direct the Auditor and Controller to establish an interest-bearing trust fund, the “Workplace Justice Fund,” with interest earnings allocated and distributed to this fund.
4. Direct the Chief Administrative Officer to place \$100,000 of the funding previously allocated to the Chief Administrative Office in the Workplace Justice Trust Fund which may be used to support workers seeking justice on a workplace issue.

EQUITY IMPACT STATEMENT

Establishing a Workplace Justice Fund will demonstrate the County’s commitment to supporting working people by providing a financial backstop for victims of retaliation or wage theft. Although a comprehensive breakdown of wage theft judgment complainants by race or other demographic group is not available, it is clear that people of color are disproportionately impacted by wage theft¹. The Workplace Justice Fund will allow OLSE to compensate some victims of wage theft who were retaliated against for asserting their rights or whose employers abandoned their duties to their workers after losing a wage claim adjudication.

SUSTAINABILITY IMPACT STATEMENT

The proposed action to create a Workplace Justice Fund contributes to many of the County of San Diego Sustainability Goals: engage the community, provide just and equitable access, and protect health and well-being. In terms of sustainability in equity, economy, and health/well-being, it will impact the communities and socio-economic groups historically burdened by wage theft by providing thousands of dollars to make ends meet and possible job transition or period of unemployment and help keep the local economy strong. Extensive community engagement through an OLSE-convened Fair Workplace Collaborative comprised of community stakeholders is a major component of the project. Remunerating victims of wage theft will improve their well-being and ability to persevere in the labor market and beyond.

FISCAL IMPACT

Funds for this request are included in the Fiscal Year 2022-23 Operational Plan in the Chief Administrative Office. If approved, this request will establish an interest-bearing trust fund, the Workplace Justice Fund, and place \$100,000 in the fund. The funding source is available General

¹ <https://calmatters.org/explainers/when-employers-steal-wages-from-workers/>

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Purpose Revenue currently budgeted in the Chief Administrative Office. Wage theft judgments will be assigned to the Office of Revenue and Recovery, which may be able to recoup some or all of the Workplace Justice Fund expenditures in future years. There will be no additional staff years.

Funding will be placed in the Workplace Justice Fund following the Board's approval and adoption of the Ordinance establishing the fund. Future appropriations will be included in future years CAO Recommended Operational Plan based on remaining funds available in the Workplace Justice Fund.

BUSINESS IMPACT STATEMENT

N/A

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

In San Diego County over the past 6 years, nearly \$13 million in unpaid/unsatisfied wage theft judgments are owed to nearly 1,000 workers.² Similarly, in 2020, the Legislative Analyst's Office reported California workers were filing 30,000 claims a year on average, totaling more than \$320 million annually in allegedly stolen wages. Workers were recovering about \$40 million, or about one-eighth, of those claims. Accordingly, to help remedy these unpaid judgments, there are two models of workplace justice funds incorporated into the County of San Diego Workplace Justice Fund and thus two broad circumstances where workers may successfully file a claim.

Retaliation Model

Generally, the Retaliation Model Workplace Justice Fund operates as a resource that a state or local enforcement agency can set up for workers who file a wage theft complaint and then experience retaliation for filing. This type of fund helps any worker who wants to report wage theft but is concerned that their employer will retaliate with an adverse action such as denial of promotion, non-hire, denial of job benefits, demotion, suspension, discharge, or anything that may dissuade a reasonable person from engaging in protected activity, e.g., complaining. Ultimately, a swiftly administered retaliation fund, run by a labor enforcement agency, has the potential to help more workers report wage theft by providing workers the financial support they need when retaliated against, not months or years later.

For a worker to access prompt and meaningful financial support, a retaliation fund should only require a worker to show that they filed a wage theft complaint, that their employer had notice of the complaint, that their employer subsequently took adverse action against the employee after learning of the complaint, and upon a finding by OLSE of retaliation. Agencies should, however,

² Data is from the California Division of Labor Standards and Enforcement. DLSE data range is from 1/1/2017 to 12/31/2022. Calculated interest of the back wages owed is not included.

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require employers who are ultimately found to have retaliated to replenish the fund. When workers cannot come forward to report violations, entire communities, especially Black, Brown, indigenous, and immigrant communities, lose.

Accordingly, the mechanics of the retaliation aspect of the Workplace Justice Fund are described as follows:

1. It applies only to complaints related to ordinances that OLSE enforces.
2. Covered workers must file a complaint with OLSE.
3. Subsequently, a worker suffers an adverse employment action/retaliation for filing.
4. OLSE investigates both the original complaint and the retaliation claim.
5. If OLSE substantiates a claim of retaliation, it provides the complainant up to a \$4,000 lump sum payment to assist in transition to a new job.
6. The County issues a 1099 tax form.
7. If OLSE substantiates an allegation of retaliation, the employer would be required to fully compensate OLSE for staff time and costs associated with investigating the claim. If the covered worker ultimately prevails on a retaliation cause of action in private litigation or through another government entity's adjudication process, the worker would be required to pay the County back.

Restitution Model

Generally, the Restitution Model Workplace Justice Fund would help victims of wage theft who are unable to collect their already-adjudicated judgments from their employers whether they have no assets, are out of business, or otherwise do not pay when all opportunities to appeal are exhausted. This was particularly exacerbated in light of the COVID-19 pandemic, which drove many employers out of business in a short period of time without compensating their employees. It would operate similar to Oregon's Bureau of Labor Industries fund or the State of California's Car Wash Worker Restitution Fund, the latter of which is outlined in Section 13694 of Chapter 6 of Division 1 of Title 8 of the California Code of Regulations.

The mechanics of the restitution aspect of the Workplace Justice Fund are described as follows:

1. An eligible worker must be all of the following:
 - a. a San Diego County resident or worker of an employer doing business in the County;
 - b. a worker with an unpaid wage theft judgment against their former employer beginning in May of 2020; and

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- c. judgment originated from the San Diego Division of Labor Standards Enforcement (DLSE) Office;
 - d. a worker who was never able to recover money from the employer despite multiple attempts.
2. Workers file a claim with OLSE to request payment of the judgment as the County would be the payor of last resort. OLSE investigates claim to determine eligibility criteria is verified.
3. Worker assigns entire judgment to County.
4. The County pays up to \$3,000 of the judgment.
5. The County issues a 1099 tax form.
6. Office of Revenue and Recovery (ORR) will attempt to collect the assigned judgment from the employer. Any funds recovered in excess of the amount the County paid the claimant, will be returned to the claimant. If the claimant successfully recovers the full judgment independently of the County, they would be required to pay the County back. The net amount of collections less the ORR admin fee will be distributed to the OLSE POETA to be paid to the claimant.
7. All disbursements from the Workplace Justice Fund are at the discretion of OLSE.

The Workplace Justice Fund would be funded initially by \$100,000 of existing General Purpose Revenue currently budgeted in the CAO's office. Future appropriations will be included in future years CAO Recommended Operational Plan based on remaining funds available in the Workplace Justice Fund.

Today's request is for the Board to approve the introduction of an ordinance creating a Workplace Justice Fund that combines the retaliation and restitution models, authorize OLSE to administer the fund, place \$100,000 in the fund, and direct the CAO to report back to the Board with an update within 120 days. If approved, the ordinance will be scheduled for adoption on May 23, 2023. If the proposed ordinance is altered on May 23, 2023, then on that date a subsequent meeting date will be selected for the ordinance's adoption.

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LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today's proposed actions support the Equity, Justice, and Innovation Initiatives in the County of San Diego's 2023-2028 Strategic Plan by advancing opportunities for economic growth and development to all individuals and the community, contributing to a system of restorative justice that strives to repair harm to victims and to the community at large, and by fostering a new idea and implementing best practices to achieve organizational excellence.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Helen N. Robbins-Meyer". The signature is fluid and cursive, with the last name being more prominent.

HELEN N. ROBBINS-MEYER
Interim Chief Administrative Officer

ATTACHMENT(S)

ATTACHMENT A - AN ORDINANCE ADDING A NEW SECTION 125.25 TO ARTICLE VIII OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES TO ESTABLISH THE CREATION OF A WORKPLACE JUSTICE FUND (Clean Copy)

ATTACHMENT B - AN ORDINANCE ADDING A NEW SECTION 125.25 TO ARTICLE VIII OF THE SAN DIEGO COUNTY CODE OF ADMINISTRATIVE ORDINANCES TO ESTABLISH THE CREATION OF A WORKPLACE JUSTICE FUND (Informational Copy)

ATTACHMENT C – SUMMARY OF PROPOSED ORDINANCE