

ATTACHMENT

For Item

#34

Tuesday,
May 23, 2023

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From: [Ikeler, Rachael](#)
To: [FGG, Public Comment](#)
Cc: [Butler, Branden](#)
Subject: DA Letter of Support for Item 34
Date: Friday, May 19, 2023 2:06:48 PM
Attachments: [Letter of Support Workplace Justice Fund.pdf](#)

Good Afternoon!

Please see the attached letter of support from DA Summer Stephan in regards to item 34 for the regular Tuesday agenda.

If you have any questions or concerns, please let me know and I would be happy to assist you!

Respectfully,

Rachael N. Ikeler

(She/Her/Hers)

Group Program Manager

COUNTY OF SAN DIEGO | Office of Labor Standards and Enforcement

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**OFFICE OF
THE DISTRICT ATTORNEY
COUNTY OF SAN DIEGO**

**SUMMER STEPHAN
DISTRICT ATTORNEY**

DWAIN D. WOODLEY
ASSISTANT DISTRICT ATTORNEY

May 15, 2023

San Diego County Board of Supervisors
1600 Pacific Highway, Room 331
San Diego, CA 92101

Honorable San Diego County Board of Supervisors,

Illegal labor practices have far-reaching negative consequences for our entire community. Not only do they prevent responsible and law-abiding employers from fair and balanced competition, they also subject workers to unfair labor practices and unsafe working conditions.

Because of this, I support Item 34, of the creation of a Workplace Justice Fund that would provide resources and assistance to workers seeking justice on a workplace issue. Creating a Workplace Justice Fund will encourage victims to come forward and report abuse and deplorable working conditions without the fear of losing their livelihood.

In 2020, my office convened a series of meetings with local workplace advocates and community partners to address this disparity. During these discussions, we repeatedly heard about the challenges in reporting violations and accessing resources. Workers are reluctant to report labor abuses or labor trafficking due to the fear of retaliation or, even worse, losing their job altogether. This is especially true of low-wage workers who are disproportionately the victims of wage theft.

As our Workplace Justice Unit continues to empower workers with accessible reporting mechanisms, today's action provides protection against retaliation, ensuring that workers will not suffer financial consequences for coming forward. Additionally, by assisting with the enforcement and collection of restitution judgments, San Diego County continues to invest resources into making sure workers receive the hard-earned wages they are owed.

The Office of Labor Standards and Enforcement (OLSE) has been a key partner in my office's efforts to protect workers' rights. The OLSE has worked with our Workplace Justice Unit to craft innovative ideas to educate workers and cultivate potential criminal case referrals. We look forward to continuing to work with the Board of Supervisors and the OLSE on innovative strategies to protect our workers from workplace injustices.

Sincerely,



**SUMMER STEPHAN
San Diego County District Attorney**

From: [Marisa Díaz](#)
To: [FGG, Public Comment](#)
Subject: [External] Letter of Support for the Creation of a Workplace Justice Fund (May 23, 2023 Board Meeting)
Date: Friday, May 19, 2023 3:27:38 PM
Attachments: [NELP Letter of Support for Workplace Justice Fund, Final.pdf](#)

Good afternoon,

I write to submit the attached letter of support from my organization, the National Employment Law Project (NELP), in support of the creation of a Workplace Justice Fund through the adoption of an ordinance to add Section 125.25 to Article VIII of the San Diego County Administrative Code. This matter is currently listed as agenda item 34 on the [agenda](#) for the Board of Supervisors' May 23, 2023, meeting.


Please let me know if you need any additional information from me and thank you in advance for processing our letter.

Regards,



Marisa Díaz

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President & CEO

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May 19, 2023

The Clerk of the Board of Supervisors
San Diego County Board of Supervisors
600 Pacific Highway, Fourth Floor, Room 402
San Diego, California 92101
Email: PublicComment@sdcounty.ca.gov

Dear Chair Vargas, Vice Chair Lawson-Remer, and Supervisors Anderson and Desmond:

On behalf of the National Employment Law Project (NELP), I am writing in strong support of the San Diego County Office of Labor Standards and Enforcement's (OLSE) Workplace Justice Fund, which would provide a restitution and retaliation fund for workers who have experienced wage theft and/or retaliation. The former would assist workers in collecting judgments for wages owed and the latter would provide one-time payments to workers who lose crucial income because of employer retaliation. NELP strongly supports both aspects of the Workplace Justice Fund, and we write here to emphasize our support for the retaliation fund, which we have promoted across jurisdictions as an innovative tool to improve labor standards enforcement.

NELP is a non-profit, non-partisan research and advocacy organization specializing in employment policy. We regularly partner with federal, state, and local lawmakers on a wide range of issues to promote workers' rights and labor standards enforcement. Given the prevalence of retaliation as a barrier to labor rights enforcement—especially for Black and Indigenous workers, workers of color, and immigrant workers—we have advocated for stronger anti-retaliation protections and enforcement mechanisms nationally for many years.¹

Employer Retaliation Against Workers is Rampant Across California

In 2022, as a member of the California Coalition for Worker Power, NELP published a report called [*How California Can Lead on Retaliation Reforms to Dismantle Workplace Inequality*](#) (Retaliation Reform Report). This report makes clear that fear and experiences of retaliation are widespread among California workers.

To better understand the reality of how workers experience retaliation in the state, the NELP report draws on a survey of California workers as well as a series of 10 focus groups. For the survey, NELP commissioned YouGov to conduct a survey of 1,000 adults in the California workforce, ages 18-64, across the income spectrum, and representative by age, gender, race, and years of education. Survey responses revealed high rates of workplace violations, but low rates of reporting those violations; high rates of employer retaliation, or concern about retaliation; and frequent unfair and arbitrary firings.

For example, most workers (54 percent) who had reported a rights violation to their employer indicated that they subsequently experienced some form of retaliation. Additionally, “more than half of working Californians (51 percent) said that concern about employer retaliation would influence their decision about whether or not to report a workplace violation in the future.”²

San Diego County OLSE’s Retaliation Fund Can Lead California

NELP’s Retaliation Reform Report (referenced above) proposes the establishment of a state-wide retaliation fund as one of its key policy recommendations. In enacting a retaliation fund on the local level, San Diego County can lead the state in this effort and become a model for local and state jurisdictions across the U.S.

As explained in NELP’s April 21, 2021 [Policy Brief](#) on retaliation funds (Retaliation Fund Policy Brief), workers “facing wage theft are stuck between two impossible choices: laboring under illegal workplace conditions or speaking out and risking, among other things, their already precarious and insufficient economic security.”³ If a worker reports workplace abuses, they often wait years before any final judgment is issued. As demonstrated by the restitution fund portion of the Workplace Justice Fund, even after a final judgment, workers may face additional barriers in the collections phase.

Our Retaliation Reform Report’s state-wide retaliation fund policy recommendation is based on worker survey results such as:

- 70 percent of survey respondents reported that it would be hard to make their next rent or mortgage payment if they lost their job;
- For more than two in three California workers, access to a retaliation hardship fund could help them report a future violation to a government agency; and,
- 92 percent of working Californians support the establishment of a retaliation hardship fund that would provide one-time financial assistance to workers who file good-faith complaints about employer retaliation.⁴

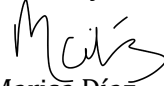
By providing quick and meaningful financial support to workers when they need it most, a retaliation fund can make it easier for workers to report wage theft and pursue their cases until fruition. In doing so, “this fund would help fill the urgent gap in the current enforcement landscape that forces workers to remain silent or risk everything by speaking up.”⁵ Because our current legal system depends on workers’ complaints as the primary means of labor standards enforcement, this type of fund has the potential to significantly improve workplace rights enforcement more broadly.

For these reasons, NELP strongly supports the OLSE’s Workplace Justice Fund. Once the fund is established, however, we would encourage the County to consider amending the retaliation fund provision that would require a worker to repay the one-time payment if they recover monetary remedies through an independent private action in court or through another agency. As noted in our Retaliation Reform Report and Retaliation Fund Policy Brief, we strongly recommend that the burden of any repayments into the fund fall only on employers who are found to have retaliated

unlawfully.⁶ We would welcome the opportunity to support the County on any future amendments of this nature.

NELP applauds the OLSE for proposing the Workplace Justice Fund as an innovative and crucial tool to enforce workers' rights and level the playing field for law-abiding employers. We respectfully urge the Board to pass the Workplace Justice Fund.

Sincerely,


Marisa Díaz
Senior Staff Attorney

Endnotes

- ¹ See, for example, past NELP reports and briefs: “How California can Lead on Retaliation Reforms to Dismantle Workplace Inequality” (Retaliation Reform Report), November 2, 2022, <https://www.nelp.org/publication/how-california-can-lead-on-retaliation-reforms-to-dismantle-workplace-inequality>; “Retaliation Funds: A New Tool to Tackle Wage Theft” (Retaliation Fund Policy Brief), April 21, 2021, <https://www.nelp.org/publication/retaliation-funds-new-tool-tackle-wage-theft/>; “Power and Voice at Work: New Yorkers View Employer Retaliation as a Barrier to Addressing Workplace Problems and Express Desire for Union Representation,” August 10, 2021, <https://www.nelp.org/publication/power-and-voice-at-work-new-yorkers-view-employer-retaliation-as-a-barrier-to-addressing-workplace-problems-and-express-desire-for-union-representation/>; “Exposing Wage Theft Without Fear: States Must Protect Workers from Retaliation,” June 24, 2019, <https://www.nelp.org/publication/exposing-wage-theft-without-fear/>; and “OSHA Must Protect Covid Whistleblowers Who File Retaliation Complaints,” October 8, 2020, <https://www.nelp.org/publication/osha-failed-protect-whistleblowers-filed-covid-retaliation-complaints/>.
- ² Retaliation Reform Report at pages 8 - 11, <https://s27147.pcdn.co/wp-content/uploads/NELP-Report-CA-Retaliation-Funds-2022.pdf>.
- ³ Retaliation Fund Policy Brief, <https://www.nelp.org/publication/retaliation-funds-new-tool-tackle-wage-theft/>.
- ⁴ Retaliation Reform Report at pages 12, 20, <https://s27147.pcdn.co/wp-content/uploads/NELP-Report-CA-Retaliation-Funds-2022.pdf>.
- ⁵ Retaliation Fund Policy Brief at page 1, <https://www.nelp.org/publication/retaliation-funds-new-tool-tackle-wage-theft/>.
- ⁶ See NELP’s [Retaliation Reform Report](#) at page 23 and [Retaliation Fund Policy Brief](#) at page 5.