

LEGISLATIVE DIGEST

[Administrative Code - Worker Justice Fund]

Ordinance amending the Administrative Code to establish the Worker Justice Fund to provide financial restitution and timely payment to workers who have not received payment from their employers for violations of City worker protection laws; to authorize the Fund to receive monies paid to the City as penalties and liquidated damages by employers as well as additional monies appropriated in the future; and to require the Office of Labor Standards Enforcement to administer the Fund and make payments to workers based on specified criteria.

Existing Law

The City's Labor and Employment Code establishes rules that govern the employment and work practices of businesses within the City limits, and of contractors, lessees, and others that do business with the City. Employers and contractors (referred to in this digest together as "employers") who violate these rules may be required to compensate the workers who suffered the violations, pay penalties or liquidated damages to those workers, or pay penalties or liquidated damages to the City. The City's Office of Labor Standards Enforcement (OLSE) enforces violations of the Labor and Employment Code. When the City receives penalty payments from employers who have violated these worker protection laws, the City generally appropriates those funds to help pay for the costs of OLSE's enforcement activities.

If an employer fails to pay workers the money it owes under a final determination by OLSE or a hearing officer, a final adjudication in court, or a written agreement between the employer and the City, then the workers may attempt to recover the funds from the employer. But in some situations, the workers never receive payment from the employer. In those situations, the City does not compensate the worker, and the City has no special funding to provide such compensation.

When an employer owes its current or former workers money for violations of the Labor and Employment Code, OLSE sometimes agrees to receive the money from the employer and distribute it to workers. On rare occasions, OLSE is not able to locate all the workers who are entitled to payment, and the City holds the funds for those workers, sometimes for several years.

Amendments to Current Law

The ordinance would establish the Worker Justice Fund. Any money paid to the City as penalties or liquidated damages would automatically be appropriated into the Fund. The Fund would also receive any money appropriated by the Board, designated in a written agreement, or donated for the purpose of compensating workers for damages under the Labor and Employment Code.

The City would use the Fund to provide financial restitution and timely payment to workers whose employers have violated worker protection laws in the Labor and Employment Code. The City would use the Fund to pay those workers in several specific situations: (1) where the worker has not received full payment from their employer one year after a final determination by OLSE or a hearing officer or a final adjudication in court; (2) where the worker has not received full payment from their employer within one year after a deadline established in a written agreement between the employer and the City; (3) where the worker has not received full payment from their employer when the worker's employer entered a written agreement with the City that includes a long-term payment plan; and (4) where the worker has not received full payment from their employer under a final determination by OLSE or a hearing officer, a final adjudication in court, or a written agreement, if OLSE or the City Attorney has determined that it is infeasible or impracticable to collect the money from the employer.

OLSE would administer the Fund in consultation with the Controller. OLSE would identify workers who are eligible to receive money from the Fund, and would make diligent efforts to identify those workers throughout the year. Once a year between July 1 and August 15, OLSE would determine a final list of all workers who were eligible to receive money from the Fund in the preceding fiscal year (ending June 30). The City would then pay those workers from the Fund. If the Fund does not contain enough money to pay all the workers on the list, then OLSE would pay workers in groups based on a priority order set forth in the ordinance.

The ordinance would also require OLSE to report to the Mayor and the Board of Supervisors every year about the use of money in the Fund.

The ordinance would require OLSE to work with the Treasurer-Tax Collector to initiate the process to "escheat" money that the City has held for three or more years on behalf of workers if the workers have not contacted the City to claim that money. The escheatment process would allow the City to use that unclaimed money for other purposes, and the ordinance states that the Board of Supervisors intends to transfer all of the escheated money to the Fund.

The ordinance would also state the Board's intent to continue to fund OLSE's budget at least at its current level so OLSE may continue its work while also administering the Fund.

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