

# QUESTIONS TO CONSIDER IN ESTABLISHING YOUR WAGE ENFORCEMENT PROGRAM

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## **A: REFERRALS AND COMPLAINTS**

1. How will the department decide which complaints to prioritize for investigation?
  - a. Worst-first? (Affects more than one employee, employee is still working there, child labor, or other serious violation.)
  - b. Repeat offender?
  - c. Targeted industries?
  - d. First come, first served? Why?
2. Will the agency accept third party complaints?
3. What will the worker have to fill out in order to designate an organization as her representative?
4. If the agency receives the complaint through an organization, how will it communicate with the organization over the course of the investigation? Is the agency willing to provide status updates to the organization?

## **B: STRATEGIC ENFORCEMENT (targeting highly non-compliant sectors in which large numbers of vulnerable workers are employed)**

1. Will the agency rely solely on complaints or will it prioritize certain industries for more proactive enforcement? If so, on what basis will the industries be selected and what will the intervention be?
2. Will the agency work with organizations in targeting industries and carrying out its strategic

enforcement program?

## **C: INVESTIGATIONS**

1. When on site, will investigators investigate on behalf of all workers employed at the worksite, or will they focus only on the individual complainant?
2. When on site, will investigators look for violations of only one ordinance or other laws as well? Which ones? Only local ordinances? State? Federal?
3. Will the inspector ask an organizational representative to accompany them (union, worker center, community organization, non-profit legal clinic) on the inspection? Under what circumstances?
4. Will the investigator accept payroll reconstruction or other documents from organizations that are working closely with the workers?
5. Will the investigator interview employees solely on the employer's premises? How will the anonymity and confidentiality of workers be ensured?
6. Will the investigator interview employees off the employer's premises? Will the investigator be empowered to do this in collaboration with an organizational representative? Will the investigator be allowed to interview workers off-site at the organization's office?
7. Will the complainant(s) and the organization be consulted after the investigator or hearing officer has met with the employer and given the chance to respond to what the employer has said?

## **D: SETTLEMENT NEGOTIATIONS AND COLLECTION**

1. What will be the policy on settlements? Does the statute require that workers must receive the full amount owed? Can fines be waived where the employer agrees to pay the full amount owed to the worker?
2. Will the worker and organization be consulted before the investigator or hearing officer agrees to a settlement amount with the employer?
3. What sort of support will be available for workers who must attend a hearing? What sort of legal support, training, or assistance including translation will be offered to the worker?
4. How will the agency ensure that settlements are collected?

## **E: PENALTIES**

1. How will the agency decide when to bring penalties, fines, or liquidated damages?
2. Will it ever turn over cases for criminal prosecution? Who will be responsible for bringing these cases?

3. Does the agency have relationships with license, contract and permit-issuing agencies in the municipality? If so, is there a protocol in place for revocation or suspension of those licenses, permits, or contracts for violation of the local wage ordinance?
4. What will be the agency's strategy for ensuring that penalty payments are collected?

## **F: DATA**

1. Will the department collect data on the approximate length of time it takes to resolve a complaint? What about the resolution of claims? Collection of settlements and penalties?

Will the agency have a way of tracking repeat offenders?

2.

# INTAKE & INVESTIGATION RECOMMENDATIONS

## GOALS

- Collect detailed, accurate information to facilitate investigation and referral
- Provide clear questions with adequate explanation; and
- Encourage workers to share truthfully and completely, without fear or intimidation.

## INTAKE PROCEDURE RECOMMENDATIONS

1. Share anti-retaliation information early and often, at first contact if possible.
  - a. List protections against retaliation and explain what actions may be retaliatory.
  - b. Provide a form for workers to track actions that may be retaliatory.
  - c. Be explicit about immigration status protection. Include information on state protections for immigrant workers (e.g. AB 263 and SB 666).
2. Determine whether a community-based organization (CBO) works in this industry, geographic area, or worker population that could support this worker.
3. Explain who you are to the employees you are interviewing, the enforcement process, and what is expected of them and the process.
4. Off-site investigations should be standard.
  - a. Fear of retaliation may prevent workers from cooperating fully during on-site investigations. Contact a CBO that works in the industry, area, or population belonging to the complainant to determine whether to conduct on-site or off-site visits, with the help of a CBO where necessary.
5. Provide comprehensive workplace rights information.
  - a. Give referrals to organizations for help with wage claims, and for non-wage issues such as health and safety, sexual harassment, public benefits, and immigration.
6. Plan to provide interpretation.
  - a. Interpreters and translators are necessary. Have clear protocol for what comprises interpretation. Do not rely ad hoc on bi-lingual workers or agency staff.

- b. Make intake forms accessible in different languages. Many local ordinances require information in all languages spoken by 5% or 10% the workforce in the geographical area. Identify those languages and prepare translations of materials.
- 7. Prioritize cases, such as those where:
  - a. The worker is still employed.
  - b. The issue is ongoing, not in the past.
  - c. More than one worker is affected.
  - d. Wage theft occurs frequently in the industry or occupation involved.
- 8. Decide whether to refer the case to DLSE or resolve it.
  - a. Factors suggesting local resolution:
    - i. Your local ordinance explicitly authorizes you to resolve the reported violation.
    - ii. The reported violation contains one of your criteria for prioritization.
    - iii. The employer currently operates, has assets, and your local ordinance provisions offer leverage for prompt resolution, such as threats to suspend health permits.
  - b. Factors suggesting referral to, or jointly investigating with the state:
    - i. The reported violation occurred in one of the state's priority industries.
    - ii. The reported violator is a repeat offender for which the DLSE can file a preemptive lien to preserve assets pending resolution.
    - iii. Joint employer situations. Collect as much information as possible about anyone who may be a joint employer and refer to the DLSE, which can name joint employers in all claims processes.
    - iv. Wage and hour violations identified that are outside of your jurisdiction.
    - v. The reported violation began long before your statute of limitations permits you to remedy the violation, so the worker will recover much more at the state.
    - vi. Violations are systemic and involve multiple employees.
- 9. Develop procedures that guide when to issue phone call warnings or cease and desist letters, make conciliation attempts, or conduct full investigations, based upon the severity of the complaint.

## **INTAKE FORM RECOMMENDATIONS**

1. Collect four categories of information: (1) employee information, (2) employer information, (3) working conditions, and (4) evidence.
2. Explain on all materials who you are, the enforcement process and timelines, and what is expected of them and the process, and retaliation protection.
3. Cross-check whether they have filed a retaliation claim with any agency.
4. Write clear, self-explanatory questions.
  - a. Do not depend on employee knowledge of wage and hour law by simply asking employees whether or not they experience violations. Instead, summarize the rules

clearly and concisely so they can identify violations. Use visuals and examples to help explain math required.

- b. Tailor questions to the industry where possible. Specific industries face unique forms of wage theft. For example, day laborers often receive subminimum-wage flat rates, garment workers receive subminimum piece rate pay, and tipped employees like salon, restaurant, valet, massage, and carwash workers may experience tip stealing or receive a subminimum base wage that employers illegally subsidize with tips. A question that seems as straightforward as, “What time do you begin work?” can be difficult to answer for employees in nail salons and carwashes, for example, who “begin work” (meaning paid work) only after the first client arrives--no matter what time they reported to work. In these cases, as what time they arrive to the worksite, who provided that direction, and whether and when they “clocked in.” CBOs can help you develop the right protocols.
  - c. Ascertain misclassification, instead of directly asking employees whether they are misclassified. Some employers tell their employees that they are independent contractors or exempt employees. It’s often helpful to provide background information on independent contractors and exempt employees, emphasizing that this is a fact-intensive inquiry.
5. Some workers misunderstand intake forms and fail to submit them if they can’t answer every question. Encourage workers to answer to the fullest extent possible, but explain that forms are accepted even if they cannot answer certain questions, such as employer information.
  6. Include an opportunity to report other workplace violations, such as sexual harassment or health and safety violations, for referral to relevant state and federal agencies.

## MODEL INTAKE QUESTIONS

### 1. Employee information

- a. Name, contact information
- b. Name of advocate or organization, if applicable
- c. Preferred language, if they need an interpreter
- d. Include disclaimer that immigration status will never be requested nor relevant to a wage claim

### 2. Employer information

- a. Name, contact information
- b. Personal information to the extent possible, including physical appearance, vehicle, homes, business assets (equipment, tools), etc.
- c. Number of employees
- d. Other businesses they own
- e. Identify decision makers, i.e. supervisors, dispatch, HR

- f. Understand how problems are addressed from the workforce up to decision makers

### 3. **Information about working conditions**

- a. Never rely on a worker's knowledge of the law. Explain questions and give examples, such as, "Illegal deductions can take the form of employees being forced to pay for their own tools and uniforms."
- b. Capture comprehensive worksite information
- c. Understand what the job entails and how they obtained employment
- d. Capture information about:
  - i. Non-payment
  - ii. Off-the-clock work
  - iii. Shift pay / flat rate of pay
  - iv. Overtime
  - v. Doubletime
  - vi. Seven consecutive work days
  - vii. Rest violations
  - viii. Meal break violations
  - ix. Split shift pay
  - x. Illegal deductions
  - xi. Tip stealing
  - xii. Misclassification
  - xiii. Final paycheck--waiting time penalties
  - xiv. Wage statements/form of payment
  - xv. Paid leave (paid sick days, paid family leave)
- e. Ask questions about other working conditions, such as:
  - i. Health and safety
  - ii. Workplace injuries
  - iii. Sexual harassment
  - iv. Discrimination
  - v. Retaliation
  - vi. Child labor
  - vii. Lactation accommodations
  - viii. Record-keeping
  - ix. Reimbursements
  - x. Travel time
  - xi. Vacation policy
  - xii. Process by which work is reviewed
  - xiii. Role of third parties
- f. Ask an open-ended question about what other policies and procedures did the employer advised or were observed at the worksite.

#### 4. Evidence gathering

- a. Determine whether the worker has any records of hours and payment, such as:
  - i. Employee handbooks
  - ii. Schedules
  - iii. Their own record of hours
  - iv. Name and contact information of co-workers willing to cooperate
  - v. Text messages or cell phone images demonstrating hours and pay
  - vi. Paystubs or checks
  - vii. Uniforms
  - viii. Surveillance cameras or security records at worksite

## MODEL INVESTIGATION PROCEDURES

Investigators should:

1. Choose the mode of investigation--by mail, email, telephone, or in person--based upon the severity of the complaint.
2. Collect available data regarding the employer's establishment to evaluate if they are a flight risk. For example, if an employer has easily transferable assets and no office location, the business can dissolve and re-incorporate quickly.
3. Make witnesses feel as comfortable as possible to facilitate the most accurate and comprehensive production of information.
4. Conduct reconnaissance on the worksite during peak hours of work prior to showing up for an inspection.
5. Never inform employers ahead of time of their plan to inspect the workplace.
6. Act deliberately with an understanding of the power dynamic at the workplace between employees, employers, and third parties.
7. Understand what the allegations are prior to conducting worksite inspections.
8. Ask a representative of the workers' organization, or a representative of the workers' choosing, to accompany them on their walk-around of the worksite, where feasible.
9. Make sure both the employer and a representative of the employees are present at opening and closing conferences, if any, while making all effort to preserve confidentiality.
10. Discuss any settlement with the worker and their organizational representative prior to any agreement with the employer.
11. Consider strategies that promote compliance beyond the immediate scope of the issue before them.
12. Engage third parties involved in the working conditions at the worksite to help them understand

the totality of the work environment and seek out any material information.

13. Address structural issues within the worksite that promote or create violations.