

REPORT FROM

OFFICE OF THE CITY ADMINISTRATIVE OFFICER

Date: October 6, 2022

CAO File No. 0220-06003-0000

Council File No. 19-0229-S1

Council District: Citywide

To: The Council

Attention: The Personnel and Animal Welfare Committee

From: Matthew W. Szabo, City Administrative Officer 

Reference: June 9, 2022 request for report from the Chair of the Personnel and Animal Welfare Committee, received by this Office on July 26, 2022

Subject: **FAIR WORK WEEK ENFORCEMENT – RESOURCES REQUIRED**

RECOMMENDATIONS

That the Council, subject to the approval of the Mayor:

1. Authorize employment by resolution authority, the following 11 positions within the Bureau of Contract Administration for implementation of the Fair Work Week Ordinance:

<u>No.</u>	<u>Code</u>	<u>Class Title</u>
1	9165-1	Compliance Program Manager I
2	9171-1	Senior Management Analyst I
8	9184	Management Analyst

2. Authorize employment by resolution authority, the following three positions within the Office of the City Attorney for implementation of the Fair Work Week Ordinance:

<u>No.</u>	<u>Code</u>	<u>Class Title</u>
2	0544	Deputy City Attorney II
1	0576	Paralegal I

3. Authorize the Controller to transfer the following for Fair Work Week Outreach:

	<u>Fund/Dept</u>	<u>Account</u>	<u>Title</u>	<u>Amount</u>
From:	100/58	580385	Fair Work Week	\$200,000
To:	100/76	003040	Contractual Services	\$200,000

SUMMARY

On July 26, 2022, this Office received a request from the Chair of the Personnel and Animal Welfare Committee for a report on the Bureau of Contract Administration (BCA) and City Attorney's Office requested resources to support the implementation of the Fair Work Week Program.

This Office has been working with the Bureau to understand the projected workload and related resources required to effectively administer the Fair Work Week Ordinance. At this time, the future workload is unknown and difficult to accurately project. However, the enforcement of the Fair Work Week Ordinance appears to be significantly more complex than the Citywide Minimum Wage Ordinance. This Office agrees that the BCA request is reasonable and recommends approval of 11 new resolution authority positions for BCA and three new resolution authority positions for the City Attorney. Due to the complexity of the Fair Work Week Ordinance, City staff should be hired in advance of the date of implementation of the Ordinance in April 1, 2023. This will allow for sufficient time for staff to train and subsequently provide training to local businesses impacted by the Ordinance.

DISCUSSION

Implementation of the Fair Work Week Ordinance

Both BCA and this Office have been searching for a way to objectively identify and anticipate future workload. The complex nature of the Fair Work Week Ordinance prohibits the development of a one-size fits all metric that can be used for budgeting purposes at this time. However, the City can use the experience with the implementation of the Citywide Minimum Wage to assess the potential workload and related staffing requirements.

Implementation of the Citywide Minimum Wage

In 2015-16, the City established an operation with dedicated staff to support the implementation of the Citywide Minimum Wage. In the first year, the BCA had four positions and the City Attorney had one. Eventually, the workload grew to require 34 positions for BCA and five for the City Attorney in the 2022-23 Budget (See table below).

Year	BCA	City Atty	Total
2015-16	4	1	5
2016-17	22	5	27
2017-18	29	5	34
2018-19	27	5	32
2019-20	31	5	36
2020-21	30	5	35
2021-22	31	5	36
2022-23	34	5	39

The level of complexity of the Fair Work Week Ordinance exceeds the level of complexity of the Citywide Minimum Wage Ordinance. Efforts to educate businesses on compliance will be more intensive. It is also expected that enforcement efforts will be significantly more complex. Additionally, it is expected that City staff will be interacting with more corporate attorneys under the Fair Work Week ordinance than when working on the Citywide Minimum Wage Ordinance.

Program Costs

The cost of the requested positions for BCA and the City Attorney (and outreach) are as follows:

<i>Bureau of Contract Administration</i>								
No.	Code	Class Title	Annual Costs for All Positions			8 Months Cost for All Positions		
			Direct	Indirect	Total	Direct	Indirect	Total
1	9165-1	Compliance Program Manager I	\$ 138,995	\$ 62,629	\$ 201,623	\$ 92,663	\$ 46,501	\$ 139,164
2	9171-1	Senior Management Analyst I	\$ 252,789	\$ 116,486	\$ 369,275	\$ 168,526	\$ 72,909	\$ 241,435
8	9184	Management Analyst	\$ 756,504	\$ 377,299	\$1,133,803	\$ 504,336	\$ 189,804	\$ 694,140
			\$1,148,288	\$ 556,414	\$1,704,702	\$ 765,525	\$ 309,214	\$1,074,740
<i>City Attorney</i>								
No.	Code	Class Title	Annual Costs for All Positions			8 Months Cost for All Positions		
			Direct	Indirect	Total	Direct	Indirect	Total
2	0544	Deputy City Attorney II	\$ 283,727	\$ 127,255	\$ 410,982	\$ 189,151	\$ 80,089	\$ 269,240
1	0576	Paralegal I	\$ 81,702	\$ 42,686	\$ 124,388	\$ 54,468	\$ 33,205	\$ 87,673
			\$ 365,429	\$ 169,941	\$ 535,370	\$ 243,619	\$ 113,294	\$ 356,913
<i>Total of Contract Administration and City Attorney</i>								
			TOTAL Annual Costs for All Positions			8 Months Cost for All Positions		
			Direct	Indirect	Total	Direct	Indirect	Total
			\$1,513,717	\$ 726,355	\$2,240,072	\$1,009,145	\$ 422,508	\$1,431,653
Outreach Contracts			200,000			\$ 200,000		
			\$1,713,717	\$ 726,355	\$2,240,072	\$ 1,209,145	\$ 422,508	\$1,431,653
<i>Annual Salary and Salary Savings from 22-23 Wages and Count</i>								

The City set aside \$2 million for the implementation of the Fair Work Week program in the 2022-23 Adopted Budget, Unappropriated Balance. In addition to the funds required for the 14 positions, BCA requests \$200,000 for outreach as part of the implementation of the Ordinance.

A total of \$200,000 is recommended to be provided to BCA for outreach. However, at this time, this Office recommends that no incremental salary funds be provided to BCA and the City Attorney. Every City department is struggling to hire sufficient staff quickly and it is likely that salary savings may develop to partially offset the costs of these positions. This Office will monitor the expenditures of BCA and the City Attorney and make any required recommendations to supplement their salary accounts in 2022-23 Financial Status Reports. Should funds be required, they can be provided from the Unappropriated Balance.

FISCAL IMPACT STATEMENT

For Fiscal Year 2022-23, there is no incremental impact on the General Fund as total estimated expenditures are \$1,431,653 and a total of \$2,000,000 is provided in the Unappropriated Balance.

For Fiscal Year 2023-24, the projected annual General Fund impact is \$2,204,702.

FINANCIAL POLICIES STATEMENT

These recommendations comply with the City Financial Policies. Sufficient funds exist within the Adopted Budget to support projected expenditures.

MWS:DHH:06230008

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Council District: All

Honorable Members of the City Council
% Office of the City Clerk
200 North Spring Street, Room 395
Los Angeles, CA 90012

June 6, 2022

Dear Honorable Members:

**BUREAU OF CONTRACT ADMINISTRATION - FAIR WORK WEEK RESOURCES
AND STAFFING CF 19-0229-S1**

On May 24, 2022, the Economic Development and Jobs Committee (Committee) instructed the Bureau of Contract Administration (Bureau) to report on resources needed for the implementation and enforcement of the Fair Work Week ordinance. The Bureau previously submitted a report in October 2019, but the Committee and City Council have since taken actions to amend the original draft ordinance. Given those changes, the Bureau is submitting an updated report that considers the currently proposed policy and the work required to successfully implement this program. These resources include funding to utilize on-call contracts to conduct outreach and assistance to employers and employees.

RECOMMENDATIONS

That the City Council, subject to approval of the Mayor:

1. RESOLVE that 11 positions within the Department of Public Works, Bureau of Contract Administration are approved and confirmed for Fiscal Year 2022-23 to implement and enforce the Fair Work Week Ordinance as follows:

# of Positions	Class Code	Classification
1	9165-1	Compliance Program Manager I
2	9171-1	Senior Management Analyst I
8	9184	Management Analyst

2. RESOLVE that 3 positions within the Office of the City Attorney are approved and confirmed for Fiscal Year 2022-23 to implement and enforce the Fair Work Week Ordinance as follows:



# of Positions	Class Code	Classification
2	0544	Deputy City Attorney II
1	0576	Paralegal

3. AUTHORIZE the Controller to transfer \$1,407,200 from the Unappropriated Balance, Fund 100/58, Account XX, titled Fair Work Week as follows:
 - i. \$860,089 to the Bureau of Contract Administration, Fund 100, Department 76, Account 001010 Salaries General
 - ii. \$200,000 to the Bureau of Contract Administration, Fund 100, Department 76, Account 003040 Contractual Services
 - iii. \$22,000 to the Bureau of Contract Administration, Fund 100, Department 76, Account 006010 Office and Admin
 - iv. \$319,111 to the Office of the City Attorney, Fund 100, Department 12, Account 001010 Salaries General
 - v. \$6,000 to the Office of the City Attorney, Fund 100, Department 12, Account 006010 Office and Admin

4. INSTRUCT the Office of the City Administrative Officer (CAO) to conduct a salary review of the Compliance Program Manager classification and associated paygrades to ensure that the salary is commensurate with the duties and responsibilities.

BACKGROUND

The Bureau's Office of Wage Standards (OWS) will be responsible for implementing, administering, and enforcing the Fair Work Week Ordinance (FWWO). The FWWO provides protections against the unpredictability of retail workers' schedules that can lead to income insecurity, underemployment and challenges with child care. OWS will be tasked with enforcing:

- Good faith estimates of work schedule - requires comparing estimates for each worker with actual hours worked
- Right to request changes to work schedules - requires reviewing written requests and responses
- 14 day written notice of schedules - requires reviewing documentation and conducting interviews with workers to verify schedules were posted timely every 2 weeks
- Requirement to offer additional hours to current employees before hiring - requires reviewing written offers of work, written responses from all eligible employees, and records of new hires
- Predictability pay for schedule changes - requires calculations of each worker's regular rate of pay for each affected pay period, reviewing documentation explaining the reason for each schedule change, comparing the anticipated schedule with the actual hours worked for each employee
- Coverage for missing work shifts - requires interviewing workers and employers to determine whether workers were required to find coverage if they miss a shift
- Rest between shifts - requires reviewing documentation of actual schedules worked to ensure that workers were compensated for shifts scheduled less than 10 hours apart



- Retention of records - requires reviewing records dating back 3 years to ensure compliance
- Posting requirements - requires a physical verification of posting
- Protection from retaliation - requires interviews and review of documentation

Complexity of Enforcement

There are many more worker protections involved in the FWWO and they are unique to each worker, making enforcement far more complex than the Minimum Wage Ordinance (MWO). In addition to enforcing all of the items above, the enforcement is very individualized. For example, a change in schedule doesn't appear on a timesheet. OWS will need to compare the schedule posted 14 days ahead of time with the actual records of hours worked for each individual worker, then determine the reason for each discrepancy. Predictability pay is also based on a worker's regular rate of pay, which can change from pay period to pay period.

While minimum wage investigations typically rely on timesheets and simple calculations of wage underpayment, FWWO requires ensuring each worker is compensated for predictability pay - based on their unique regular rate of pay - for each schedule change. The reason for the schedule change is also critical - if it's due to another employee calling in sick, for example, no predictability pay is required. If the employer gets an unexpected delivery and needs somebody to stay longer, they do owe predictability pay. Overall, these complexities make it difficult to compare staffing needs with that of MWO enforcement.

Lastly, since this law affects large retailers like grocery store chains and big box stores, the OWS will be interacting largely with teams of attorneys. City Attorney support will also continue to be critical for case specific guidance and legal investigative procedures.

Survey of Other Municipalities

The Bureau sought feedback from other municipalities on their experience with implementation of Fair Work Week policies. All cities contacted by the OWS have been unanimous that this is their most complicated and time-consuming labor standard to enforce. Investigations typically take over one year and attorneys are utilized to perform investigations in some cities.

The programs in other cities evaluated by OWS cover different industry sectors, so it is difficult to perform an exact comparison. San Francisco's program covers some restaurants in addition to retail, and investigations typically take a year and a half to two years with five staff assigned to perform enforcement. Seattle's program also covers some restaurants, and investigations typically take 1.3 years for its five staff to perform. The population of Los Angeles is roughly six times that of Seattle, and four times that of San Francisco, which would extrapolate to 30 or 20 positions if resources provided were equivalent to those peer agencies.

At the onset of this program, staffing will be needed to establish the FWWO program. This unit will connect with stakeholders and develop the compliance tools and educational materials that are necessary to implement this program, such as Rules and Regulations, Frequently Asked Questions, Complaint Forms, Fact Sheets, Workplace Posters, etc. Work would then focus on outreach to the affected employers and employees to communicate the labor standard requirements. Enforcement will ensue after the compliance tools have been developed.



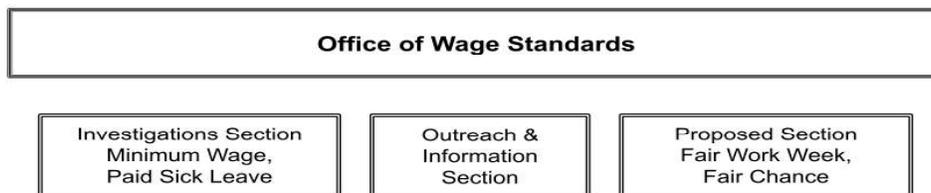
Staffing Request

The draft Ordinance is currently proposed with an effective date of April 1, 2023. To meet this timeline the OWS will need to begin work immediately at the start of the fiscal year on tasks such as drafting Rules and Regulations and informational materials, training staff, performing outreach, and issuing Task Orders to consultants with specialized language and cultural competencies.

In October 2019, the OWS previously submitted reports to the City Council with recommendations for implementation and resource requirements. Based on its evaluations of programs in other cities, the OWS requested a total of 15 new positions to establish this program for FY 2020-21. The Bureau has reduced its request from 15 positions down to 11 to stay within the allotment available in the Unappropriated Balance. The Bureau will assess workload in the first year and report back if resources are not sufficient to provide the desired level of enforcement. The requested positions include one (1) Compliance Program Manager I to oversee the investigation section, two (2) Senior Management Analysts to provide training and oversight, and eight (8) Management Analysts to conduct investigations and analysis. Based on a comparison of staffing resources for other cities as described above, the Bureau's request for 11 positions represents a conservative approach to launch the program in the first year. The Office of the City Attorney has also indicated a need for two (2) Deputy City Attorneys and one (1) Paralegal.

OWS Structural Reorganization

These positions will comprise the bulk of a new section that will be tasked with implementing and enforcing workplace opportunity labor standards. The current Investigation and Compliance Section would remain focused on Minimum Wage and Paid Sick Leave. In addition to the requested Fair Work Week positions, this Section would immediately include one existing Management Analyst position that will be moved from the Investigations Section, which will relocate Fair Chance Initiative for Hiring activities under this new section. In addition, staffing resources for the Freelance Worker Protection law that is currently in the City Council Committee review phase, would be housed in this section too.



Outreach

The requested outreach funds are essential to inform businesses about these new requirements. Penalties for non-compliance can be severe, so it's critical to ensure that affected businesses are aware of their responsibilities before they are found to be in violation and liable for significant penalties. The funding will also enable the Bureau to expand efforts to educate workers about these new rights, and in particular low wage workers who may not speak English. If these funds



are not provided, businesses will potentially be liable for large amounts of penalties while not knowing that they were in violation of this new law.

If you require additional information, please contact Kimberly Fitzpatrick, Compliance Program Manager II, at kim.fitzpatrick@lacity.org.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. Reamer, Jr.", written in a cursive style.

JOHN L. REAMER, JR.

Director

