

LABOR STANDARDS ADVISORY GROUP

September 19, 2014

Mayor Ed Murray
Seattle City Hall
600 4th Avenue
Seattle, WA 98104

Re: Report of the Labor Standards Advisory Group

Dear Mayor Murray:

We are very pleased to convey to you the final Report of the Labor Standards Advisory Group. You asked us to make recommendations regarding the City's labor standards, including the new Minimum Wage Ordinance. We were all honored to serve on this committee, and hope that this Report will assist you and the City Council in the important work of implementing and enforcing these standards in a fair and effective manner.

This Report was the product of many meetings, discussions, and debates among the Group's members over several months. We are gratified that we were able to reach agreement on most of the issues presented to us. Where there was disagreement, it is reflected in the Report as views expressed by two different perspectives that emerged.

Sincerely,

Labor Standards Advisory Group Members

George Allen, Sr. Vice President, Seattle Chamber of Commerce
Cariño Barragán Talancon, Campaign Organizer, Casa Latina
Andrew Beane, , SEIU 775
Kellis Borek, Director Labor/Employment & General Counsel, Archbright
Marcus Charles, Principal, Local 360 Café & Bar
Richard Feldman, Former Senior Policy Advisor, Labor Liaison for Mayor Nickels
Marty Garfinkel, Attorney, Schroeter Goldmark & Bender
Lindsey Grad, Legislative Director, SEIU Healthcare 1199NW
Christine Jones, Manufacturing Industrial Council, Workforce Education Manager
Josh McDonald, Local Government Relations, Seattle Restaurant Alliance
Joe Mizrahi, Political Action Coordinator, UFCW21
Teresa Mosqueda, Government Affairs Director, Washington State Labor Council
David Rolf, President, SEIU 775
Mona Smith, Chair, Public Affairs, Greater Seattle Business Association
Rebecca Smith, Executive Director, National Employment Labor Project
Hilary Stern, Executive Director, Casa Latina

Attachments

Labor Standards Advisory Group

Report to the Mayor and City Council

September 18, 2014

Introduction

This report is the culmination of close to six months of collaborative work by the City of Seattle Labor Standards Advisory Group (LSAG). People serving on the LSAG included people with expertise in wage and labor issues, people whose interests correspond with those of the businesses in Seattle, and people who primarily focus on the interests of workers. The LSAG was tasked with considering these issues:

- The implementation of the Minimum Wage Ordinance and the coordination of this law with existing statutes;
- The City's role in gaining compliance with labor standards and workforce policies;
- The most pressing gaps and priorities in City enforcement efforts;
- The most effective compliance strategies, including use of community-based outreach efforts, public outreach efforts and public information and marketing strategies; and
- Ideas for improving the coordination of compliance and enforcement efforts by City departments.

This report speaks to these issues via four primary topic areas. Within each topic the LSAG has articulated agreements reached among all members. Where disagreements remain, these are briefly described as well. The following pages demonstrate what is possible when candid, collaborative engagement occurs among people with disparate views but a common goal.

Topic 1: One Entity

Recommendation:

Establish a single, centralized entity (agency, sub-agency, division, office or department) within the City of Seattle to house, implement and coordinate all compliance, education, outreach, and enforcement functions for the minimum wage, paid sick and safe time, criminal wage theft to the extent allowed by law and job assistance ordinances.

Areas of agreement:

1. Provide expertly trained staff, knowledgeable in applicable State and Federal laws as well as City of Seattle labor standards. Assure that those making inquiries are directed to the place that can provide the best support, response or information whether within or outside of the City. Have expert staff provide individualized follow-up, interpretation services, and collaborative, responsive problem solving.
2. Centralize information. Include information and referral options about state and federal agencies with wage and labor responsibilities.
3. Create virtual and physical interfaces that allow people to work with a staff person right away if they wish. Ideally, a single person would be assigned to each case or inquiry and be responsible for supporting and following up on the case as long as it is active.

4. Maintain a rigorous standard of confidentiality. Include a mechanism for people (businesses, workers, advocates, associations and others) to learn and make inquiries anonymously.
5. Brand the City entity with an objective and descriptive title that clearly conveys this is the place for employees, employers, businesses and others to go for information and assistance regarding wage and labor ordinances and standards in Seattle.
6. Initially, combine all information from all relevant arms of City government into a single 'outward facing' (to the public) website, phone number and physical location. Do this before, and as, responsibilities are officially combined and transferred into a single City entity. The single entity should use the internet, media, social media, flyers, letters, etc., to communicate widely and effectively with employers and employees to ensure that the needed information is broadly accessible and all such material clearly conveys that this entity is the place for employees, employers, and others to go for information and assistance regarding labor standards in Seattle.
7. The new agency should take steps to improve enforcement of the Wage Theft Ordinance within legal requirements.
8. Our hope and vision is that all future labor laws and ordinances would fall under the purview of this single entity.

Topic 2: Education and Outreach

Recommendation:

Establish a comprehensive education and outreach structure that enables employers and employees to understand their roles, responsibilities and rights under labor standards ordinances. Ensure outreach and education is tailored to employers and employees and that all outreach and education consistently demonstrates and models cultural competency.

Areas of agreement:

1. Develop clear rules, policies and information materials that set forth and explain all aspects of the laws. Make this an immediate priority for the Minimum Wage Ordinance. Design and establish outreach strategies for both employers and employees. Develop outreach systems that are attentive to the structures and needs of the different groups of employees, and different business sectors. Small business will also require tailored outreach. Develop an accurate and reliable on-line tool for self-evaluation so that every employer can easily determine the correct minimum wage that applies to it.
2. Use the business license application and renewal system, and permit applications (e.g., for construction) as opportunities to educate employers.
3. Establish a user-friendly website. Use media (including social media) and other proactive mechanisms as part of the City's outreach and engagement. Implement a robust web-based system, as well as alternative access points to serve those who do not have easy access to web-based systems.
4. Include self-directed options in written and on-line materials that allow people to navigate the information on their own. Consider using interactive flow charts and decision trees modeled after those on the websites of Washington State Department of Labor & Industries and U.S. Department of Labor.
5. Be consistent with information and messages, even as outreach strategies and mechanisms differ according to the needs of specific audiences.
6. Design and establish culturally and linguistically appropriate education and outreach strategies for both employers and employees. Ensure the strategies are proactive, respectful and directed toward the wide variety of cultural groups and communities extant in Seattle and engage ethnic constituencies and

organizations to assist with the design and approach. Dedicate resources for this from the outset. The City has made a commitment that everyone, including those for whom English is a second language, has full access to City information and resources. Reflect this policy in the outreach and education strategies.

7. Recognize that some of the workers affected by Seattle's wage and labor laws -- in particular the Minimum Wage Ordinance -- are low wage workers, and may have limited English language literacy. Also recognize that some businesses affected by Seattle's wage and labor laws may have owners who have limited English language literacy.
8. Continue and enhance education and outreach programs over time ensuring that the City continues to be a competent resource to employers, and employees for information on roles, rights and responsibilities and problem solving options.
9. When resources are limited, the City will allocate the resources between education and outreach and enforcement as it deems necessary.

Topic 3: Partnerships

Recommendation:

Establish partnerships with organizations to provide outreach and education regarding City wage and labor laws and standards. Have organizations tailor their work to specific audiences and demographic groups.

Areas of agreement:

1. The City can and should take advantage of the distinct competencies of government and of non-governmental organizations. Outside organizations already have access to and trust among various populations of workers and businesses. For example, non-profits steeped in Seattle's neighborhoods and their distinct languages and cultures could help reach out to employers and employees alike.
2. Establish a rigorous Request for Proposal (RFP) process. Through this process, establish criteria for selection of a partner organization, and clear performance and measurement standards. This will assure that services delivered are high quality, meet the needs of the groups they are serving and meet rigorous ethical standards. Consider the perspectives of affected stakeholders when drafting an RFP.
3. Contracts or subcontracts awarded to partners through the RFP process will include performance standards, rigorous accountability standards, measures of effectiveness and well-defined scopes of work. Eligible organizations must be willing to commit to using City funds solely to deliver the scope of work in the contract.
4. Partner with organizations that are culturally competent and trusted by the employer and employee constituents with whom they will engage. Selected organizations should be able to design and prioritize their outreach and education efforts to address the particular needs of limited English speaking workers and business owners.
5. Partnership is a two-way street. Ensure the City provides technical support to partner organizations, and works closely with them to ensure a productive partnership. Have the City provide the training necessary to have the staff of partner organizations become proficient in all aspects and of the City labor laws and standards and to make appropriate constituent referrals to the City. The City will anchor and guide the work with partner organizations, and provide direction and oversight.

Areas of Disagreement:

This is a set issues the group did not resolve:

1. Partner organizations performing worker education and outreach under a city contract should coordinate in order to maximize the efficient use of resources, ensure accountability, and effectively meet the community needs. This can best be accomplished by having the city contract with a lead organization, which then subcontracts with other partners, as evidenced by recent community-based public-private partnerships in the city, the state, and other jurisdictions. As part of their education and outreach role, partner organizations should help workers understand how to access the city's enforcement system and how to compile evidence should a violation have occurred
2. This is another set of issues the group did not resolve:
3. Oversight, supervision and guidance by the City is critical to the success of any partnerships with partner organizations, whether the organizations work with employees, employers or both. With taxpayer money funding partnerships with outside organizations, the greatest degree of transparency and accountability is essential. Creating potential layers of subcontractors not directly accountable to the City diminishes the City's ability and need to have the control necessary to assure contract compliance and implementation of the City's program's goals and outreach and education initiatives. The scope of any partnership contract will be limited to outreach and education of labor standard ordinances.

Topic 4: Compliance, Enforcement and Penalties

Recommendation:

Strong and effective enforcement is critical in order to achieve maximum compliance with labor standards laws. It complements strong and effective education and outreach. Focus investigations and penalties on those who are habitual or egregious violators, and where violations are systemic.

Areas of agreement:

1. The Minimum Wage Ordinance ("MWO") is complex; an immediate 'crack down' during the first year (*i.e.*, from April 1, 2015 through April 1, 2016) is not warranted. During this first year, the City will:
 - a. Focus on outreach and education to gain compliance as quickly and effectively as possible;
 - b. Where violations are found, seek a "make whole remedy" that reimburses workers for lost pay back and interest in accordance with the ordinance;
2. When an employer or business is found to be out of compliance in the first year, regardless of whether the violation is intentional and regardless of whether or not a penalty has been imposed, the City should follow up with that business or employer to assure the requirements of the law are fully understood and that no further violations occur.
3. Depending on the nature of the violation, the City shall consider whether the violation is systemic and if so, will make whole all affected workers.
4. The City should monitor the efficacy of chosen compliance and enforcement strategies through the first year of implementation of the Minimum Wage Ordinance. It should adjust strategies to improve compliance as data on efficacy is received and analyzed.
5. The City should ensure complaint systems are both transparent and confidential. It should meet with other City, State and Federal agencies to develop protocols for referral and prioritization of complaints, drawing on the strengths of each agency and the protections afforded under the laws each enforces.

6. The City should implement a process where it may refer potential wage theft cases to the City Attorney or King County Prosecutor.
7. The City should maintain its ability to revoke the business licenses of repeat, intentional or egregious offenders where warranted.

Areas of Disagreement:

This is a set of issues the group did not resolve:

1. The City should develop best practices and have a full complement of tools at its disposal to implement and enforce its labor standards ordinances. In doing so, the City should start from the premise that the vast majority of businesses are or want to be compliant with the City's labor standards ordinances, and given the complexity of the ordinances most violations are unintentional, as the City's own data from outreach and enforcement of the Paid Sick and Safe Time Ordinance demonstrates. To achieve maximum compliance, the City's primary focus should be outreach and education to employers and workers to enable them to understand their rights and obligations. Any program must be effective, efficient and cost-effective.
2. The City should adopt a tiered enforcement model that allows for flexibility and discretion around penalties and ascertaining the intentionality of a violation. Investigations and enforcement should always derive from a complaint and be carried out only by the City agency or department charged with overseeing labor standards. The City should send a notice of a first violation, regardless of when the alleged violation occurs, to the employer and provide assistance to bring the employer into compliance. The City should use its discretion to decide, based on the totality of the facts and circumstances, whether and to what extent a business should be penalized for subsequent violations of the same ordinance. As to the minimum wage ordinance, the City's enforcement strategy should reflect that the minimum wage ordinance has different "first" years for different businesses, i.e. businesses that currently pay their employees \$13 an hour will be in compliance with the law for multiple years opposed to businesses that will need to increase employee wages to meet the Seattle minimum wage on April 1, 2015.
3. Where an egregious violation leads to a company-wide investigation, the investigation focus must be restricted to the ordinance originally violated. Where a violation is found to be systemic, the Agency should be entrusted to decide whether a further investigation of the business is warranted.
4. Enforcement data should be evaluated every 2 to 3 years. When data is used to make enforcement strategy decisions, the data used should be Seattle-specific rather based on national statistics.
5. Existing state statutes and administrative laws provide a private right of action to employees to collect unpaid wages, recovery of attorney fees and the potential of punitive damages.

This is another set of issues the group did not resolve:

1. Focused Strategic Enforcement: A reactive complaint-based system alone is not an effective use of limited resources to enforce a new minimum wage law that covers thousands of employers and 100,000 employees. The City should engage in focused, strategic enforcement strategies to achieve higher overall compliance rates for industries where evidence shows violations are most likely and industries with vulnerable workers that are least likely to complain. Also, with the increased "fissuring" of the workplace where work was once done by direct employment but now is subject to layers of contracting, it is important to hold the "top" of fissured industries accountable as well. These best practices are supported by evidence-based research conducted for the U.S. Department of Labor by David Weil (the DOL's new Wage & Hour Division Administrator) in his May, 2010 paper "Improving Workplace Conditions Through Strategic Enforcement."
2. Complaint-based Enforcement After The First Year: After April 1, 2016: It should be the mandatory practice to impose statutory penalties on employers who violate the MWO, with only limited exceptions in cases of legitimate, extenuating circumstances as defined by agency policy.

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3. Bring enforcement in the Minimum Wage Ordinance in line with other minimum wage laws:
 - a) Penalties must be awarded in amounts that prevent further violations. Seattle should follow the lead of numerous other jurisdictions that have enacted laws providing for treble damages in cases of violations.
 - b) The ordinance lacks any back pay remedy or penalty to discourage retaliation. These should be included.
 - c) Workers need to be afforded an explicit private right of action, as is common in other labor standards laws and to increase enforcement resources. Current state statutory law does not permit private enforcement of this law, except under RCW 49.52 which requires a showing of “willful withholding” and therefore does not provide a meaningful private right of action in the vast majority of routine cases.
4. Coordination With Other City Agencies: Other Departments, such as the Department of Health, may be in a position to spot potential violations of labor standards, and should be given the tools and authority to ascertain if an investigation into violations of labor standards may be warranted at a given business.