



NATHAN FLETCHER

CHAIR

SUPERVISOR, FOURTH DISTRICT
SAN DIEGO COUNTY BOARD OF SUPERVISORS

AGENDA ITEM

DATE: May 4, 2021

TO: Board of Supervisors

SUBJECT

FRAMEWORK FOR THE FUTURE: CREATING AN OFFICE OF LABOR STANDARDS AND ENFORCEMENT (DISTRICTS: ALL)

OVERVIEW

The COVID-19 pandemic has only highlighted the need for robust worker protections for essential workers. During the pandemic, many essential workers in industries that San Diegans relied on to function were put in difficult positions by bad actor employers. Essential workers needed to bring home a paycheck but had limited opportunities. My office heard directly from community partners and individuals about workers who continued going to work under unsafe conditions, in locations that were not following public health guidelines, or for employers who refused to pay full wages or honor mandated sick time. These workers and their families should never be put in these positions.

While the pandemic has heightened the plight of essential workers, we know that San Diego working families were already struggling before the pandemic. Greater protection and involvement from the County of San Diego can help address these concerns.

Labor laws are a mix of federal, state and local laws and regulations, but there is no countywide local government entity to assist workers and employers in navigating this complicated system. That is why I am proposing the creation of an Office of Labor Standards and Enforcement (OLSE) to be housed within the Finance and General Government Group (FG3). The County has taken limited action in protecting working families, the economic backbone of our communities, but it certainly has a role to play. It is imperative that workers be treated fairly and that employers follow all local, state, and federal laws related to employment. The County can provide a central location to provide education and resources to employers and workers alike, conduct research and data collection on worker issues, and could take on additional enforcement measures to protect workers.

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RECOMMENDATION(S)
CHAIR NATHAN FLETCHER

1. Direct the Chief Administrative Officer to establish within the Finance and General Government Group, an Office of Labor Standards and Enforcement including: a Director of the Office of Labor Standards and Enforcement and additional staff support and resources, as appropriately classified by the Department of Human Resources, including county counsel with appropriate expertise in this area, and refer \$1.1 million dollars to budget for consideration during the Fiscal Year 2021-22 budget deliberations and adoption.
2. Direct the Chief Administrative Officer to return to the Board within 120 days and report back on the overall scope, roles and responsibilities of the Office of Labor Standards and Enforcement, and number of staff and type of positions needed for initial execution of the following duties including, but not limited to:
 - a. Providing a central location for questions and connection to resources for workers across San Diego County.
 - b. Engaging business and community partners in education and outreach on important issues related to workers.
 - c. Acting as the County expert on worker issues, including data collection and research initiatives, in order to better understand regional workplace issues including trends, gaps in services, and potential policies that would further goals of protecting and advancing fair and safe workplaces for all.
 - d. Reporting back annually to the Board of Supervisors on the data analysis and research that the Office has undertaken with policy recommendations to consider.
 - e. Exploring the creation of a workplace justice fund that could provide resources to workers who are seeking justice on a workplace issue and need assistance.
 - f. Determination of additional ways the County can participate in enforcement of state and local laws and regulations impacting workers within the County's jurisdictional boundaries, including, but not limited to:
 - i. Enforceable fines and penalties.
 - ii. Ability to collect judgments.
 - iii. Assisting workers in obtaining full restitution.
 - iv. Injunctions against employers that do not comply.
 - v. Development of protocols for denial, suspension, or revocation of licenses, permits or County contracts of employers who repeatedly violate labor standards.
 - g. Coordinating with other County departments and offices that monitor and enforce County contracting requirements and expenditure of County funds, including the Office of Ethics and Compliance and the Department of General Services.

FISCAL IMPACT

Funds for this request are not included in the Fiscal Year 2020-2021 Operational Plan, and there is no fiscal impact associated with this request in Fiscal Year 2020-2021. If approved, Fiscal Year 2021-2022 costs and funding required to staff and maintain the functions of the new Office of Labor Standards and Enforcement are estimated to be \$1.1 million with a projected staffing impact of 5 FTEs, based on similar offices performing this function in other jurisdictions. This request

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will be referred to budget for consideration during Fiscal Year 2021-2022 budget deliberations and adoption. The preliminary recommended funding source would be General Purpose Revenue, but will eventually be determined by program design, duration, and available funding.

BUSINESS IMPACT STATEMENT

The Office of Labor Standards and Enforcement would be a resource for workers and business owners alike to get clarity and information about laws and regulations related to businesses in San Diego County and would take steps to ensure that employers are treating workers fairly.

ADVISORY BOARD STATEMENT

N/A

BACKGROUND

The COVID-19 pandemic has only highlighted the need for robust worker protections for essential workers. During the pandemic, many essential workers in industries that San Diegans relied on to function were put in difficult positions by bad actor employers. Essential workers were particularly in need of bringing home a paycheck but had limited economic opportunities. My office heard directly from community partners and individuals about workers who continued going to work under unsafe conditions, in locations that were not following public health guidelines, or for employers who refused to pay full wages or honor mandated sick time. These workers and their families should never be put in these positions.

The COVID-19 pandemic has disproportionately impacted communities of color. County data throughout the pandemic showed that the case rates for populations and communities of color were significantly higher than for their white counterparts, and this disparity has been especially pronounced in the Black, Indigenous, Latino, and Asian and Pacific Islander communities. At the same time, these communities bore the brunt of the economic impact of the pandemic. These same workers are more concentrated in tourism, hospitality, agriculture, and service sectors, sectors that have not yet recovered, tend to have lower wages, and are vulnerable to employers acting improperly.

These issues are not new, although they have certainly been made worse in the last year. According to a study by the Economic Policy Institute, prior to the pandemic, an estimated \$2 billion was stolen each year from California workers due to minimum wage violations alone. In 2019, the Center for Policy Initiatives and San Diego State University (SDSU) partnered on a survey of 2,600 hourly workers in the San Diego region. The study found that 64% of those workers either did not receive any sick days, received fewer than they were entitled to, or faced retaliation when taking sick days.

Labor laws are a mix of federal, state and local laws and regulations, but there is no countywide local government entity to assist workers and employers in navigating this complicated system. That is why I am proposing the creation of an Office of Labor Standards and Enforcement (OLSE). The County has long been disconnected and uninvolved in many ways regarding working families, the economic backbone of our communities. Still, it certainly has a role to play. It is imperative that workers be treated fairly and that employers follow all local, state, and federal laws related to employment. The County, through OLSE, can both provide a central location to help provide

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education and resources to employers and workers alike and could play a role in enforcing laws and regulations within the County's jurisdiction.

There are many barriers for workers seeking to achieve justice when they have been wronged. Most worker complaints are directed to an overburdened State Labor Commissioner's Office, which cannot respond to all workers' needs. Deciding who to turn to is confusing in such an unwieldy system and community organizations have been stepping in to fill gaps where they can help. Creating a local government entity fully versed in the San Diego region would make achieving justice more accessible for workers and would help good faith business owners who are currently competing with those who cheat the system.

District Attorney Summer Stephan has taken bold steps in workplace justice initiatives, establishing a unit within her office to pursue crimes like wage theft and labor trafficking. While criminal prosecution may be the appropriate avenue for some incidents, OLSE would supplement this work by offering education and resources to workers whose experiences may not rise to the level of necessitating criminal prosecution. We envision a partnership with the District Attorney to ensure that appropriate cases are referred between these two entities, depending on the level of enforcement needed.

In recent months, I partnered with District Attorney Stephan in convening a Workplace Justice Advisory Group made of community partners to discuss issues facing workers in the San Diego region. Out of these discussions we repeatedly heard about the financial losses suffered by workers seeking justice on a workplace issue, including because of retaliatory measures by employers. Our partners shared that creating a fund to assist such workers would help wronged workers meet their needs and encourage the reporting of other employers who mistreat workers. OLSE should explore the creation of such a fund that could provide resources to workers seeking justice on a workplace issue and need assistance.

Enterprise-wide, the County of San Diego holds thousands of contracts, many of which are further divided via subcontracts. While the contract holder has direct access to County staff and resources, my Office has heard from several workers directly regarding contractors or subcontractors mistreating their workers.

For example, during the COVID-19 pandemic, our office heard from employees of County subcontractors who were being told that workers who tested positive for COVID-19 could report back to work as long as they wore a mask. This kind of misinformation is dangerous to those individuals, their co-workers, and the public at large. Additionally, allocating public money through County contracts to businesses that act in this way is a dereliction of our duty as public servants. There are current processes in place through the Office of Ethics and Compliance and the Department of General Services to address issues with existing County contracts. Still, OLSE could serve as a central location where workers can bring complaints to the attention of the County and work with the appropriate departments to ensure that County contracts are only held by companies that follow federal, state, and local laws and regulations and align with Board policies.

We also know that the County requires contractors to disclose pertinent information to demonstrate good standing. However, it does not currently extend to subcontractors. In March, I brought

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forward a policy change to disclose subcontractor contact information and license numbers for entities seeking building permits or right-of-way permits. Enforcement will be essential to ensure that these regulatory changes meet their intended results, and OLSE can play a critical role in determining proper enforcement and facilitating such actions against non-compliant actors.

Specifically, this proposal would direct the Chief Administrative Officer to return to the Board within 120 days and report back on the overall scope, roles and responsibilities of the Office of Labor Standards and Enforcement (OLSE). OLSE would serve many functions including, but not limited to:

- Providing a central location for questions and connection to resources for workers across San Diego County.
- Engaging business and community partners in education and outreach on important issues related to workers.
- Acting as an expert on regional worker issues, including data collection and research initiatives, to better understand the issues, including trends, gaps in services, and potential policies that would further protect and advance fair and safe workplaces for all.
- Reporting back annually to the Board of Supervisors on the data analysis and research that the Office has undertaken with policy recommendations to consider.
- Exploring the creation of a workplace justice fund that could provide resources to workers seeking justice on a workplace issue and need assistance.
- Coordinating with other County departments and offices that monitor and enforce County contracting requirements and expenditure of County funds, including the Office of Ethics and Compliance and the Department of General Services.

The report back on the creation of OLSE should also include a determination of the additional ways the County can participate in enforcement of state and local laws and regulations impacting workers within the County’s jurisdictional boundaries. We know that the County has a role to play in enforcement, but clarity is needed to move forward. An analysis of these issues should include how the County could move forward on enforcement when it comes to violations of labor standards such as minimum wage, sick days, and health and safety standards. The tools that should be considered include, but are not limited to:

- Enforceable fines and penalties.
- Ability to collect judgments.
- Assisting workers in obtaining full restitution.
- Injunctions against employers that do not comply.
- Development of protocols to allow for denial, suspension, or revocation of licenses, permits or County contracts of employers who repeatedly violate labor standards.

As our County moves to prioritize equity and racial justice, OLSE would be giving workers who have been historically exploited and abused the tools and resources they need to build stability for themselves and their families. This is a critical step in addressing income inequality in communities of color and building towards a stronger San Diego.

The creation of OLSE is just one important step we are taking across the enterprise to lift up working families. On January 12, 2021, the Board of Supervisors voted to suspend the previously

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approved 2021 County of San Diego Legislative Program and directed staff to draft new documents for a Legislative Program that better aligned with Board priorities. On January 26, 2021, the Board of Supervisors voted unanimously to approve the revised Legislative Program, including a new section in Policy Guidelines titled “Supporting Working Families.” Included in this section are the following: 1) support legislation that promotes living wage jobs with good benefits; 2) support legislation that protects the right for workers to organize; and 3) support legislation that provides strong workplace safety standards. These new components are reflective of new energy and new priorities at the Board of Supervisors.

What exists in the County’s Legislative Program should also be mirrored in the policy actions taken by the Board of Supervisors. The creation of OLSE is the first step to create robust education and enforcement around labor issues within San Diego County, but the goal is to continue to grow this office to best meet the needs of San Diego workers. In partnership with community partners, other jurisdictions, such as the incorporated cities, employers, and workers, OLSE will make great strides in pursuing workplace justice.

I urge your support.

LINKAGE TO THE COUNTY OF SAN DIEGO STRATEGIC PLAN

Today’s proposed action to create an Office of Labor Standards and Enforcement supports the Building Better Health, Living Safely, and Operational Excellence Strategic Initiatives in the County of San Diego’s 2021-26 Strategic Plan by ensuring that workers are treated fairly, employers are well-informed, and that County contracts are in alignment with County and board policies and regulations.

Respectfully submitted,

A handwritten signature in black ink that reads "Nathan Fletcher". The signature is written in a cursive, slightly slanted style.

CHAIR NATHAN FLETCHER
Supervisor, Fourth District

ATTACHMENT(S)

N/A

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AGENDA ITEM INFORMATION SHEET

REQUIRES FOUR VOTES: Yes No

WRITTEN DISCLOSURE PER COUNTY CHARTER SECTION 1000.1 REQUIRED

Yes No

PREVIOUS RELEVANT BOARD ACTIONS:

January 26, 2021 (14) to approve the revised 2021 Legislative Program Priority Issues and Guidelines.

March 17, 2021 (6) to develop a new ordinance that would require contractors to disclose subcontractors working on projects, and assess relevant enforcement options.

BOARD POLICIES APPLICABLE:

N/A

BOARD POLICY STATEMENTS:

N/A

MANDATORY COMPLIANCE:

N/A

ORACLE AWARD NUMBER(S) AND CONTRACT AND/OR REQUISITION NUMBER(S):

N/A

ORIGINATING DEPARTMENT: Fourth Supervisorial District

OTHER CONCURRENCE(S): N/A

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